

EMERENCIANO ESPINOSA, FERNANDITO BARONIA, BONIFACIO BELEN AND LYDIA RAMOS, PETITIONERS, VS. OFFICE OF THE OMBUDSMAN, JOSELITO OJEDA, JESUS POLLANTE, SR. AND SERGIO ASIA, RESPOND...

G.R. No. 135775. October 19, 2000

Ponente: BELLOSILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-135775/>

BELLOSILLO, J.:

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 RA 6770 has endowed it with a wide latitude of investigatory and prosecutory 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 public service." [1]

This Petition for Certiorari under Rule 65 seeks to annul and set aside for having been rendered with grave abuse of discretion the Orders dated 2 June 1998 and 14 August 1998 issued by Special Prosecution Officer II Cicero D. Jurado Jr. and approved by the Ombudsman. The first Order recommended the dismissal of the criminal case and the withdrawal of the Information against respondents Joselito Ojeda, Jesus Pollante Sr. and Sergio Asia for violation of Sec. 3, par. (e) of RA 3019, The Anti-Graft and Corrupt Practices Act, and the second Order recommended the dismissal of petitioners' Motion for Reconsideration/Motion to Reopen Reinvestigation.

Petitioners Emerenciano Espinosa, Fernandito Baronia, Bonifacio Belen and Lydia Ramos were all members of the Sangguniang Bayan of Mulanay, Quezon Province, while private respondent Joselito Ojeda was Mayor, private respondent Jesus Pollante Sr. was Municipal Treasurer and private respondent Sergio Asia was Private Secretary of the Mayor, all of the municipality of Mulanay, Quezon Province, when the antecedents of the instant case transpired.

On 1 September 1992 a certain Anita Bariata, employed as Revenue Collection Clerk II in the Municipality of Mulanay, wrote respondent Mayor Ojeda requesting permission to continue her studies and be a degree holder. Her request bore the handwritten approval of respondent Municipal Treasurer Jesus Pollante Sr., then her immediate superior, with the proviso that Bariata should attend to her classes after the usual civil service prescribed office hours. [2]

Respondent Mayor Ojeda approved the request in an Office Order which stated that Bariata was to be "temporarily stationed at Lucena City" and was further instructed to coordinate all her official activities with respondent Sergio Asia, the Mayor's private secretary. [3]

Bariata then enrolled in the College of Business Administration of the Manuel S. Enverga University Foundation (MSEUF) in Lucena City and was a student there starting the second semester of school year 1992-1993 until the

first semester of school year 1994-1995, as certified to by the Dean of the University.[4]

On 8 December 1992, during a meeting attended by Members of the Sangguniang Bayan of Mulanay, as well as department heads of the municipal government in the Office of the Mayor, petitioner Emerenciano Espinosa brought to the attention of respondent Mayor Ojeda what he perceived to be an anomalous situation, i.e., that Revenue Collection Clerk II Bariata continued to be a monthly-paid employee of the Mulanay municipal government despite the fact that she was a full-time student in Lucena City. To support his allegation, petitioner Espinosa produced the Daily Time Records of Bariata, duly certified by respondent Asia, showing that she had been reporting for work in Mulanay, Quezon, from 8:00 a.m. to 5:00 p.m. daily from Monday to Friday, and for which she was paid the monthly salary of P1,823.00.[5]

Not satisfied with respondents' explanations, petitioners as Concerned Citizens of Mulanay, Quezon, filed with the Office of the Deputy Ombudsman for Luzon a criminal and administrative Complaint against respondents Mayor Joselito Ojeda, Vice Mayor Meliton O. Baronia, Municipal Treasurer Jesus Pollante Sr., Secretary to the Mayor Sergio Asia, and Revenue Collection Clerk II Anita Bariata for "malversation, falsification of documents, graft and corrupt practices and other crimes in connection with acts they committed and continue to commit, in their official capacities, and by taking advantage of the same." [6] It was the contention of petitioners that since Anita Bariata was regularly attending classes at the MSEUF in Lucena City, it would have been impossible for her to have fulfilled her duties as Revenue Collection Clerk II in Mulanay. They noted that travel time between Lucena City and Mulanay was at least six (6) hours one way. Hence, the amounts given to her as her salary were in the nature of illegal disbursements which "defraud(ed) and deprive(d) the government of its property, in the process giving undue advantage to an individual to the prejudice of the public in general."

