

**MARCELO G. GANADEN, OSCAR B. MINA, JOSE M. BAUTISTA AND
ERNESTO H. NARCISO, JR. PETITIONERS, VS. HONORABLE OFFICE
OF THE OMBUDSMAN AND ROBERT K. HUMIWAT, RESPONDENTS.**

G.R. Nos. 169359-61. June 01, 2011

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before us is the petition for certiorari of petitioners Marcelo G. Ganaden, Oscar B. Mina, Jose M. Bautista and Ernesto H. Narciso, Jr. praying for the annulment of the May 22, 2003 Joint Resolution[1] of the Office of the Ombudsman in OMB-L-C-02-0923-I to OMB-L-C-02-0926-I, as well as the August 21, 2003 and April 26, 2005 Orders[2] in OMB-L-C-02-0926-I and the July 7, 2005 Joint Order[3] in OMB-L-C-02-0923-I to OMB-L-C-02-0926-I, finding probable cause to indict them for violation of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act.

The facts that initiated the present controversy were summarized in the assailed Joint Resolution as follows:

A group of employees[4] of the National [P]ower Corp. [NPC], District IV (Cagayan Valley Area) filed a complaint against Marcelo Ganaden, NPC-Area Manager, Oscar B. Mina, Employee, NPC-Substation, Josephine V. Atal, Cashier, NPC-Substation, Jose M. Bautista, Ernesto H. Narciso, Jr. and Virgilio M. Rimando for allegedly committing the following:

- Printing and sale of raffle tickets using NPC Resources under the direction of Mr. Ganaden by making it appear to be the project of Cagayan Valley Area Employees Association but without consultation with the NPC-District IV employees and the required permit from appropriate agencies. The employees, security guards and janitors were given tickets ranging from P200 to P1,000.00 with the instruction that [the tickets were] considered sold. However, the tickets were not drawn nor the monies collected...returned.

- By making it appear that the assembly, erection, mounting of beams, gantry towers and steel towers at the 230 KV and 69 KV switchyard at Tuguegarao substation was thru "Pakyaw Labor" [contract for piece of work] done by the linemen of Tuguegarao substation as shown in their daily [t]ime record. In fact, based [o]n the Security In and Out Logbook and Security Attendance Sheet, there was no entry of [the alleged contractors] Mr. De Gracia nor Jojo Mateo for the period March 29, 1999 to April 22, 1999, the period the pakyaw work [was supposedly done].

- Mr. Ganaden influenced a certain Perfecto D. Lazaro, husband of the proprietress of Remy D. Lazaro Builders and Construction Supplier to agree that the volume of soil to be removed and hauled from the 230 KV switchyard of Tuguegarao substation be increased from the actual volume of about 5 cubic meters to 253 cubic meters with the excess payment be given to him (Ganaden).

- On Dec[ember] 14 and 23, 2000, Mr. Ganaden's personal car with plate [n]o. TDF 366 refueled at Solano Caltex but [it was made to appear that the gas was] loaded to an NPC vehicle.

- Mr. Ganaden, also reassigned employees from one province to another by virtue of his Office Order No.

AO-99-418. However, said order was based on a fictitious and unapproved Table of Organization which was not approved by the higher management.

- Purchase and withdrawal of tires in CY 2000 purposely to replace the tires of NPC service vehicle with Plate [No.] SEW 454, his service vehicle, but said tires were installed to his personal Nissan Pick-up car with Plate [No.] ADL 157.

- Withdrawal and delivery of ceramic tiles in CY 2000 from SANTIAGO Substation to his house at Fairview, Quezon City which was undergoing renovation.[5]

Petitioners defended themselves through their counter-affidavits, basically offering explanations and clarifications to the alleged acts and denying having committed any illegality.

On May 22, 2003, the Office of the Deputy Ombudsman for Luzon issued the assailed Joint Resolution.[6] In said Joint Resolution, the Ombudsman found the charge that petitioners used NPC resources for printing and selling raffle tickets devoid of merit. Also, the charge that petitioner Ganaden misappropriated NPC resources (gasoline, tires and ceramic tiles) for his personal benefit were found to be unsupported by evidence. However, on the other charges, the Deputy Ombudsman for Luzon found probable cause to charge petitioners with violation of the Anti-Graft and Corrupt Practices Act. The dispositive portion of the Joint Resolution reads:

WHEREFORE, premises considered, it is hereby recommended that respondents GANADEN, NARCISO and BAUTISTA be charged with Violation of Sec. 3 (e) of R.A. 3019.

