

**RAUL H. SESBRENO, PETITIONER, VS. OSCAR E. ALA, REX V. TANTIONGCO, ALEJANDRO B. AFURONG, J. MARIO LAQUI, MARCELO N. FERNANDO, EMMA B. SUAREZ, NICOMEDES DEYNATA, MANUEL CUSTODIO,...**

*G.R. No. 95393. May 05, 1992*

Ponente: PARAS, J.

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**PARAS, J.:**

These two (2) petitions for certiorari are consolidated since both have the same petitioner with his appealed cases originating from the same catena of events and in line with the Court's policy of helping decongest its docket.

Petitioner, Atty. Raul H. Sesbreno appearing for himself in both cases is seeking, in G.R. No. 95393, the annulment of the Resolution dated April 18, 1990 and the Order dated August 17, 1990, both issued by the Office of the Ombudsman in case OMB-0-90-0056 entitled "Raul H. Sesbreno, complainant, versus Manuel Custodio, et al., respondents"; and in G.R. No. 103471, the Resolution dated November 8, 1991 and the Order dated January 2, 1992, both issued by the Visayas Area, Ombudsman Office; Cebu City in case OMB-VIS-90-00524, entitled "Raul Sesbreno, Complainant, versus Cebu City Assistant Prosecutors Bienvenido M. Mabanto, Jr., et al. Respondents." The two (2) petitions alleged the same ground for their appeal which is grave abuse of discretion resulting in excess or lack of jurisdiction.

The facts of these cases are as follows:

At around 4 o'clock in the afternoon of May 11, 1989, a Visayan Electric Company (VECO) inspection team composed of Engr. Felipe Constantino and Ronald Arcilla (both from VECO) and Sgt. Demetrio Balicha of the 341st PC/INP Company, conducted an inspection of petitioner's electric watthours meter with Serial No. 4 5240 at his residence in Almaciga Street, La Paloma Subdivision, Tisa, Cebu City, which resulted in the following finding:

"As found, terminal bottom screw detached. Meter was tilted 180 from its original position upon inspection. Change meter for laboratory test."

The defective electric watthour meter was therefore replaced with another one bearing Serial No. 645619. The findings of the VECO team bore the signatures of its three (3) members and one Chuchie Garcia, as petitioner's representative because petitioner was then allegedly out of the house. This Visayan Electric Company inspection team got the ire of petitioner for its reportedly high-handed manner of investigation, resulting in the incident reaching the desk of the 2nd Asst. Fiscal of Cebu City on July 31, 1989 (pp. 218-225, Rollo), which spawned G.R. No. 103471, to be discussed for clarity after narrating this ERB case or G.R. No. 95393.

A few days after, on May 19, 1989, an Energy Regulatory Board (ERB) analyst, one Engr. Rey Ernesto Reyes, conducted a test on petitioner's defective electric watthour meter and made the corresponding report, to wit:

“a. The VECO seal #50 (both sides) was intact;

“b. When tested upright (original position), the accuracy of the meter was 0.01%; and

“c. Upon dial test, the meter disc did not rotate when tilted 180 (degrees) from original position.”

Petitioner, on August 21, 1989 filed an administrative charge against Energy Regulatory Board analyst Engr. Rey Ernesto Reyes, with the following complaints:

1) that Reyes did not verify that petitioner's meter was removed from the latter's residence in his absence and without his permission; 2) that Reyes did not exert efforts to have subject meter deposited with a neutral party to prevent tampering thereof by the VECO inspection team; and 3) that Reyes conducted the meter test without notice to and in the absence of the petitioner.

On August 31, 1989, an investigating committee was created to look into this administrative complaint. It was composed of Atty. Nicomedes B. Deynata, as chairman, and Atty. Emma B. Suarez and Engr. Custodio as members. The committee recommended that petitioner's complaint against Engr. Rey Ernesto Reyes be dismissed for lack of merit. To this effect, the Energy Regulatory Board, composed of Marcelo N. Fernando as chairman, J. Mario Laqui, Alejandro B. Afurong, Rex B. Tantiogco and Oscar E. Ala, as members on November 7, 1989, issued a resolution, on the matter of dismissal.