On 26 April 1996 respondent Ojeda submitted a Counter-Affidavit setting forth his defenses.[7] He presented the Office Order which he issued, dated 26 October 1992, ordering Bariata to be temporarily stationed in Lucena City. He also presented Bariata's letter requesting him to allow her to continue her studies which was endorsed favorably by respondent Municipal Treasurer Pollante, Sr., "provided that the said studies (would) be done after the CSC prescribed office hours."

On 27 November 1997 the Office of the Deputy Ombudsman for Luzon, through Graft Investigation Officer Lourdes Alarilla, issued a resolution[8] finding a prima facie case against respondents Ojeda, Pollante Sr. and Asia, and recommending the filing of an Information before the Sandiganbayan against them for violation of Sec. 3, par. (e) of RA 3019 which was approved by the Ombudsman.[9] Respondent Vice Mayor Baronia was exonerated on the ground that, as found by the Graft Investigation Officer, Baronia's signing of the questioned payrolls was done in good faith and that he was not part of the conspiracy to defraud the government. But, as regards Mayor Joselito Ojeda, Municipal Treasurer Jesus Pollante Sr. and Secretary Sergio Asia, the corresponding Information was filed against them on 3 February 1998 and docketed as Crim. Case No. 24432 of the Fifth Division of the Sandiganbayan. Respondents moved for reconsideration but their motion was denied on 28 April 1998.

Before they could be arraigned, respondents filed with the Sandiganbayan (Fifth Division) a Motion for Reinvestigation purportedly in light of new evidence to be presented. They submitted certifications from Bariata's professors at the MSEUF indicating that she had made "special arrangements" with them to the effect that she would make up or attend tutorial sessions in lieu of regular classes.[10] The ensuing reinvestigation resulted in the assailed Order of 2 June 1998 issued by Special Prosecution Officer II Cicero D. Jurado Jr., approved by Ombudsman Aniano A. Desierto, recommending the dismissal of the case and the withdrawal of the Information against respondents. The Order cited *Santiago v. Garchitorena* where the Court declared that there were "two (2) ways of violating Sec. 3, par. (e) of RA 3019: 1) causing any undue injury to any party, including the government;

and, 2) by giving any private party any unwarranted benefit, advantage or preference." Since the certifications from the professors of Bariata proved that Bariata did not attend classes on working days in view of their special arrangements, her salaries could not be considered irregular disbursements and, consequently, the government did not suffer any undue injury. In the absence of this element, the accused cannot be indicted or prosecuted for breach of Sec. 3, par. (e), of RA 3019.[11]

Petitioners filed a Motion for Reconsideration/Motion to Reopen Reinvestigation which was denied in the second assailed Order of 4 August 1998.[12] On 15 October 1998 the Sandiganbayan (Fifth Division) granted the withdrawal of the Information on motion of Special Prosecution Officer II Jurado Jr.[13] Hence this recourse.

The issues in the instant petition can be summed up into whether the Ombudsman committed grave abuse of discretion amounting to lack of jurisdiction when he approved the Orders of Special Prosecution Officer II Jurado Jr. which reversed an earlier resolution by Graft Investigation Officer II Alarilla recommending the filing of a criminal case against respondents on the basis of new evidence presented during the reinvestigation.

