



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
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FELICIANO S. PASOK, JR.,
Petitioner,

G.R. No. 218413

Present:

- versus -

CARPIO, *J.*, Chairperson,
PERALTA,
PERLAS-BERNABE,
CAGUIOA, and
REYES, JR., *JJ.*

**OFFICE OF THE OMBUDSMAN–
MINDANAO and REX Y. DUA,**
Respondents.

Promulgated:

06 JUN 2018

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DECISION

CARPIO, *J.*:

This is a petition for certiorari¹ assailing the (1) Order² dated 3 January 2013 finding probable cause against petitioner Feliciano S. Pasok, Jr. and (2) Joint-Order³ dated 13 April 2015 of the Office of the Ombudsman–Mindanao in Case No. OMB-M-C-06-0383-G for Malversation and violation of Section 3(e) of Republic Act No. 3019.

The Facts

Sometime in April 2005, then Municipal Mayor of Tandag, Surigao del Sur Alexander T. Pimentel issued a Memorandum dated 12 April 2005 directing private respondent Rex Y. Dua (Dua), in his capacity as Agricultural Technician II in the Office of the Municipal Agriculturist, to handle, monitor, evaluate, and submit monthly reports on the animal dispersal program and other agricultural programs of the municipality.

¹ Under Rule 65 of the 1997 Revised Rules of Civil Procedure.
² *Rollo*, pp. 23-33.
³ *Id.* at 34-41.

In the course of Dua's field inspection and investigation of the said programs, Dua allegedly found some irregularities in the implementation of the programs by petitioner Feliciano S. Pasok, Jr. (Pasok), the Municipal Agriculturist of Tandag.

Dua filed a Complaint⁴ dated 28 July 2006 before the Office of the Ombudsman–Mindanao for Malversation of Public Funds and violations of Republic Act Nos. 3019⁵ (RA 3019) and 6713⁶ against Pasok. In the complaint, Dua listed down the following irregularities:

(1) Non-remittance to the LGU Trust Fund of the ₱91,000 proceeds of the Emergency Assistance Certified Seeds/Fertilizer Project of the FAO-UN, which recipient-farmers individually paid sometime in October 2004, to support the rehabilitation of the calamity-damaged farms in the municipality. To support the allegation, Dua presented a copy of the Certified Seeds/Fertilizer Releases by Municipality submitted by the Rice FAO Program Coordinator of the Province of Surigao del Sur.

(2) Non-remittance to the LGU Trust Fund of the ₱109,000 fund assistance sometime in 1998 from the Department of Agriculture (DA) for the Hybrid Pigs Projects to benefit the members of the Rural Improvement Club of Barangay Rosario, Tandag. The hybrid pigs cost ₱4,500 each and the recipients had an obligation to pay the municipality without interest. However, out of the total money released, the Office of the Municipal Agriculturist had collected ₱21,000 only without issuing any receipt. Dua presented a Certification issued by the Barangay Captain of Rosario that the collection of ₱21,000 was not immediately deposited in the LGU Trust Fund and it was only in April 2006 that the said amount was deposited.

(3) Non-delivery to the intended beneficiaries, sometime in 2004, of the free Bacterial Leaf Blit Fungicide (BLBF) with the so-called Gloria Rice at ₱1,200 per sack since only the Gloria Rice sacks were given to buyers and the free BLBFs were taken for the personal use of certain personnel of the Office of the Municipal Agriculturist in their rice crops.

⁴ Id. at 44-46.

⁵ Anti-Graft and Corrupt Practices Act. Approved on 17 August 1960.

⁶ An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, To Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and For Other Purposes. Approved on 20 February 1989.

(4) The taking of a water pump, sometime in 1997, by Pasok from Pablito Suazo, a recipient of a calamity assistance program by the DA extended to calamity-affected farmers in the municipality. The water pump was subsequently utilized by Pasok in his fishpond and rice mill in Barangay Buenavista.

(5) The manipulation of the award of one unit rice harvester equipment, which was part of the national government's Poverty Alleviation Fund from the DA in the amount of ₱80,000, in favor of a fictitious organization called the Tanabog Farmers Association headed by a certain Nelson Suarez, who turned out to be Pasok's tenant. The said association was not included in the list of accredited civil society organizations, non-governmental organizations and people's organizations. To substantiate the allegation, Dua submitted a Letter from Bernarda B. Pontevedra, the Barangay Captain of Rosario addressed to Mayor Pimentel informing the mayor that Pasok's tenant was the one using the rice harvester at Pasok's farm.