Not satisfied with the foregoing dismissal, herein petitioner then filed a complaint with the Office of the Ombudsman against all aforementioned eight (8) Energy Regulatory Board personnel for alleged violation of the following:

I. Section 3(a), Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), as amended - "Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense."

II. Section 3(e) of R.A. 3019. - "Causing any undue injury to any party, including the government, or giving any private party any unwarranted benefits, advantages or preferences in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence."

III. Section 3(c) of Republic Act No. 6713 (An Act establishing a Code of Conduct and Ethical Standards for Officials and Employees). - "Justness and sincerity - Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs."

IV. Section 3(g) of R.A. 6713 - "Commitment to democracy - Public officials and employees shall commit themselves to the democratic way of life and values, maintain the principle of public accountability, and manifest by deeds the supremacy of civilian authority over the military. They shall at all times uphold the Constitution and put loyalty to country above loyalty to persons or party."

V. Section 2, R.A. 6713 in relation to Section 1, Article XI, 1987 Constitution.

Section 2, R.A. 6713 - Declaration of Policy - It is the policy of the State to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead

modest lives, and uphold public interest over personal interest.

Section 1 Article XI, 1987 Constitution - Public Office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

"In their joint comment on the complaint, respondents stated that the ERB dismissed the administrative complaint filed by petitioner against Engr. Rey Ernesto Reyes on the ground that the acts and/or omissions complained of were not violative of any law, rules and regulations, hence, did not warrant the imposition of any administrative sanction." (p. 112, Rollo)

As the resolution of the Ombudsman dated April 18, 1990 states:

"Anent the first and second allegations, the Committee stated that they found no provision of the ERB rules and regulations requiring that a verification first be made as to the manner by which the electric watt-hour was moved before a test thereon could be conducted. In addition the Committee also stated that there is no rule requiring that electric watt-hour meter submitted to ERB personnel for testing first be deposited by said personnel with a neutral party while awaiting the test.

"As regards the third allegation, the Committee spelt out that the BOE (now ERB), in its Order dated February 4, 1981 in BOE Case No. 79-698, authorized VECO to remove from the consumer's or customer's premises any electric meter which it believes is defective or has been tampered with. In addition, the Committee stated that the said BOE Order requires that before removing the meter, VECO 'shall give a written notice to the consumer/customer concerned to the effect that it will remove/disconnect the meter for testing purposes'. In view of the BOE Order, the Committee stated that the obligation to notify the customer of the impending removal or test of his meter rests upon VECO and not Engr. Reyes.

"The Committee also explained that in the inspection report of the VECO inspection team, it shows that a certain Chuchie Garcia, alleged representative of complainant, acknowledged/signed the VECO inspection team's report containing the notice to witness the meter test.

"For this reason, the Committee pointed out that the respondent was justified in conducting the meter test of the subject watt-hour meter in the absence of the complainant or his representative who was duly notified of said test but failed to attend.

"Moreover, the Committee pointed out that even Ms. Chuchie Garcia was not the authorized representative of the complainant, they find no cogent reason to hold respondent Engr. Reyes liable for such misrepresentation for the reason that respondent had no participation in the conduct of the inspection and in the preparation of the inspection report containing the signature of Ms. Chuchie Garcia as complainant alleged representative." (pp. 74-75, Rollo)

The Ombudsman continues: -

"After a careful perusal of the records of this case, this Office finds the allegations/arguments relied upon by complainant to be wanting in clear and direct evidence, under circumstances that would support a prima facie case for violation of R.A. 3019, as amended, and R.A. 6713, against respondents herein, for the following reasons:

"Firstly, the theory that a 'white-wash' and 'cover-up' existed, stemmed merely from complainant's apprehension that since the members of the Investigating Committee which recommended the dismissal of the administrative complaint and the members of the Board which issued the resolution approving the said recommendation are likewise ERB employees/officials, he would not get a fair and just resolution of his case is clearly an imputation of a wrongdoing that is predicated on complainant's personal feelings; and

"Secondly, there is no direct nor positive evidence on record to substantiate the indictment that respondents herein conspired in the commission of the offense charged. There is also no evidence adduced that would ascertain, much more to prove, that Engr. Reyes had persuaded, induced or influenced respondents herein to perform an acts complained of or that the respondents allowed themselves to be persuaded, induced or influenced to cover-up or white-wash the acts or omissions of Engr. Reyes.

