ANTONIO P. CALINGIN, PETITIONER, VS. ANIANO A. DESIERTO AS OMBUDSMAN, AND THE SANDIGANBAYAN, SECOND DIVISION, RESPONDENTS.

G.R. NOS. 145743-89. August 10, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-nos-145743-89/

SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Certiorari[1] seeking to set aside the Resolution dated July 20, 2000 approved by then Ombudsman Aniano A. Desierto, recommending the prosecution of Antonio P. Calingin and his co-accused for violation of Republic Act (R.A.) No. 3019 and Article 220 of the Revised Penal Code, docketed as Criminal Case Nos. 25549-25595.

The facts of the case as gleaned from the record are:

Antonio P. Calingin, petitioner, is a former mayor of Claveria, Misamis Oriental. During his incumbency, the municipality undertook a low-cost housing project known as the Bahay Ticala Housing Project (housing project). It developed 18.7 hectares of land for the purpose of constructing 1,342 housing units financed by a bond flotation adopted by the municipality and guaranteed by the Home Insurance and Guaranty Corporation. Bond proceeds of P20 million were earmarked to complete the first 85 housing units.

On September 5, 1994, the Sangguniang Bayan of Claveria passed SB Ordinance No. 94-29 adopting a bond flotation to fund priority projects as the Sangguniang Bayan may determine, pursuant to Section 299 of the Local Government Code of 1991.[2] On the same date, the Sangguniang Bayan likewise passed SB Resolution No. 71-94 authorizing petitioner to sign the Agreement between the Municipality of Claveria and Preferred Ventures Corporation/Danilo V. Fausto/DVF Construction whereby the latter would act as consultant of the municipality in the flotation of bonds to finance the development, livelihood, and infrastructure projects of the municipality.

In a Joint Venture Agreement dated January 25, 1995, the Municipality of Claveria, represented by petitioner, contracted Blue Marlin Development Corporation (Blue Marlin) to be the developer of the housing project. Under its terms, the municipality agreed to float and issue municipal bonds in the amount of P20 million to finance the project. Blue Marlin, in turn, agreed to complete at least 85 housing units at the project site according to the approved plans and specifications.

On February 6, 1995, the same Sangguniang Bayan of Claveria passed SB Resolution No. 72 authorizing petitioner to represent the municipality in the implementation of the bond flotation in the total amount of P25 million, of which P20 million was set aside for the housing project.

On April 5, 1995, Blue Marlin executed a Deed of Assignment in favor of Macajalar Construction Company, represented by Kim C. Tulio, assigning to the latter full power and authority to proceed with the construction work under the Joint Venture Agreement of January 25, 1995.

Sometime in May 1995, the Municipality of Claveria, through the Philippine National Bank (PNB), paid Blue

Marlin the amount of P4.5 million as partial payment for the construction of Block Nos. 1 and 2 of the housing project.

For calendar year 1995, the PNB paid Blue Marlin P9.8 million, P300,000.00 of which was returned to the bank to satisfy the sinking fund requirement.

In February 1996, the Municipality of Claveria took over the implementation of the housing project. Eleven (11) housing units amounting to P5,870,873.42 were constructed.

After one month from the takeover, the municipality ceased its construction work.

On April 8, 1996, Macajalar Construction executed an Affidavit of Quit Claim, waiving any and all of its rights or those of its successors-in-interest in the housing project in favor of the Municipality of Claveria or its authorized representative.