First, the ground rules. This Court has consistently held that the courts will not interfere with the discretion of the fiscal or the Ombudsman in prosecuting or dismissing a complaint filed before him, absent a clear case of grave abuse of his discretion.[14]

The rule is based not only upon constitutional considerations but upon practical ones as well. If it were otherwise, the courts would be gravely hampered by innumerable petitions questioning the dismissal of investigatory proceedings before the Ombudsman, in much the same way that the courts would be swamped if they would be compelled to review the exercise of discretion on the part of our prosecutors each time they decide to file an information in court or throw out a complaint.[15]

In resolving the issues before us we are once again reminded of the duties of the prosecutor in the prosecution of criminal cases, so aptly stated in *Cruz, Jr. v. People*[16] -

The main function of the government prosecutor during the preliminary investigation is merely to determine the existence of probable cause, and to file the corresponding information if he finds it to be so. And, probable cause has been defined 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.

However, the duty of a government prosecutor to prosecute crimes does not preclude him from refusing to file an information when he believes there is no prima facie evidence to do so. Thus in *Zulueta v. Nicolas*[17]-

The fiscal has for sure the legal duty to prosecute crimes where there is enough evidence to justify such action. But it is equally his duty not to prosecute when after an investigation he has become convinced that the evidence available is not enough to sustain a prima facie case. The fiscal is not bound to accept the opinion of the complainant in a criminal case as to whether or not a prima facie case exists. Vested with authority to determine whether there is sufficient evidence to justify the filing of the corresponding information, and having control of the prosecution of the criminal case, the fiscal cannot be subjected to the dictation of the offended party (emphasis supplied).

The Office of the Ombudsman has the sole power to "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." [18] The Court has refused to interfere with the Office of the Ombudsman in disapproving the findings of its special prosecutors,[19] promulgating its own rules of procedure,[20] summarily dismissing complaints without going through preliminary investigation,[21] issuing orders without giving parties a prior oral hearing,[22] and even dismissing criminal cases filed against "a series of

nine City Prosecutors who tossed the responsibility of conducting a preliminary investigation to each other with contradictory recommendations, 'ping-pong' style,"[23] among others.

The Court will likewise refuse to intervene in the instant case. The power to withdraw the Information already filed is a mere adjunct or consequence of the Ombudsman's overall power to prosecute. It is subject, of course, to the approval of the Sandiganbayan. As with any other criminal case, once the same has been filed with the court, it is that court, and no longer the prosecution, which has full control of the case so much so that the information may not be dismissed without the approval of that court.[24] Consequently, it is important to note that in the case at bar the Sandiganbayan, through its Fifth Division, gave such an approval, contained in its 15 October 1998 Resolution.

Anent petitioners' contention that they were deprived of due notice at the reinvestigation, we note that the Sandiganbayan found that "complainants actually received copy of the prosecution's Motion to Withdraw Information." The same notwithstanding, complainants did not submit any evidence refuting the veracity of the Enverga University certifications other than the observation that -

There would not have been any necessity for Ms. Bariata to be assigned in Lucena City if she were going to attend her classes on Saturdays. She could have worked in Mulanay, Quezon and go to Lucena every weekend to attend her classes.[25]

We see no reason to disturb such findings. And even without such notice, we agree with the observations of the Sandiganbayan that "under the Rules of Procedures of the Office of the Ombudsman (Administrative Order No. 07), particularly Sec. 7, in relation to Sec. 4, while complainants in preliminary investigation before the Ombudsman actively participated therein, their participation is no longer accorded to them as a matter of right in the stage of the reinvestigation." [26] In administrative proceedings, moreover, technical rules of procedure and evidence are not strictly applied; administrative due process cannot be fully equated with due process in its strict judicial sense.[27]

To repeat, it is well-settled that in the absence of a clear case of abuse of discretion, courts will not interfere with the discretion of the Ombudsman, who, depending on his finding and considered evaluation of the case, either dismisses a complaint or proceeds with it.[28]

Petitioners attempt to bring the case within the exception to the general rule of non-interference with the powers of the Ombudsman. In their Consolidated Reply, they argued that "(they) are not questioning the authority and discretion of Public Respondent to resolve cases brought before it for investigation. What they question is the manner in which Public Respondent exercised that discretion." [29]

According to petitioners, the Ombudsman's grave abuse of discretion lies in his failure to consider the contradictory nature of the evidence presented by respondents. The conflicting evidence referred to are: (a) the Counter-Affidavit presented by Mayor Joselito Ojeda in the preliminary investigation where he asserted that Bariata was transferred from the Office of the Municipal Treasurer to the Office of the Mayor and assigned to Lucena City where she was allowed to attend classes "subject to the condition that her studies (would) be done only after office hours;" and, (b) the Affidavits of five (5) professors explaining the "special arrangements" with Bariata where she was allowed to attend make-up classes on weekends.