Pasok denied the charges against him. Pasok claimed that Dua was motivated by malice in filing the complaint since he did not accommodate Dua's promotion from Agricultural Technician II to Agricultural Technologist due to lack of civil service eligibility, having failed the civil service examination four times.

Pasok further claimed that:

(1) He was not in charge of the implementation of the emergency assistance certified seeds/fertilizer project nor was he involved in the safekeeping of the proceeds. Pasok added that under the approved project proposal submitted to DA-FAO, it was a certain Lynn V. Dequito, Agricultural Technologist, who was designated to "collect and disburse, deposit, distribute farm inputs, such as seeds, fertilizers and other related activities." As per records of the Municipal Treasurer, Dequito deposited the amount of ₱25,000 in the LGU Trust Fund.

(2) The livelihood project for the Rural Improvement Club of Barangay Rosario was covered by a Memorandum of Agreement and payments to the project recipients in the amount of ₱21,400 were properly accounted for. Pasok submitted certifications executed by the alleged beneficiaries to support the claim.



(3) He had no participation in the implementation of the Hybrid Rice Commercialization Program (Gloria Rice) and denied any knowledge of the missing BLBF. Pasok stated that the one in charge of the Gloria Rice program was Agricultural Technologist Dequito. In support of his claim, Pasok submitted a certification from Marcos M. Quico, Provincial Agriculturist, that Dequito received and recorded the payment of farmers' equity and turned over the payment to the SL-8H representative.

(4) There is no record that Pablito Suazo was a beneficiary of the Shallow Tube Well/Open Source Pump Project. Pasok denied owning a fishpond or rice mill in Brgy. Buenavista and submitted certifications from the Bureau of Fisheries and National Irrigation Administration to substantiate this.

In a Decision dated 10 March 2008, the Office of the Ombudsman-Mindanao found Pasok guilty of grave misconduct and serious dishonesty and imposed on him the penalty of dismissal from the service. The same office issued a Resolution dated 12 March 2008 which found probable cause against Pasok for violation of Section 3(e)⁷ of RA 3019.

However, acting upon a Motion for Reconsideration filed by Pasok, the Office of the Ombudsman-Mindanao, in a Joint-Order⁸ dated 29 September 2009, set aside without prejudice its 10 March 2008 Decision and 12 March 2008 Resolution pending the submission of a report by the Commission on Audit (COA), Regional Office No. 13, Butuan City. The dispositive portion of the Joint-Order states:

WHEREFORE, PREMISES CONSIDERED, the Commission on Audit, Regional Office No. 13, Butuan City, is hereby directed to conduct a fact-finding/audit investigation on the circumstances surrounding the procurement of the rice harvester, its eventual award to Tanabog Farmers Association, and the reasons for its non-repair or non-replacement and to submit to this Office the results thereof within five (5) days from its conclusion.


The findings and rulings of this Office in the assailed Resolution dated 12 March 2008 which found probable cause that the respondent violated Section 3(e) of Republic Act No. 3019, otherwise known as the

⁷ Section 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:

x x x x

(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.

⁸ *Rollo*, pp. 58-76.



Anti-Graft and Corrupt Practices Act, as well as the Decision dated 10 March 2008 which found him guilty of Grave Misconduct and Serious Dishonesty and thereby meting upon him the penalty of dismissal from the service are hereby SET ASIDE WITHOUT PREJUDICE to the results of the COA fact-finding/audit investigation.

SO ORDERED.⁹

The COA-Regional Office No. 13 submitted its first Audit Report dated 2 September 2011 to the Office of the Ombudsman–Mindanao. Then on 14 March 2012, the same COA office submitted a Special Audit Report. As a result of the audit reports, the Office of the Ombudsman–Mindanao issued an Order¹⁰ dated 3 January 2013 finding probable cause that Pasok violated Section 3(e) of RA 3019. The dispositive portion states:

WHEREFORE, this Office finds PROBABLE CAUSE that Section 3(e) of Republic Act No. 3019 was violated in the instant case and respondent Feliciano S. Pasok, Jr. is PROBABLY GUILTY thereof. Let the attached Information be filed in the proper court.

SO ORDERED.¹¹

Likewise, in an Order dated 4 January 2013, the Office of the Ombudsman–Mindanao found Pasok guilty of grave misconduct and serious dishonesty. The dispositive portion states:

WHEREFORE, respondent Feliciano S. Pasok, Jr. is hereby found GUILTY of Grave Misconduct and Serious Dishonesty.