Subsequently, the Commission on Audit (COA) of Region X, Cagayan de Oro City conducted a special audit of the housing project for calendar years 1995 and 1996. The findings of the COA Special Audit Team are reproduced below:

> I
>
> Evaluation conducted on the Bahay Ticala Housing Project revealed the project's over-all accomplishments were worth P4,472,728.70 as against the total amount utilized for the purpose of P10,370,873.42, resulting in a loss of P5,898,144.72.
>
> II
>
> The Municipal Mayor approved the payment of P386,484.00 for rental of grader/heavy equipment to PSB Enterprises, Inc, whose Manager is Mr. Rocky Calingin, the Municipal Mayor's son, contrary to the provisions of Section 3 of R.A. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act and Article 403 of the Implementing Rules and Regulations (IRR) of R.A. 7160. Likewise, its lease of equipment from the said company had no legal basis because no contract of lease was executed for the purpose and no authority was secured from the Sangguniang Bayan in violation of Sections 444 Item I (VI) of R.A. 7160. Further, rental services from the said company were secured without the benefit of public bidding in violation of Section 536 of the Government Accounting and Auditing Manual Volume 1 (GAAM).
>
> In addition, we noted the following checks were endorsed by Mayor Antonio P. Calingin:

Payee Check No. Date Amount Remarks

Xarre & Co. 487635 04-02-96 P380,454.55

Endorsed by Mayor Antonio P. Calingin for deposit under Account No. 810487-9

PBS Enterprises 487632 04-02-96 89,775.00 -do-

PBS Enterprises 487633 04-02-96 43,725.00 -do-

Ristian Hardware 487634 04-02-96 450,321.63 -do-

PSB Enterprises 487704 04-16-96 85,000.00

Endorsed & encashed by Mayor Calingin

DVF Construction 552905 12-22-95 750,000.00 -do-

> It may be worth remembering that some checks which were payable to Mayor Calingin were endorsed by him

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

for deposit to account no. 810487-9.

III

The amount of P2,750,000.00 out of P9.8 million proceeds from bonds flotation was used for purposes other than for which such bonds were floated resulting in illegal use of public funds.

IV

Disbursements of P9.5 million were made without accounting processing and signature of the Municipal Accountant in violation of Section 344 of R.A. 7160. Likewise, these disbursements were not supported with the required documents, in violation of Section 4 (6) of P.D. 1445.

V

The check of P4.5 million payable to Blue Marlin Integrated Development Corp./Kim Tulio bears only the signature of Municipal Mayor Antonio P. Calingin, as authorized by the Sangguniang Bayan members, in violation of Section 345 of RA 7160 and Section 43 of COA Circular No. 92-382.

VI

Payments amounting to P1,995,000.00 were made to Mayor Antonio P. Calingin instead of the creditors or their authorized representatives, in violation of Section 93 of P.D. 1445.

VII

A total of P2,553,763.47 in the General Fund was used to pay expenditures of the Bahay Ticala Housing Project despite the absence of an appropriation for the purpose, contrary to Section 4 (1) of P.D. 1445 and Section 336 of R.A. 7160.

VIII

Copies of contracts and purchase orders entered into by the Municipality with several contractors/suppliers for the Bahay Ticala Housing Project totaling P6,748,357.00 were not furnished the Office of the Provincial Auditor for review, in violation of the provisions of COA Circular Nos. 76-34, 82-195, and 96-010.

The members of the COA Special Audit Team executed a Joint Affidavit embodying the above findings for the purpose of filing criminal charges against petitioner and other public officials. The COA Special Audit Team then submitted its Audit Report and Joint Affidavit to the Office of the Deputy Ombudsman for Mindanao.

In a Resolution dated December 2, 1998, Graft Investigation Officer Jocelyn R. Araune of the Office of the Deputy Ombudsman for Mindanao recommended the filing of sixteen (16) counts for violation of Section 3(e) of R.A. No. 3019, seven (7) counts for violation of Section 3 (h) of R.A. No. 3019, and twenty-four (24) counts for violation of Article 220 of the Revised Penal Code against petitioner and several other public officials.

Upon review, however, Special Prosecution Officer Alberto B. Sipaco, Jr., Office of the Ombudsman for Mindanao, in his Memorandum dated June 22, 1999, recommended that the said Resolution dated December 2, 1998 be disapproved and the charges be dismissed for insufficiency of evidence.