"WHEREFORE, upon the foregoing considerations, the complaint against Manuel Custodio, Nicomedes B. Deynata, Emma Suarez, Marcelo, N. Fernando, J. Mario Laqui, Alejandro B. Afurong, Rex V. Tantiongco and Oscar E. Ala is hereby DISMISSED for insufficiency of evidence and lack of merit." (p. 76, Rollo)

Petitioner, then filed a motion for reconsideration of the aforesaid resolution, arguing inter alia and reiterating that the ratification by the ERB respondents of the acts or omissions of Rey Ernesto Reyes was an adroit "cover up" or "white wash" which constituted a culpable violation of the Constitution and other existing laws and that the violation of his rights constituted the direct and positive evidence to establish "conspiracy" among the respondents. Said motion for reconsideration was denied by the Ombudsman in an Order dated August 17, 1990. Hence the first petition was filed docketed as - G.R. No. 95393.

Anent G.R. No. 103471. This originated from several cases against the VECO inspection team members. Ronald Arcilla, Felipe Constantino and Sgt. Demetrio Balicha representing the PC/INP company together with those VECO personnel who reported petitioner's alleged tampered watt-hour electric meter and other officials who had something to do in the confiscation of subject electric meter that obviously piqued the petitioner no end resulting in the filing of numerous cases against any VECO personnel who figured in this picayune and insignificant May 11, 1989 incident.

Simultaneously filed with the cases against the ERB people were criminal cases filed at the Cebu City Prosecutor's Office against the aforesaid VECO employees and officials. Criminal charges range from incriminatory machinations to estafa thru falsification, etc. bearing IS Numbers 89-2937; 89-3283; 89-3472; 89-3483; 89-3507; 89-3711; 89-4004; and 89-4148. All of these cases were dismissed by respondents Assistant Cebu City Prosecutors Bienvenido N. Mabanto, Jr., Dario D. Rama, Jr. and Pedro Montecillo but the complaint filed against herein petitioner by a VECO personnel, IS No. 89-3427A, for violation of Batas Pambansa Bilang 876 (An Act To Include All Authorized Water, Gas, Electric and Telephone Utilities within the coverage of Presidential Decree No. 401, As Amended) for alleged tampering/stealing electricity was recommended to be filed in court.

The prosecutors were branded among other things as co-conspirators in railroading the hasty filing of IS 89-3427A; because of which they are unfit and "must resign at once from their office." Allegedly, they were unfit, biased, vindictive, and prejudiced, in hearing and later dismissing all the rest of petitioner's complaints. This is the mood in which the majority of the pleadings of the petitioner was made.

Petitioner first went up to the Secretary of Justice, then to the Ombudsman, then filed an action for damages against the three prosecutors in Civil Case, CEB-7984, before the Regional Trial Court, Branch 17 of Cebu City. As alleged by petitioner, he won in the RTC civil case. Emboldened by this 'victory', he thought of going further up to the Ombudsman (Visayas Area) and even cited the handwritten note of Ombudsman Vasquez (Manila Office) in the Resolution dated April 18, 1990, thus:

"The complainant's cause of action should be against the VECO Inspection Team that removed the meter in violation of BOE Order." (p. 77, Rollo)

A resolution dated November 18, 1991 was issued by Ombudsman Graft Investigator Avito Cahig of the Visayas Area dismissing the complaint against the respondents-prosecutors. A motion for reconsideration immediately

ensued which motion was however, denied through a January 2, 1992 Order.

