

ANTONIO BALAY MATURAN, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, THE HONORABLE OMBUDSMAN AND THE HONORABLE SANDIGANBAYAN, RESPONDENTS.

G.R. Nos. 150353-54. July 27, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review seeks to annul the Order dated September 12, 2001 of the Office of the Ombudsman in Criminal Cases Nos. 24635-24636, adopting the recommendation of the Office of the Chief Legal Counsel of the Ombudsman, which found probable cause for filing charges against the petitioner for violation of Sec. 3 (e) of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019), as amended.[1]

The records show that the abovenumbered cases stemmed from the complaints filed with the Office of the Ombudsman for Mindanao by one Amado S. Teposo averring that petitioner, who was then the municipal mayor of Prosperidad, Agusan del Sur, had caused the purchase and installation of a radio antenna in his residence at an overprice, or above allowable cost. Consequently, the Office of the Ombudsman for Mindanao requested the Commission on Audit (COA) to conduct a special audit of the said project.

In its Special Audit Report, the COA found that the municipal government of Prosperidad, Agusan del Sur, did acquire an 80-foot radio tower from “Radio Shack Enterprises” located at San Francisco, Agusan del Sur, for a purchase price of P17,200. The price paid for the tower exceeded by more than 10% the prevailing market price of P10,450 per canvass of the auditor. The price variance of P6,750 was more than the allowable range. The COA also found that said tower was installed at the petitioner’s residence in San Jose, Prosperidad, Agusan del Sur, and not at the Municipal Hall.[2]

On the basis of the COA’s audit report, the Office of the Ombudsman for Mindanao found probable cause to file two (2) Informations against petitioner for violation of Section 3(e) and (g)[3] of the Anti-Graft and Corrupt Practices Act before the Sandiganbayan, to wit:

Criminal Case No. 24635

That in November, 1994, ... Accused ANTONIO BALAY MATURAN, ... Mayor of Prosperidad, [Agusan del Sur], acting in the performance of his official functions and taking advantage of his official position, did then and there wilfully, unlawfully and criminally cause undue injury to the government through evident bad faith and manifest partiality by causing to be installed a municipality-owned 80-foot tower antenna at his place of residence and not within the premises of the municipal hall to the damage and prejudice of the government.

CONTRARY TO LAW. [4]

Criminal Case No. 24636

That in November, 1994 ... Accused ANTONIO BALAY MATURAN and JOHN DOES, all public officers being then the Mayor of Prosperidad, Agusan del Sur, and members of the Committee on Awards ...

confederating and conspiring with each other and with Accused JANE DOE, ... member of the Sangguniang Bayan ... and Accused TOM DOE, the proprietor or representative of Radio Shack Enterprises ... did then and there wilfully, unlawfully and criminally award and execute a contract, in behalf of the said municipality, for the procurement of an “80-[foot] Tower With Omni Antenna Complete With Guy Wire, Turn Buckles With Installation”, in favor of Radio Shack Enterprises ... which contract was manifestly and grossly disadvantageous to the said municipality as it carried an overpriced contractual consideration of P17,200.00 ... when the said equipment then had a market price of P10,450.00 only, to the damage and prejudice of the government.

CONTRARY TO LAW.[5]

On September 21, 1998, petitioner filed a Motion for Reinvestigation, which the Sandiganbayan granted.

In a Resolution dated August 22, 2001, Ombudsman Special Prosecutor (OSP) Jesus A. Micael recommended the dismissal of Criminal Cases Nos. 24635-36 for lack of probable cause.

On the charge of overpricing, the Special Prosecutor found that the purchase of the radio antenna and the installation of the 80-foot tower by the municipal government of Prosperidad, Agusan del Sur, was above board. The allegation of overpricing was unfounded as the lower price obtained by COA did not include the additional expenses for the installation of the antenna, such as labor and transportation costs, as well as the additional accessories. The OSP likewise observed from the price quotations on record that the price for the antenna varied, depending on what the package included. In sum, according to the OSP, there is no probable cause to hold the petitioner liable for entering into a transaction disadvantageous to the government.