Likewise, GANADEN and MINA should also be charged with Violation of Sec. 3 (b) of R.A. 3019 before the proper court.

However, as to other respondents, finding no sufficient evidence to include them in the information, case is hereby DISMISSED.

SO RESOLVED.[7]

Petitioners sought reconsideration of the resolution but their motion was denied in an Order[8] dated August 21, 2003. They subsequently filed a motion for reinvestigation and reopening but said motion was also denied in an Order[9] dated April 26, 2005. Undaunted, petitioners filed a second motion for reconsideration, which, however, was likewise denied by the Ombudsman for lack of merit in an Order[10] dated July 7, 2005.

Meanwhile, considering the denial by the Ombudsman of petitioners' motion for reconsideration on August 21, 2003, the Regional Trial Court, Branch III, of Tuguegarao City issued an Order[11] on July 11, 2005 setting petitioners' arraignment for September 16, 2005 at 8:30 in the morning.

On September 7, 2005, petitioners filed with this Court the present petition for certiorari with prayer for the issuance of a temporary restraining order and writ of preliminary injunction.[12] Petitioners pray that the Court annul the May 22, 2003 Joint Resolution, the August 21, 2003 and April 26, 2005 Orders and the July 7, 2005 Joint Order of the Office of the Ombudsman and order the dismissal of the criminal complaints against them for lack of merit.

Petitioners argue that the complaints filed against them are purely intended for harassment and done in retaliation to the reorganization petitioner Ganaden did in 1999 when he was still the NPC Area Manager in District IV-Cagayan Valley Area. They believe that the complaint is a part of a bigger persecution plan against them, pointing out that it is just one of more than thirty-four (34) pending complaints filed against them in different courts, prosecution offices, and administrative agencies.[13]

Petitioners state that the complaint only relies on self-serving testimonies of persons who are motivated by

vengeance and ill will. Petitioners aver that the Office of the Ombudsman blatantly disregarded the December 5, 2001 Comprehensive Internal Audit Report which would show that the complaints filed lack factual and legal basis. Also, petitioners point out that the Ombudsman disregarded several affidavits of workers who performed the actual hauling of soil to prove that actual hauling was indeed done. Petitioners contend that by reason of these evidentiary oversights, the Office of the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction.[14]

Petitioners further question the Ombudsman's finding of conspiracy among them.[15] They argue that the findings of the Ombudsman are mere conclusions of law unsupported by any evidence that petitioner Ganaden acted in unison with other petitioners in perpetuating the alleged crime. Petitioners insist that the elements of conspiracy are simply inexistent.

Essentially, the question for our resolution is whether the Office of the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its May 22, 2003 Joint Resolution finding probable cause to indict petitioners for alleged violation of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act.

The petition is bereft of merit.

We hold that the Office of the Ombudsman did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in finding probable cause to hold petitioners for trial for alleged violation of R.A. No. 3019.

Jurisprudence has established rules on the determination of probable cause. In *Galario v. Office of the Ombudsman (Mindanao)*,[16] the Court held:

[A] finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

‘The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. x x x. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. (Italics in the original.)

In the case at bar, the Office of the Ombudsman found sufficient reason to believe that a violation of R.A. No. 3019 has been committed and that the petitioners are probably guilty thereof.

The investigation resulted in several affidavits[17] that indicate possible involvement of the petitioners in the alleged violation. Statements to the effect that the assembly, erection, mounting of beams, gantry towers and steel towers at the 230 KV switchyard of the Tuguegarao substation were done by the NPC employees themselves and not by any contractor verify and strengthen the accusations in the complaint.

Further, the alleged contractor himself Randy M. De Gracia, executed a sworn statement[18] that he was requested to sign a price proposal for the supply of "pakyaw labor" for the assembly, erection, mounting of beams, steel posts at the 230 KV switchyard of the Tuguegarao substation, and that he did not actually perform the aforementioned work but he was instructed by Engr. Narciso, Jr. in July 1999 to get his check from the cashier of NPC and to encash it and give the proceeds to Engr. Narciso, Jr.

On the charge of taking part in the payment for services rendered by the Rema D. Lazaro Builders and Construction Supplies, Perfecto Lazaro stated under oath that sometime in the middle of August 1999, petitioner Ganaden through petitioner Mina, offered to give him a project, which was the removal and transit hauling of

excess soil from the 230 KV switchyard of the Tuguegarao substation for as long as he will give petitioner Ganaden the excess payment for the actual work to be done. He also stated that in October 1999, he was made to sign the related disbursement voucher and to issue an Official Receipt to make it appear that the entire work claimed to be done was indeed performed.[19]

All these allegations in the complaint coupled with the statements of several key witnesses, among others, all point towards some kind of irregularity in the performance of public works. Based on the assessment of the Office of the Ombudsman, there is sufficient reason to believe that a violation of R.A. No. 3019 has been committed. Also, based on the evidence presented, there is sufficient reason to believe that the accused public officials are probably guilty of the violation.