Feeling aggrieved, petitioner filed G.R. No. 103471 questioning Ombudsman Cahig's aforesated resolution and order, and included the two (2) prosecutors, Mabanto and Rama, as respondents. In his prayer, he also asked that Ombudsman Cahig's dismissal of cases against the respondents-prosecutors be annulled and that an order be issued for subject officer (Cahig) to continue hearing OMB-VIS-90-524.

He assigned two (2) errors committed by Officer Cahig, to wit:

D-1. THE PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION BY DISREGARDING PETITIONER'S EVIDENCES AND CITATIONS OF JURISPRUDENCE SHOWING A PRIMA FACIE EVIDENCE THAT THE PRIVATE RESPONDENTS MAY BE LIABLE FOR VIOLATION OF REPUBLIC ACT NO. 3019 AND/OR REPUBLIC ACT NO. 6713.

D-2. THE PUBLIC RESPONDENT GRAVELY ERRED BY REFUSING TO APPLY APPLICABLE OR PERTINENT JURISPRUDENCE TO THE FACTS PROVED OR IN ARRIVING AT AN ERRONEOUS CONCLUSION FROM THE FACTS DRAWN, PROVED OR SHOWN:

Quoted are the "findings and recommendations" of Ombudsman Officer Cahig, in the questioned resolution:

"A close scrutiny of the complaint, answer and the other pleadings submitted clearly indicates that the issues raised in the complaint are plainly and purely connected with the exercise of discretion of respondents in the disposition of the cases of herein complainant filed before their office (Cebu City Prosecutor's Office).

"There is no solid evidence presented so far that the respondents in the performance of their functions as Investigating Prosecutors of the cases herein mentioned acted with malice, evident bad faith, manifest partiality or were grossly and inexcusably negligent. Further there is nothing to support the allegation of vindictiveness on the part of respondent 1st Assistant Prosecutor Pedro Montecillo for having merely approved the recommendation as contained in the joint resolution. It should be stressed that respondent Prosecutors, as any other official in government tasked in the investigation and prosecution of cases, are invested officially with specific duties and obligations to act accordingly knowing fully well that they may be held accountable under the principle of public accountability. In the instant case, it is our holding that the presumption of regularity in the course of official functions in favor of respondents has not been clearly shown to have been effectively rebutted. In fairness to respondents and to the office they represent, they should be spared from any and all insinuations of irregularity, absent a clear and unmistakable showing of impropriety equating malice in law that justify criminal indictment.

"Finally, the Office of the Ombudsman does not have the authority to review, much less rule on the actions taken by Prosecutors in the exercise of their functions as the law and the rules amply provide the kind of relief a party may take as in the cases herein mentioned. Complainant's remedy is to appeal the resolution to the Secretary of Justice.

"WHEREFORE, on the basis of all the foregoing considerations and there being no prima facie case against respondents for having violated the Constitution as well as Republic Acts 6770 and 6713, the instant complaint is respectfully recommended DISMISSED for insufficiency of evidence." (pp. 71-72, Rollo, G.R. No. 103471)

Again, the same Officer states in his questioned order:

"We therefore maintain that 'there is no solid evidence presented so far that respondents in the performance of their functions as Investigating Prosecutors of the cases acted with malice, evident bad faith, manifest partiality or were grossly negligent.' " (p. 74, Rollo, G.R. No. 103471)

Records bear out that there was a long, thorough and exhaustive investigation and study of the allegations and grievances of petitioner in his complaint filed with the Energy Regulatory Board and from his several cases filed

with the Cebu (Visayas Area) Ombudsman Office. In verbose pleadings, petitioner-lawyer, appearing in his own behalf, kept on hammering on the due process clause, violation of government ethics, and the Anti-Graft law, etc. These had all been refuted patiently and correctly by the ERB investigating team and Ombudsman repeatedly in their questioned resolutions and orders. Likewise a very patient study of the records of both cases, confirmed the facts that respondents discharged their duties weighing correctly all the evidence of the case and acted in accordance with applicable jurisprudence.

Further, the queries posed by the petitioner in his petition in GR No. 95393 involve the examination of the probative value of the evidence presented by the litigants which this Court can not do as Our review cannot generally cover the facts.

