

ROGELIO P. ANTALAN, PETITIONER, VS. HON. ANIANO DESIERTO, IN HIS CAPACITY AS OMBUDSMAN, RESPONDENT.

G.R. NO. 152258. November 30, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Sought to be annulled in the present Petition for Certiorari under Rule 65 of the Rules of Court are the October 1, 2001 Memorandum[1] of Ombudsman Legal Counsel Sylvia Hazel T. Bismonte-Beltran (Bismonte-Beltran) in OMB-MIN-01-0260[2] and the October 4, 2001 Information[3] filed with the Sandiganbayan pursuant to said Memorandum.

The facts are not disputed.

On the basis of an Affidavit[4] executed by Edison Ehilla (Ehilla), a resident of Island Garden City of Samal (IGACOS), a Complaint[5] was filed with the Office of the Deputy Ombudsman for Mindanao (OMB-Min) charging IGACOS City Mayor Rogelio Antalan (Antalan) with Grave Misconduct, Graft and Corruption, Grave Abuse of Authority, Dishonesty, and Malversation of Public Funds in connection with the purchase of four (4) units of six wheeler dump trucks, disbursement of intelligence funds and construction of a structure along the city shorelines.

After Antalan filed his Counter-affidavit,[6] OMB-Min Graft Investigator I Quintin Pedrido, Jr. (Pedrido) issued a Resolution[7] dated June 18, 2001 recommending the dismissal of the case. Ombudsman Aniano Desierto (Ombudsman) approved said Resolution on July 13, 2001.[8] Ehilla filed a Motion for Reconsideration[9] but Pedrido denied the same in an Order[10] dated September 11, 2001 which the Ombudsman approved on September 21, 2001.[11]

It would appear, however, that by verbal instruction, the Ombudsman directed Bismonte-Beltran to review the September 11, 2001 Pedrido Order.[12] In her October 1, 2001 Memorandum, Bismonte-Beltran recommended the following:

WHEREFORE, premises considered, it is respectfully recommended that: a) the Order dated September 11, 2001 of the Office of the Deputy Ombudsman for Mindanao be disapproved insofar as it recommends the dismissal of the charge for violation of Section 3 (e) of R.A. 3019 in connection with the alleged irregularities in the purchase of four (4) units 6-wheeler dump trucks; b) and that upon a finding of probable cause for violation of Section 3 (e), R.A. 3019 against respondent Mayor Rogelio P. Antalan, the corresponding information be filed against him before the Sandiganbayan.[13]

Bismonte-Beltran also prepared an Information[14] dated October 4, 2001 charging Antalan with Violation of Section 3(e), Republic Act No. 3019. She certified therein that a preliminary investigation was conducted in the case and that there is probable cause to believe that Antalan committed the crime charged.[15]

On December 21, 2002, the Ombudsman approved the October 1, 2001 Memorandum[16] and the October 4,

2001 Information.[17] Thus, the Information was filed with the Sandiganbayan on January 7, 2002 and docketed as Criminal Case No. 27128.[18]

On January 17, 2002, Antalan filed with the Sandiganbayan a Motion for Reconsideration/Reinvestigation on the ground that he was denied his right to file a motion for reconsideration as guaranteed under R.A. No. 6770 and Administrative Order No. 07.[19] In an Order[20] dated January 23, 2002, the Sandiganbayan[21] granted said Motion and ordered reinvestigation of the case, thus:

Considering that the Information in this case was filed on exactly the same day that the Office of the Ombudsman had sent a copy of the resolution authorizing the filing of the Information in this case thereby effectively depriving the accused his statutory right to file a motion for reconsideration and there being no objection on the part of Prosecutor Victor A. Pascual, the motion is GRANTED. Consequently, said accused is given a period of fifteen (15) days from today within which to file his expanded motion or supplemental motion for reconsideration in the Office of the Special Prosecutor which is directed to inform this Court of the action it has taken thereon within thirty (30) days from receipt of the adverted motion.

Accordingly, on February 19, 2002, Antalan filed a Supplemental Motion for Reconsideration with the Office of the Special Prosecutor (OSP).[22] Pending resolution of his Motion, Antalan filed with this Court, on March 11, 2002, the present Petition for Certiorari[23] where he reiterates that the October 1, 2001 Memorandum and October 4, 2001 Information were issued in violation of his constitutional right to due process.[24]

In his Comment,[25] respondent, through the Solicitor General, argues that the Petition has been rendered moot by petitioner's filing a Supplemental Motion for Reconsideration with the OSP where he also questioned the validity of the October 1, 2001 Memorandum and October 4, 2001 Information.[26] Respondent points out that petitioner virtually engaged in forum shopping when he took both recourse.[27]

Subsequent events rendered this petition moot and academic.