On the contention of the petitioners that the Office of the Ombudsman failed to consider some relevant evidence, specifically the December 5, 2001 Comprehensive Internal Audit Report and affidavit of workers, that would show that the complaint lacks factual and legal ground, we find that these are matters of defense more properly raised during trial. The same is true for their allegation that conspiracy does not exist. We have held that the absence (or presence) of any conspiracy among the accused is evidentiary in nature and is a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits.[20]

It is worth stressing that the Ombudsman's finding of probable cause does not touch on the issue of guilt or innocence of the accused. It is not the function of the Office of the Ombudsman to rule on such issue. All that the Office of the Ombudsman did was to weigh the evidence presented together with the counter-allegations of the accused and determine if there was enough reason to believe that a crime has been committed and that the accused are probably guilty thereof. In this light, we find no compelling reason to disturb the findings of the Office of the Ombudsman.

On the assertion of grave abuse of discretion amounting to lack or excess of jurisdiction, we are guided by previous pronouncements of this Court regarding this matter. In *Vergara v. Ombudsman*,[21] the Court ruled:

We reiterate the rule that courts do not interfere in the Ombudsman's exercise of discretion in determining probable cause unless there are compelling reasons. The Ombudsman's finding of probable cause, or lack of it, is entitled to great respect absent a showing of grave abuse of discretion. Besides, to justify the issuance of the writ of certiorari on the ground of abuse of discretion, the abuse must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.

Grave abuse of discretion is defined as capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[22]

In the case at bar, the Office of the Ombudsman properly conducted the investigation and received evidence on the allegations and counter-allegations. The Office of the Ombudsman diligently sifted through all the relevant and pertinent allegations, statements of witnesses, defenses raised by the accused officials, and audit reports. Based on the submitted data and information, it made a determination of probable cause. There is no showing of any capricious, whimsical and arbitrary action or inaction on the part of the Office of the Ombudsman. In the questioned May 22, 2003 Joint Resolution, the Office of the Ombudsman carefully considered all the evidence submitted to it when it cleared petitioners of other wrongdoings being attributed to them. The Office of the

Ombudsman dismissed the charge that petitioners used NPC resources to print and sell raffle tickets for being devoid of merit. Likewise, the charge that petitioner Ganaden misappropriated NPC resources (gasoline, tires and ceramic tiles) for his personal use was dismissed for lack of supporting evidence. Such findings show that the Office of the Ombudsman carefully weighed the evidence presented and properly discarded baseless and unsupported allegations. The assailed action of the Office of the Ombudsman is therefore well within its jurisdiction and mandate.

WHEREFORE, the petition for certiorari is DISMISSED.

With costs against petitioners.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Sereno, JJ., concur.

[1] Rollo, pp. 218-233.

[2] Id. at 429-433, 559-562.

[3] Id. at 584-587.

[4] Led by private respondent Robert K. Humiwat. See rollo, pp. 32, 85.

[5] Rollo, pp. 221-222.

[6] Id. at 218-233.

[7] Id. at 233.

[8] Id. at 429-433.

[9] Id. at 559-562.

[10] Id. at 584-587.

[11] Id. at 588.

[12] Id. at 3-76.

[13] Id. at 32-33.

[14] Id. at 33-34.

[15] Id. at 40.

[16] G.R. No. 166797, July 10, 2007, 527 SCRA 190, 204.

[17] Rollo, pp. 103, 119, 130-131.

[18] Id. at 102.

[19] Id. at 131.

[20] *Go v. The Fifth Division, Sandiganbayan*, G.R. No. 172602, April 13, 2007, 521 SCRA 270, 289, citing *Singian, Jr. v. Sandiganbayan*, G.R. Nos. 160577-94, December 16, 2005, 478 SCRA 348, 363-364.

[21] G.R. No. 174567, March 12, 2009, 580 SCRA 693, 713, citing *San Miguel Corp. v. Sandiganbayan*, 394

Phil. 608, 636-637 (2000).

[22] Cabrera v. Lapid, G.R. No. 129098, December 6, 2006, 510 SCRA 55, 66.

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