Petitioner cited the following assignment of errors allegedly committed by Ombudsman Vasquez -

D-1. Concluding that there is no provision in the ERB rules and regulations requiring that verification first be made as to the manner by which the electric watthour meter was removed before a test thereon could be conducted or that the electric watthour meter submitted to ERB personnel for testing be first deposited by said personnel with a NEUTRAL PARTY while awaiting the test; or that the obligation to notify the customer of the impending removal or test of petitioner's meter rests upon VECO and not Engr. Reyes (p. 3, questioned resolution).

D-2. Concluding that one Margarita Garcia who signed the NOTICE issued by Visayan Electric Co. (VECO) as "CUSTOMER" was duly authorized to act as representative of herein petitioner to sign said NOTICE OF METER TEST (p. 4, questioned resolution).

D-3. Concluding that Rey Ernesto Reyes could not be held liable for FALSIFICATION thru the USE OF FALSIFIED (sic) by using the NOTICE issued by VECO for a meter test on May 18, 1990 when:

a) Mr. Reyes' meter test was actually conducted on May 19, 1990, NOT May 18, 1990 per notice;

b) It was made to appear that herein petitioner participated in the signing of said notice thru one Margarita Garcia when, in truth, herein petitioner did not so participate as in fact he never authorized Margarita Garcia to act as his representative or agent to sign said NOTICE OF METER TEST issued by VECO, not by the ERB thru Mr. Reyes. (page 4, questioned resolution).

D-4. Concluding that Mr. Reyes did not know that the removed meter was the product of an "ILLEGAL SEARCH" (pages 4-5, questioned resolution).

D-5. Concluding that there was no "white-wash" or "cover-up" when said Hon. Vasquez relied on the theories of respondents officers of the ERB (page 5, questioned resolution).

D-6. Concluding that respondent officers of the ERB could not be held liable under the pertinent provisions of Republic Act No. 6713 and/or Republic Act No. 3019, as amended (page 5, questioned resolution). (pages 7-8, Rollo)

As pointed out by the Solicitor General in his Comment dated December 28, 1990: -

"Obviously, the finding that 'the allegations/arguments relied upon by complainant ... (are) wanting in clear and direct evidence, under circumstances that would support a prima facie case for violation of R.A. 3019, as amended, and R.A. 6713 against respondents herein ...' is factual in nature. Hence, in assailing said finding, on the ground that 'respondent Hon. Vasquez commit(ted) grave abuse of discretion (a) in relying on the theories of the respondents (pages 3, 4, and 5 of the questioned resolution) as basis for his questioned resolution' and (b) 'in concluding that respondents officials of the ERB are not liable for violation of the pertinent provisions of Republic Act No. 6713 and Republic Act No. 3019', petitioner is clearly raising questions of fact herein.

"The law does not allow petitioner to do that. Section 14 of Republic Act No. 6770 (Ombudsman Act of 1989) provides:

'SEC. 14. Restrictions. -- No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.

'No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure questions of law.' "(pp. 118-119, Rollo)

The factual findings of respondents are conclusive on the parties absent any showing of grave abuse of discretion (Ching Sui Yong vs. IAC, 191 SCRA 187) as the principle is well settled that the findings of administrative agencies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but even finality (Llorente vs. Sandiganbayan, G.R. No. 85464, October 3, 1991).

From a careful study of the records, it is evident that Ombudsman Vasquez as well as Ombudsman Officer Cahig (Visayas area) did not commit any abuse, much less a grave abuse of discretion in relying on the theories of the respondents as the bases of their questioned resolutions. Neither did they commit any grave abuse of discretion in concluding that the other respondent officials of the ERB and VECO are not liable for violation of the pertinent provisions of R.A. No. 6713 and R.A. No. 3019.

WHEREFORE, premises considered, both petitions are DENIED for utter lack of merit.

**SO ORDERED.**

Narvasa, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, and Nocon, JJ., concur.  
Bellosillo, J., on leave.

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