In their Memorandum, petitioners assert that "it is obvious that Public Respondent failed to compare the two sets of evidence or to even consider the first set submitted during the preliminary investigation." [30]

In raising this point, petitioners would have the Court review findings of fact made by the Ombudsman through Special Prosecution Officer II Jurado Jr. To consider their arguments will necessarily entail a review of the

Ombudsman's appreciation of the facts. This is, to quote a case, "a mere desperate attempt to lure this Court into reviewing the factual findings of the Office of the Ombudsman." [31] Petitioners are well aware that the Court is not a trier of facts, more so in the consideration of the extraordinary writ of certiorari where neither questions of fact nor even of law are entertained, but only questions of lack or excess of jurisdiction or grave abuse of discretion. [32]

On the other hand, findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. [33] Absent a clear showing of grave abuse of discretion, we shall not disturb such findings. There is no reason to do so in this case.

WHEREFORE, the petition is DISMISSED there being no showing that the assailed Orders of 2 June 1998 and 14 August 1998 of Special Prosecution Officer II Cicero D. Jurado Jr., and approved by the Ombudsman, were issued in grave abuse of discretion amounting to lack or excess of jurisdiction.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] *Alba v. Nitorreda*, G.R. No. 120223, 13 March 1996, 254 SCRA 753.

[2] *Rollo*, p. 61.

[3] *Id.*, p. 62.

[4] *Id.*, p. 23.

[5] *Id.*, pp. 25, 27, 29, 34-36.

[6] *Id.*, pp. 18-22.

[7] *Id.*, p. 62.

[8] *Id.*, pp. 75-79.

[9] Sec. 3 (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.

[10] *Rollo*, pp. 119-123.

[11] *Rollo*, pp. 82-84.

[12] *Id.*, pp. 93-95.

[13] *Id.*, p. 116.

[14] *Ocampo IV v. Office of the Ombudsman*, G.R. Nos. 103446-47, 30 August 1993, 225 SCRA 725; *Young v. Office of the Ombudsman*, G.R. No. 110736, 27 December 1993, 228 SCRA 718.

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

[16] *Ibid.*

[17] 102 Phil. 944 (1958).

[18] Sec. 15 (1), The Ombudsman Act of 1989 (RA 6770).

[19] See Note 14.

[20] See Note 1.

[21] Knecht v. Desierto, G.R. No. 121916, 26 June 1998, 291 SCRA 292.

[22] See Concerned Officials of the MWSS v. Vasquez, G.R. No. 109113, 25 January 1995, 240 SCRA 502. The Supreme Court affirmed the action of the Ombudsman insofar as the parties were amply accorded the opportunity to be heard.

[23] Gracia-Rueda v. Pascasio, G.R. No. 118141, 5 September 1997, 278 SCRA 769.

[24] Dungog v. Court of Appeals, G.R. Nos. 77850-51, 25 March 1988, 159 SCRA 145.

[25] Additional Observations of Associate Justice Anacleto D. Badoy, Jr., appended to Sandiganbayan Resolution of 15 October 1998, Crim. Case No. 24432 (OMB-1-94-2053); Rollo, p. 117.

[26] Ibid.

[27] Ocampo IV v. Office of the Ombudsman; see Note 14.

[28] Young v. Office of the Ombudsman; see Note 14.

[29] Rollo, p. 144.

[30] Id., p. 182.

[31] See Note 1.

[32] Commission on Audit v. Tanodbayan, G.R. No. 81476, 26 July 1991, 199 SCRA 622.

[33] The Ombudsman Act of 1989, RA 6670, Sec. 27.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.