Pursuant to Section 52 (A)(1), Section 52(A)(3) and Section 55 of Resolution No. 991936, otherwise known as the Uniform Rules on Administrative Cases in the Civil Service, as modified by the Revised Rules on Administrative Cases in the Civil Service, respondent Feliciano S. Pasok, Jr. is accordingly meted the penalty of DISMISSAL from the service together with all the accessory penalties and disabilities appurtenant thereto.

SO ORDERED.¹²

Pasok filed motions for reconsideration of the Orders dated 3 January and 4 January 2013, as well as a supplemental motion for reconsideration dated 30 May 2014. The Office of the Ombudsman–Mindanao, in a Joint-Order¹³ dated 13 April 2015, denied the motions.

Hence, the instant petition.



⁹ Id. at 74.

¹⁰ Id. at 23-33.

¹¹ Id. at 32.

¹² Id. at 37.

¹³ Id. at 34-41.

The Issue

Whether or not the Office of the Ombudsman–Mindanao acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it set aside its 29 September 2009 Joint-Order and found probable cause against Pasok on the basis of the COA fact-finding reports without furnishing Pasok a copy thereof or requiring him to comment thereon, thus, in violation of Pasok’s right to due process.

The Court’s Ruling

The petition lacks merit.

Petitioner Pasok contends that the Office of the Ombudsman–Mindanao abused its discretion when it reversed its own 29 September 2009 Joint-Order and found probable cause against him for the offense charged on the basis of the COA fact-finding reports without furnishing him a copy thereof or requiring him to comment thereon, thus, violating his right to due process.

Private respondent Dua, on the other hand, maintains that there is nothing in the Joint-Order dated 29 September 2009 which states that the Office of the Ombudsman-Mindanao reversed its 10 March 2008 Decision and exonerated Pasok from the charges of grave misconduct and dishonesty. Dua asserts that the Office of the Ombudsman-Mindanao has the discretion to dismiss without prejudice a preliminary investigation if it finds that the final decision of the COA is necessary for its investigation and the future prosecution of the case.

Likewise, public respondent Office of the Ombudsman–Mindanao asserts that Pasok’s right to due process was not violated since Pasok was able to argue his case and explain the merits of his defense. The Office of the Ombudsman-Mindanao maintains that the Office of the Ombudsman’s power to investigate and to prosecute is plenary and unqualified and that it has full discretion to file an information against a supposed offender. The Office of the Ombudsman-Mindanao explains that it set aside its earlier Resolution dated 12 March 2008 without prejudice to the results of the COA fact-finding investigation. Thus, after careful analysis of the reports which the COA submitted, the Office of the Ombudsman-Mindanao found sufficient basis to warrant the filing of an Information against petitioner for violation of Section 3(e) of RA 3019. Thus, the finding of probable cause was well substantiated and not tainted with grave abuse of discretion.

The Court has always adhered to the general rule upholding the non-interference by the courts in the exercise by the Office of the Ombudsman of



its plenary investigative and prosecutorial powers.¹⁴ In certiorari proceedings under Rule 65, the Court's inquiry is limited to determining whether the Office of the Ombudsman acted without or in excess of its jurisdiction, or with grave abuse of discretion.

There is grave abuse of discretion when an act of a court or tribunal is whimsical, arbitrary, or capricious as to amount to an "an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility."¹⁵ Grave abuse of discretion was found in cases where a lower court or tribunal violates or contravenes the Constitution, the law, or existing jurisprudence.¹⁶

In the present case, the Office of the Ombudsman-Mindanao received a complaint for malversation of public funds, and violations of the Anti-Graft and Corrupt Practices Act and the Code of Conduct and Ethical Standards for Public Officials and Employees. The complaint was filed by Rex Y. Dua against Feliciano S. Pasok, Jr. after Dua discovered some irregularities in the different agricultural programs of the Office of the Municipal Agriculturist in Tandag, Surigao del Sur. After conducting a preliminary investigation, the Office of the Ombudsman-Mindanao issued (1) a Decision dated 10 March 2008 finding Pasok guilty of grave misconduct and serious dishonesty, and (2) a Resolution dated 12 March 2008 finding probable cause against Pasok for violation of Section 3(e) of RA 3019. However, on 29 September 2009, the Office of the Ombudsman-Mindanao issued a Joint-Order setting aside its decision and resolution issued earlier pending further investigation by the COA. After submission of the fact-finding reports by the COA, the Office of the Ombudsman-Mindanao again issued the assailed orders finding probable cause against Pasok. Pasok now insists that his right to due process was violated.

