

CAYETANO A. TEJANO, JR., PETITIONER, VS. THE HON. OMBUDSMAN AND THE HON. SANDIGANBAYAN, RESPONDENTS.*G.R. No. 159190. June 30, 2005*

Ponente: CHICO-NAZARIO, J.

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This petition for certiorari under Rule 65 of the Rules of Court, with application for temporary restraining order, seeks to nullify the Ombudsman's disapproval of the memorandum[1] dated 03 November 1999 of Special Prosecutor Jesus A. Micael of the Office of the Special Prosecutor recommending the dismissal of Criminal Case No. 21654, as well as the memorandum[2] dated 09 June 2003 denying petitioner's motion for reconsideration.

The Facts

The instant petition stemmed from the report of Philippine National Bank (PNB) Resident Auditor Alexander A. Tan, dated 15 October 1992, on his investigation regarding an alleged unfunded withdrawal in the amount of P2.2 million by V&G Better Homes Subdivision (V&G) under Savings Account No. 365-5355-6-4.

The report, as summarized by Special Prosecution Officer III Jesus A. Micael, is as follows:[3]

. . . [I]n the morning of 17 July 1992, Emilio P. Montesa (Bank Executive Officer of PNB Cebu) handed a note to Jane Rita Jecong (Cashier) instructing her to include her cash requisition for the day from Central Bank — Cebu, the amount of P2.2 M at P1,000.00 denomination; that on 20 July 1992 at about past 10:00 A.M., Juanito Mata (Cashier III), upon the instruction of Cayetano A. Tejano Jr. (Vice President and Branch Manager of PNB Cebu), took the P2.2 M from Ms. Jecong and delivered the same to Mr. Tejano; that at about noontime of same day, Mr. Mara handed to Ms. Jecong a pre-signed withdrawal slip against SA No. 365-535506-4 under the name of V & G Better Homes for the same amount to replace the cash withdrawn and to serve as cash-on-hand at the end of the day's transaction; that the withdrawal slip was approved by Mr. Tejano and was postdated 21 July 1992; that as of 20 July 1992 V & G Better Homes SA No. 365-535506-4 has only P33,436.78; that in the afternoon of 20 July 1992 the amount of P2,336,563.32 (consisting of P2,200,000.00 in cash; P100,000.00 in check; and P36,563.22 in withdrawal slip) was received by Teller Mary Ann Aznar as payment for the loan of V & G Better Homes for which PNB Official Receipt No. 952981E was issued; that the transaction was recognized as an increase in PNB Cebu Branch's cash-on-hand and a decrease in the loan account of V & G Better Homes; that the PNB Cebu Credit Committee approved the loan at the rate of 23% lower than the 26% interest rate on its first renewal and 27% on its second renewal; that the loan proceeds was credited to the account of V & G Better Homes on 21 July 1992, the same day that the withdrawal slip of P2.2 M was taken by Mr. Montesa from Ms. Jecong and given to Irene Abellanosa to be taken as her transaction for the day; and that upon the instruction of Montesa, Savings Account No. 365-535506-4 of V & G Better Homes was debited and the withdrawal slip was validated by Teller Abellanosa although no actual cash withdrawal was made.

The report of Resident Auditor Alexander A. Tan implicated Vice President Cayetano A. Tejano, Jr., the petitioner herein, Executive Officer Emilio Montesa, and Supervising Branch Teller Jane Rita Jecong, all of the PNB, Cebu City Branch, including Juana dela Cruz and Vicente dela Cruz of V&G, as persons involved in the

irregular withdrawal of P2.2 million of PNB funds.

In an order dated 22 December 1992, the Office of the Deputy Ombudsman for the Visayas ordered Tejano, Montesa, Jecong, Juana dela Cruz and Vicente dela Cruz to file their respective counter-affidavits.[4]

In a resolution dated 29 March 1993, Graft Investigation Officer Edgardo G. Canton recommended the filing of the proper information for violation of Section 3(e) of Republic Act No. 3019,[5] as amended, against petitioner Cayetano A. Tejano, Jr., Juana dela Cruz and Vicente dela Cruz of V&G.[6] The case against Montesa and Jecong was dismissed for lack of evidence. The resolution was approved by Deputy Ombudsman for Visayas Arturo C. Mojica and then Ombudsman Conrado M. Vasquez.

The resolution was thereafter referred for review to Special Prosecutor III Orlando I. Ines of the Office of the Special Prosecutor.