It was only on September 11, 2006 that the records of Criminal Case No. 27128 was elevated to this Court.

The records reveal that proceedings in said case has taken the following course:

First, acting on petitioner's Supplemental Motion for Reconsideration, Ombudsman Prosecutor III Victor A. Pascual (Pascual) of the OSP issued on August 12, 2002 a Resolution[28] granting said Motion, thus:

WHEREFORE, foregoing premises considered, the accused's Motion for Reconsideration is hereby given due course and the memorandum dated October 1, 2001 (approved December 21, 2001) recommending the filing of the Information against accused be set aside and the Information already filed against accused Rogelio Antalan be withdrawn for lack of factual and legal basis. Consequently, an appropriate Motion to Withdraw an Information be filed with the Sandiganbayan Court. (Emphasis ours)

The foregoing Resolution was approved by Acting Ombudsman Margarito Gervacio, Jr. on September 2, 2002.[29] Thus, on October 1, 2002, a Motion to Withdraw Information[30] was filed in Criminal Case No. 27128. Meanwhile, complainants in Criminal Case No. 27128 filed with OSP a Motion for Reconsideration[31] from the August 12, 2002 OSP Resolution; and with the Sandiganbayan, an Opposition (to Motion to Withdraw Information) with Manifestation.[32]

Second, in a Memorandum[33] dated February 14, 2003, the Ombudsman convened a panel to act on complainant's Motion for Reconsideration. In a Memorandum[34] dated January 25, 2006, Pascual as panel member recommended that said Motion for Reconsideration be denied and Criminal Case No. 27128 dismissed for lack of probable cause. Ombudsman Merceditas Gutierrez approved the recommendation on April 28, 2006.

Meanwhile, as regards the Motion to Withdraw Information which OSP had filed, the Sandiganbayan issued Resolution dated January 7, 2003 in Criminal Case No. 27128, the dispositive portion of which reads:

WHEREFORE, the instant motion is hereby GRANTED and the Information in this case is ordered WITHDRAWN. The cash bail bond posted by accused Rogelio P. Antalan is ordered returned to him subject to the usual accounting and auditing rules and procedures. The Hold Departure Order dated January 23, 2002 issued against the above-named accused is ordered LIFTED.

SO ORDERED. [35]

Nothing in the records indicate that a motion for reconsideration was filed from said January 7, 2003 Sandiganbayan Resolution.

It is lamentable that all the foregoing incidents in Criminal Case No. 27128 transpired without any of the parties herein taking the trouble to inform this Court of the futility of the present petition. It is quite plain that, through the January 7, 2003 Sandiganbayan Resolution, petitioner has already obtained all the reliefs initially sought from this Court. He has no more interest in the present petition as it is now merely hypothetical.[36]

WHEREFORE, the petition is hereby DENIED for being moot and academic.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, and Callejo, Sr., JJ., concur.
Chico-Nazario, J., no part.

[1] Rollo, p. 16.

[2] Entitled "Edison S. Ehilla, Complainant, versus Rogelio P. Antalan, Mayor, Island Garden City of Samal, Davao del Norte, Respondent."

[3] Rollo, p. 20.

[4] Id. at 29.

[5] Id. at 22.

[6] Id. at 40.

[7] Id. at 65.

[8] Id. at 68.

[9] Id. at 69.

[10] Id. at 100.

[11] Id. at 104.

[12] Id. at 16 and 117.

[13] Id. at 19.

[14] See note 3.

[15] Id. at 21.

[16] Id. at 19.

[17] See note 15.

[18] Folder I (unnumbered page).

[19] Folder I (unnumbered page).

[20] Rollo, p. 110.

[21] Composed of Associate Justices Minita V. Chico-Nazario (now a member of the Supreme Court), Ma. Cristina G. Cortez-Estrada, and Francisco H. Villaruz, Jr.

[22] Rollo, p. 111.

[23] Id. at 3.

[24] Id. at 7-11.

[25] Id. at 115.

[26] Id. at 119-120.

[27] Rollo at p. 121.

[28] Folder I (unnumbered page).

[29] Supra.

[30] Id.

[31] Id.

[32] Id..

[33] Id.

[34] Id.

[35] Supra, note 28.

[36] *Ley Construction and Development Corporation v. Hyatt Industrial Manufacturing Corporation*, 393 Phil. 633, 643 (2000); *Philippine Airlines v. Pascua*, 456 Phil. 425, 436 (2003).

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