Section 13, Article XI of the Constitution enumerates the powers, functions, and duties of the Office of the Ombudsman. These powers, functions, and duties are also stated in Section 15 of Republic Act No. 6770¹⁷ or the Ombudsman Act of 1989. Section 13, paragraphs (1) and (5), Article XI of the Constitution state:

Section 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.

¹⁴ *Angeles v. Gutierrez*, 685 Phil. 183, 193 (2012).

¹⁵ *Callo-Claridad v. Esteban*, 707 Phil. 172, 186 (2013).

¹⁶ *Republic of the Philippines v. COCOFED*, 423 Phil. 735, 774 (2001).

¹⁷ An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes. Approved on 17 November 1989.

- (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

It is clear from Section 13(1), Article XI of the Constitution that the Office of the Ombudsman has the power to investigate on its own or on complaint, any act of a public official when the act appears to be illegal, unjust, improper, or inefficient. The Office of the Ombudsman may also ask for the assistance of a government agency, like the COA in this case, to carry out its duties.

In *Presidential Commission on Good Government v. Desierto*,¹⁸ we held that the Office of the Ombudsman is “empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.” This determination is done by means of a preliminary investigation.

Here, when the Office of the Ombudsman-Mindanao initially conducted a preliminary investigation based on the complaint filed, the parties, Dua and Pasok, were each given a chance to submit their allegations and establish their claims. Dua and Pasok both submitted their pleadings, certifications and affidavits from different witnesses and offices, and relevant records and documents to prove and disprove their claims. Pasok was given the opportunity to address all the allegations that Dua presented in his complaint filed with the Office of the Ombudsman-Mindanao. Pasok cannot now assert that he has been deprived of his right to due process when he was given every opportunity to do so during the preliminary investigation.

The directive of the Office of the Ombudsman-Mindanao to the COA in its Joint-Order dated 29 September 2009 to “conduct a fact-finding [or] audit investigation on the circumstances surrounding the procurement of the rice harvester, its eventual award to Tanabog Farmers Association, and the reasons for its non-repair or non-replacement,”¹⁹ as well as the setting aside by the Office of the Ombudsman-Mindanao of the decision and resolution it issued earlier, was issued without prejudice to the results of the COA fact-finding/audit investigation. Thus, it was still within the power of the Office of the Ombudsman-Mindanao to issue another directive, after evaluating the COA reports, that a criminal case should be filed despite setting aside the decision and resolution it issued earlier.



¹⁸ 553 Phil. 733, 742 (2007).

¹⁹ *Rollo*, p. 74.

In *Dimayuga v. Office of the Ombudsman*,²⁰ we held that the Office of the Ombudsman may, for every particular investigation, decide how best to pursue each investigation. This power gives the Office of the Ombudsman the discretion to dismiss without prejudice a preliminary investigation if it finds that the final decision of the COA is necessary for its investigation and future prosecution of the case. It may also pursue the investigation because it realizes that the decision of the COA is irrelevant or unnecessary to the investigation and prosecution of the case. Since the Office of the Ombudsman is granted such latitude, its varying treatment of similarly situated investigations cannot by itself be considered a violation of any of the parties' rights to the equal protection of the laws. Nor in the present case, can it be considered a violation of petitioner's right to due process.

In sum, we defer to the findings of the Office of the Ombudsman-Mindanao and will not interfere with the exercise of its plenary power absent any showing that it committed grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, we **DISMISS** the petition. We **AFFIRM** the Order dated 3 January 2013 and Joint-Order dated 13 April 2015 of the Office of the Ombudsman-Mindanao in Case No. OMB-M-C-06-0383-G.

SO ORDERED.



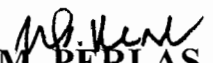
ANTONIO T. CARPIO
Senior Associate Justice

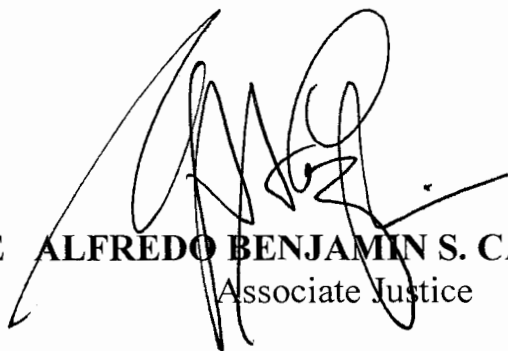
WE CONCUR:



DIOSDADO M. PERALTA
Associate Justice

²⁰ 528 Phil. 42, 51 (2006).



ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)