In a Memorandum[7] dated 25 October 1994, Ines affirmed the resolution of Graft Investigation Officer Edgardo G. Canton.

On 28 October 1994, Deputy Special Prosecutor Jose De G. Ferrer recommended the approval of the memorandum of Special Prosecution Officer Ines.

On 08 November 1994, Aniano A. Desierto, then the Special Prosecutor, concurred in the approval of Ferrer.[8] Ombudsman Conrado M. Vasquez concurred thereto on 11 November 1994.

Subsequently, on 24 November 1994, an Information for violation of Section 3(e) of Rep. Act No. 3019, as amended, was filed before the Sandiganbayan, and docketed as Criminal Case No. 21654.

On 08 December 1994, petitioner filed with the Sandiganbayan an Urgent Motion for a Period of Time to File Motion for Reinvestigation.

In an order dated[9] 12 December 1994, the Sandiganbayan granted the motion for reinvestigation.

On 22 December 1994, petitioner filed his motion for reinvestigation in the Office of the Special Prosecutor.

On 20 April 1995, the Sandiganbayan ordered the Office of the Special Prosecutor to conduct the reinvestigation.[10] The reinvestigation was assigned to Special Prosecution Officer III Jesus Micael.

Convinced that no probable cause existed to indict petitioner Tejano, and spouses Juana and Vicente dela Cruz, Special Prosecutor Micael, in a memorandum[11] dated 03 November 1999, recommended the dismissal of the case. The recommendation was approved by Deputy Special Prosecutor Robert E. Kallos and concurred in by Special Prosecutor Leonardo P. Tamayo.

On 10 December 1999, Ombudsman Aniano A. Desierto, who earlier participated in the initial preliminary investigation as Special Prosecutor, disapproved the recommendation for the dismissal of the case with the marginal note "assign the case to another prosecutor to prosecute the case aggressively."

On 02 February 2000, Special Prosecutor Micael filed a Manifestation, to which was attached a copy of his memorandum, informing the Sandiganbayan of the disapproval by Ombudsman Desierto of his recommendation to dismiss the case.

On 10 February 2000, petitioner filed a Motion for Reconsideration of the disapproval by Ombudsman Desierto of the recommendation of Micael.

Apparently, petitioner's motion for reconsideration was not resolved on the merits because on 27 June 2000, Special Prosecution Officer III Joselito R. Ferrer filed a Motion to Set the Case for Arraignment alleging therein

that the prosecution did not give due course to the motion for reconsideration on the ground that it was the second motion which is prohibited under the Ombudsman Act of 1989. He added that the results of the reinvestigation were already submitted to the respondent court before receiving the motion for reconsideration.[12]

Petitioner manifested before the Sandiganbayan the Office of the Special Prosecutor's failure to resolve his motion for reconsideration. Thus, in a resolution[13] dated 24 March 2003, the respondent court directed the Office of the Ombudsman to resolve the said motion.

In a memorandum[14] dated 09 June 2003, Special Prosecutor Joselito R. Ferrer recommended the denial of the motion for reconsideration filed by petitioner. Deputy Special Prosecutor Robert E. Kallos changed his previous position and recommended that the memorandum for the dismissal of the motion for reconsideration be approved, with Special Prosecutor Dennis M. Villa-Ignacio concurring in the denial.

On 14 July 2003, Ombudsman Simeon V. Marcelo, who succeeded Ombudsman Desierto when he retired, approved Joselito Ferrer's memorandum recommending the denial of the motion for reconsideration.

Petitioner thus filed the instant petition with prayer for the issuance of a temporary restraining order to enjoin the Sandiganbayan from taking further action in Criminal Case No. 21654.

On 25 August 2003, the First Division of this Court issued the temporary restraining order prayed for.

On 28 July 2004, the instant petition was transferred to the Second Division of this Court.