On August 13, 1999, then Ombudsman Aniano A. Desierto, respondent, disapproved the Memorandum of Sipaco and approved the Resolution of Araune. Consequently, 47 Informations for violation of Section 3 (e) and (h) of R.A. No. 3019 and Article 220 of the Revised Penal Code were filed with the Sandiganbayan against petitioner and his co-accused, docketed as Criminal Case Nos. 25549-25595.

On September 3, 1999, petitioner filed a motion for reinvestigation which was granted by respondent

Sandiganbayan. It then ordered the Office of the Special Prosecutor to reinvestigate the cases.

In a Resolution dated July 20, 2000, Special Prosecutor Norberto B. Ruiz recommended the dismissal of all the cases against all the accused for lack of probable cause. Deputy Special Prosecutor Robert E. Kallos recommended the approval of the Resolution, with then Special Prosecutor Leonardo P. Tamayo concurring.

Upon instruction of respondent Ombudsman, the Ruiz Resolution was sent to the Office of Legal Affairs, Office of the Ombudsman for review.

In a Memorandum dated August 10, 2000, the Chief of the Office of Legal Affairs reversed the Ruiz Resolution and recommended that petitioner and his co-accused be prosecuted. Respondent Ombudsman approved the recommendation.

The only issue before us is whether respondent Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in disapproving the recommendation of the Office of the Special Prosecutor to dismiss all the charges against herein petitioner and his co-accused.

Petitioner contends that the Office of Legal Affairs which recommended his prosecution has no authority to review the findings and recommendation of the Office of the Special Prosecutor since the latter is not subject to the control and supervision of the Ombudsman. Thus, respondent Ombudsman, in disapproving the recommendation of the Special Prosecutor, committed grave abuse of discretion tantamount to lack or excess of jurisdiction.

Petitioner's contention lacks merit.

The Office of the Ombudsman and the Office of the Special Prosecutor are creatures of the 1987 Constitution. Sections 5, 7 and 13 of Article XI provide:

> SEC. 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one General Deputy, and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.
>
> x x x
>
> SEC. 7. The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution.
>
> SEC. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:
>
> (1) Investigate 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.

In Zaldivar v. Sandiganbayan,[3] this Court ruled that under the Constitution, the Special Prosecutor is a mere subordinate of the Ombudsman and can investigate and prosecute cases only upon the latter's authority or orders.

R.A. No. 6770, also known as the Ombudsman Act of 1989, provides that the Special Prosecutor has the power and authority, under the supervision and control of the Ombudsman, to conduct preliminary investigation and prosecute criminal cases before the Sandiganbayan and perform such other duties assigned to him by the Ombudsman.

Verily, the Office of the Special Prosecutor is but a mere subordinate of the Ombudsman and is subject to his supervision and control. In Perez v. Sandiganbayan,[4] this Court held that control means "the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and

to substitute the judgment of the former for that of the latter." Clearly, in disapproving the recommendation of the Office of the Special Prosecutor to dismiss all the charges against petitioner and his co-accused, respondent Ombudsman did not act with grave abuse of discretion.

WHEREFORE, we DISMISS the petition. Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

---

[1] Filed pursuant to Rule 65 of the 1997 Rules of Civil Procedure, as amended.

[2]SEC. 299. Bonds and Other Long Term Securities. - Subject to the rules and regulations of the Central Bank and the Securities and Exchange Commission, provinces, cities and municipalities are hereby authorized to issue bonds, debentures, securities, collaterals, notes and other obligations to finance self-liquidating, income-producing development or livelihood projects pursuant to the priorities established in the approved local development plan or the public investment program. The Sanggunian concerned shall, through an ordinance approved by a majority of all its members, declare and state the terms and conditions of the bonds and the purpose for which the proposed indebtedness is to be incurred.

[3]G.R. Nos. 79690-707 & 80578, April 27, 1988, 160 SCRA 843.

[4] G.R. No. 166062, September 26, 2006, 503 SCRA 252.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

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.