On the propriety of installing the radio antenna at petitioner’s residence, the Special Prosecutor found that the installation of said antenna was in response to the demand of the various barangays of the municipality. The Association of Barangay Councils (ABC) of Prosperidad, Agusan del Sur, which passed ABC Resolution No. 38, Series of 1994 on September 5, 1994, urged petitioner to establish a Very High Frequency (VHF) Radio Transceiver with aerial antenna at his residence in San Jose, Prosperidad, to facilitate communication between petitioner and his constituents, thus:

The resolution was premised on the fact that the geographical situation of the town and the lack of communication facilities that could reach the residence of the Mayor greatly diminished effective and efficient public service on a 24 hour basis; that the regular interaction between and among local executives and its constituents is inevitable in the exercise of its supervisory powers and responsibilities; that the residence of the mayor is located about 14 km. away from the Municipal Hall and the only mode of communication he could be reached immediately is through VHF Radio of which all Barangay Captains utilize thereby creating a network; and that the presence of strong insurgency movement and other crimes in the town necessitates the regular contact with the Mayor personally during night time or whenever the latter was away from his office.

...

On postscript, ... upon the recommendation of the commission on audit, the radio antenna was reinstalled and transferred to the newly constructed PNP building at Prosperidad, Agusan del Sur.[6]

On instructions of Ombudsman Aniano Desierto, the Office of the Chief Legal Counsel of the Ombudsman reviewed the resolution of the OSP. In its Memorandum of September 12, 2001, the Office of the Chief Legal Counsel approved the withdrawal of the information for violation of Sec. 3 (g) of Rep. Act No. 3019, but recommended the prosecution of petitioner for violation of Sec. 3 (e) of Rep. Act No. 3019. The Office of the Chief Legal Counsel explained:

...

However, the information for violation of R.A. 3019, Sec. 3 (e) should be sustained on the ground that the installation of the antenna should not have been made in the premises of the residence of the accused, but on government owned or non-private property. It must be pointed out that the argument of proximity does not hold water since the accused is not supposed to hold office in his residence (at least not in the daytime, or during office hours), or conduct official business therein, but in the town hall. The subsequent transfer of the antenna simply drove home the point that in the first place, it should not have been installed on a private property away from or outside of the perimeter of the municipal hall. Such subsequent transfer entailed additional and unnecessary expense on the part of the government.[7]

Ombudsman Desierto approved the foregoing recommendation in his Order of September 12, 2001.

Hence, this petition. In its Comment on the petition, respondent Ombudsman, through the OSP, cites as issues the following:

I

WHETHER THIS HONORABLE COURT SHOULD GIVE DUE COURSE TO THE INSTANT PETITION CONSIDERING THAT THE ISSUE RAISED BY THE PETITIONER CONCERNS THE CORRECTNESS OF THE ACTION OF THE OMBUDSMAN IN NOT DISMISSING THE CASE AGAINST THE PETITIONER FOR VIOLATION OF SECTION 3 (e) OF REPUBLIC ACT NO. 3019, AS AMENDED.

II

WHETHER THE OMBUDSMAN CAN ARRIVE AT HIS OWN CONCLUSION DIFFERENT FROM HIS INVESTIGATING OFFICERS.[8]

After perusing over the arguments of the parties in their respective pleadings, we find pertinent for resolution, the following: (1) the propriety of a petition for review to assail the correctness of the assailed order of the Ombudsman; and (2) the validity of the conclusion drawn by the Ombudsman when he refused to dismiss Criminal Case No. 24635.

On the first issue, petitioner argues that regardless of whether his chosen remedy is erroneous, the procedural defect must be deemed waived as the Court has given his petition due course. On the other hand, respondent Ombudsman contends that the petition should be dismissed because it is technically flawed.[9] The Ombudsman contends that petitioner should have filed a petition for certiorari under Rule 65 and not a petition for review under Rule 45 of the Rules of Court because the Supreme Court can only review a decision of the Ombudsman when there is grave abuse of discretion amounting to lack or excess of jurisdiction.

In filing this petition for review, the petitioner relied on Section 14[10] of Rep. Act No. 6770.[11] But such reliance on Section 14 of Rep. Act No. 6770 is misplaced, in view of our ruling in *Nava v. Commission on Audit*[12] that the right to appeal is not granted to parties aggrieved by Orders and Decisions of the Ombudsman in criminal cases, as such right is granted only from Orders or Decisions of the Ombudsman in administrative cases. Thus, under Rule 45 of the Rules of Court, only Judgments or Final Orders or Resolutions of the Court of Appeals, Sandiganbayan, the Regional Trial Court and other courts, whenever authorized by law, may be the subject of an appeal by certiorari to this Court. It does not include Resolutions of the Ombudsman on preliminary investigations in criminal cases, pursuant to *Nava*.