Issues

Petitioner raises the following issues:

I

WHETHER OR NOT RESPONDENT OFFICE OF THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DISAPPROVED THE EARLIER RECOMMENDATION FOR THE DISMISSAL OF THE CASE AGAINST ALL THE ACCUSED WITHOUT ANY COGENT OR VERIFIABLE REASON AMOUNTING TO LACK OF JURISDICTION WHEN THEY:

1. THE OFFICE OF THE OMBUDSMAN ABUSED ITS DISCRETION IN THE DISAPPROVAL OF THE RESOLUTION DATED NOVEMBER 3, 1999 — AGAINST ALL ACCUSED FOR LACK OF PROBABLE CAUSE AS MANDATED UNDER SECTION 13 R.A. 6770 IN RELATION TO SECTION 3, RULE 112 OF THE RULES ON CRIMINAL PROCEDURE.
2. THE OFFICE OF SPECIAL PROSECUTOR DID NOT DETERMINE THE EXISTENCE OF PROBABLE CAUSE IN A RESOLUTION DENYING PETITIONER'S MOTION FOR RECONSIDERATION FOR APPROVAL BY THE NEW OMBUDSMAN.

II

WHETHER OR NOT THE CASE FILED AGAINST THE ACCUSED IS A CLEAR CASE OF PERSECUTION AND NOT PROSECUTION CONTEMPLATED UNDER R.A. 3019, AS AMENDED, OTHERWISE KNOWN AS THE ANTI-GRAFT AND CORRUPT PRACTICES ACT, REPUBLIC ACT NO. 1374 AND CHAPTER II, SECTION 2, TITLE VII, BOOK II OF THE REVISED PENAL CODE.

III

WHETHER OR NOT THE HONORABLE OMBUDSMAN HAS JURISDICTION OVER THE CASE.

Ruling of the Court

Quite apart from the above, we find a focal issue apparently glossed over by the parties — whether or not Ombudsman Desierto committed grave abuse of discretion in disapproving the 03 November 1999 memorandum of Special Prosecutor Jesus Micael recommending the dismissal of Criminal Case No. 21654 against petitioner Tejano, and spouses Juana and Vicente dela Cruz of V&G for violation of Section 3(e) of Rep. Act No. 3019, where he had earlier participated in the preliminary investigation of the said criminal case recommending the filing of the information.

This Court has been consistent in holding that it will not interfere with the Ombudsman's exercise of his constitutionally mandated investigatory and prosecutory powers, and respect 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." [15] Such discretionary power of the Ombudsman is beyond the domain of this Court to review, save in cases where there is clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction of the latter.

Grave abuse of discretion is such capricious and whimsical exercise of judgment on the part of the public officer concerned which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility. [16]

Ombudsman Desierto, in this case, committed grave abuse of discretion. Petitioner attributes partiality on the part of Ombudsman Desierto for having participated in the reinvestigation of the instant case despite the fact that he earlier participated in the initial preliminary investigation of the same when he was a Special Prosecutor by concurring in the recommendation for the filing of the information before the Sandiganbayan.

We agree with the petitioner. Steadfastly, we have ruled that the officer who reviews a case on appeal should not be the same person whose decision is under review. [17] In *Zambales Chromite Mining Company v. Court of Appeals*, [18] the decision of the Secretary of Agriculture and Natural Resources was set aside by this Court after it had been established that the case concerned an appeal of the Secretary's own previous decision, which he handed down while he was yet the incumbent Director of Mines. We have equally declared void a decision rendered by the Second Division of the National Labor Relations Commission, because one of its members, Commissioner Raul Aquino, participated in the review of the case which he had earlier decided on as a former labor arbiter. [19] Likewise, this Court struck down a decision of Presidential Executive Assistance Jacobo Clave over a resolution of the Civil Service Commission, in which he, then concurrently its Chairman, had earlier concurred. [20]

Having participated in the initial preliminary investigation of the instant case and having recommended the filing of an appropriate information, it behooved Ombudsman Desierto to recuse himself from participating in the review of the same during the reinvestigation. He should have delegated the review to his Deputies pursuant to Section 15 of Rep. Act No. 6770, which provides:

Sec. 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

.....

(10) Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions and duties herein or hereinafter provided; . . .

In earlier recommending the filing of information, then Special Prosecutor Desierto was already convinced, from that moment, that probable cause exists to indict the accused. It becomes a farfetched possibility that in a subsequent review of the same, Ombudsman Desierto would make a turnabout and take a position contradictory to his earlier finding.

Due process dictates that one called upon to resolve a dispute may not review his decision on appeal.[21] We take our bearings from *Zambales Chromite Mining Co. v. Court of Appeals*[22] which succinctly explained that:

In order that the review of the decision of a subordinate officer might not turn out to be farce, the reviewing officer must perforce be other than the officer whose decision is under review; otherwise, there could be no different view or there would be no real review of the case. The decision of the reviewing officer would be a biased view; inevitably, it would be the same view since being human, he would not admit that he was mistaken in his first view of the case.