Therefore, the proper course of action for petitioner should have been a special civil action for certiorari before us. While the Ombudsman has the full discretion to determine whether a criminal case should be filed, this Court is not precluded from reviewing the Ombudsman's action when there is grave abuse of discretion amounting to a lack or excess of jurisdiction, in which case Rule 65 of the Rules of Court may be invoked pursuant to present practice or, exceptionally, even Section 1,[13] Article VIII of the 1987 Constitution. Accordingly, where the

finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, we have held that while there is no appeal, the aggrieved party may file before us a petition for certiorari under Rule 65. [14]

Thus, by availing of a wrong remedy, the instant petition merits outright dismissal.

As to the second issue, absent a showing of a grave abuse of discretion on the part of the Ombudsman, even if we were to consider the present petition as one filed properly before us for the sake of speedy disposition of cases, the instant petition cannot prosper.

In our view, Ombudsman Desierto's Resolution dated September 12, 2001, does not appear to be arbitrary or whimsical. The conflicting findings of the Office of the Ombudsman for Mindanao and the Ombudsman Special Prosecutor laid down sufficient basis for respondent Ombudsman to order the Office of the Chief Counsel to conduct a reinvestigation of the case. In disapproving the recommendation of Ombudsman Special Prosecutor and instead adopting the recommendation of the Office of the Chief Legal Counsel of the Ombudsman, Desierto was merely exercising his power and discharging his duty based upon the constitutional mandate of his office. At this juncture, we do not agree that the courts should interfere with the action taken by the Ombudsman.

The Ombudsman Act of 1989 (Rep. Act No. 6770) confers on the Office of the Special Prosecutor the power to conduct preliminary investigations and prosecute criminal cases within the jurisdiction of the Sandiganbayan.[15] Considering, however, that the Office of the Special Prosecutor is under the supervision and control of the Ombudsman,[16] it is discretionary upon the Ombudsman if he would rely mainly on the findings of fact of the investigating prosecutor in making a review of the latter's report and recommendation. The Ombudsman can very well make his own findings of fact.[17] On this score, judicial review is not called for, unless grave abuse of discretion amounting to lack or excess of jurisdiction is shown.

A policy of non-interference by the courts in the exercise of the Ombudsman's constitutionally mandated powers is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well.[18] Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they were compelled to review the exercise of discretion on the part of the fiscals, or prosecuting attorneys, each time they decide to file an information in court or dismiss a complaint by a private complainant.[19]

Petitioner's argument, that he could not be indicted for violation of Section 3(g) of Rep. Act No. 3019 because he acted in good faith when he approved the purchase and installation of the radio antenna, is evidentiary in nature and is a matter of defense, which could have been raised in a full-blown trial on the merits. Petitioner's case ought to have taken its regular course, and when an unfavorable verdict was handed down, he could have appealed in the manner authorized by law.[20]

WHEREFORE, the petition is DENIED for lack of merit. The Order dated September 12, 2001 of the Office of the Ombudsman is AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] SEC. 3. Corrupt practices of public officers.— In addition to acts or omissions of public officers already

penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

...

(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.

[2] Rollo, p. 18.

[3] Sec. 3. ...

...

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

[4] Records, Vol. 2, pp. 1-2.

[5] Id. at 3-4.

[6] Rollo, pp. 21, 23.

[7] Id. at 25.

[8] Id. at 48-49.

[9] Id. at 49.

[10] 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 a 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 question of law.

[11] Rollo, p. 3.

[12] G.R. No. 136470, 16 October 2001, 367 SCRA 263, 270.

[13] Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. Also, *Fabian v. Desierto*, G.R. No. 129742, 16 September 1998, 295 SCRA 470, 487.

[14] *Cabahug v. People*, G.R. No. 132816, 5 February 2002, 376 SCRA 113, 124.

[15] Id. at 122.

[16] SEC. 11. Structural Organization.—The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman,

who shall have supervision and control of said Office.

...

(3) The Office of the Special Prosecutor shall be composed of the Special Prosecutor and his prosecution staff. The Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman and shall be under the supervision and control of the Ombudsman.

[17] Cruz, Jr. v. People, G.R. No. 110436, 27 June 1994, 233 SCRA 439, 451.

[18] Nava v. Commission on Audit, G.R. No. 136470, 16 October 2001, 367 SCRA 263, 271.

[19] Young v. Office of the Ombudsman, G.R. No. 110736, 27 December 1993, 228 SCRA 718, 722-723; See Cruz, Jr. v. People, *supra*, at 452.

[20] Raro v. Sandiganbayan, G.R. No. 108431, 14 July 2000, 335 SCRA 581, 600 citing Quiñon v. Sandiganbayan, G.R. Nos. 113908 & 114819, 18 April 1997, 271 SCRA 575, 592.

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