Cojuangco, Jr. v. Presidential Commission on Good Government[23] concedes the applicability of the prohibition on the reviewing officer to handle a case he earlier decided, thus:

Where the circumstances do not inspire confidence in the objectivity and impartiality of the judge, such judge should inhibit voluntarily or if he refuses, he should be prohibited from handling the case. A judge must not only be impartial but must also appear impartial as an assurance to the parties that his decision will be just. His actuation must inspire that belief. This is an instance when appearance is as important as reality.

The same rule of thumb should apply to an investigating officer conducting a preliminary investigation. This is the reason why under Section 1679 of the former Revised Administrative Code, the Secretary of Justice, who has supervision over the prosecution arm of the government, is given ample power to designate another prosecutor to handle the investigation and prosecution of a case when the prosecutor handling the same is otherwise disqualified by personal interest, or is unable or fails to perform his duty. (Italics supplied)

The fact that the motion for reconsideration of Ombudsman Desierto's disapproval of the 03 November 1999 memorandum of Special Prosecutor Jesus Micael recommending the dismissal of Criminal Case No. 21654 was denied by another reviewing officer, Ombudsman Marcelo, does not cure the infirmity of Ombudsman Desierto's actuation. As stressed in *Singson v. NLRC*:[24]

. . . The infirmity of the resolution was not cured by the fact that the motion for reconsideration of the petitioner was denied by two commissioners and without the participation of Commissioner Aquino. The right of petitioner to an impartial review of his appeal starts from the time he filed his appeal. He is not only entitled to an impartial tribunal in the resolution of his motion for reconsideration. Moreover, his right is to an impartial review of three commissioners. The denial of petitioner's right to an impartial review of his appeal is not an innocuous error. It negated his right to due process. (Italics supplied)

With the foregoing conclusion, we deem it unnecessary to discuss the other issues raised by petitioner.

WHEREFORE, the Ombudsman's disapproval of the memorandum dated 03 November 1999, where Prosecutor Jesus A. Micael of the Office of the Special Prosecutor recommended the dismissal of Criminal Case No. 21654, as well as the memorandum dated 09 June 2003, which denied petitioner's motion for reconsideration, are SET ASIDE. The case is remanded to the Office of the Ombudsman for further proceedings. No costs.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Records, pp. 41-46.

[2] Records, pp. 57-60.

[3] Records, pp. 41-42.

[4] Records, p. 144.

[5] Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefit, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.

[6] Id.

[7] Records, pp. 61-64.

[8] Id.

[9] Records, pp. 34-40.

[10] Records, p. 148.

[11] Records, pp. 41-46.

[12] Respondent's Memorandum, pp. 9-10.

[13] Records, pp. 34-40.

[14] Records, pp. 57-60.

[15] Loquias, et al. v. Office of the Ombudsman, G.R. No. 139396, 15 August 2000, 338 SCRA 62; Rizon v. Desierto, G.R. No. 152789, 21 October 2004; Yu v. Sandiganbayan, G.R. No. 128466, 31 May 2001, 358 SCRA 353.

[16] Domondon v. Sandiganbayan, G.R. No. 129904, 16 March 2000, 328 SCRA 292, citing Cuison v. Court of Appeals, G.R. No. 128540, 15 April 1998, 289 SCRA 159.

[17] Government Service Insurance System v. Court of Appeals, G.R. No. 128523, 28 September 1998, 296 SCRA 514; Singson v. NLRC, G.R. No. 122389, 19 June 1997, 274 SCRA 358; Icasiano v. Office of the President, G.R. No. 49855, 15 May 1992, 209 SCRA 25; Zambales Chromite Mining Co. v. Court of Appeals, G.R. No. L-49711, 07 November 1979, 94 SCRA 261.

[18] Id.

[19] Singson v. NLRC, *supra*, note 17.

[20] Government Service Insurance System v. Court of Appeals, *supra*, note 17, citing Anzaldo v. Clave, G.R. No. L-54597, 15 December 1982, 119 SCRA 353.

[21] Government Service Insurance System v. Court of Appeals, *supra*, note 17.

[22] *Supra*, note 17, p. 267.

[23] G.R. Nos. 92319-20, 02 October 1990, 190 SCRA 226, 256.

[24] *Singson v. NLRC*, *supra*, note 17, p. 365.

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