

SPECIAL FIFTEENTH DIVISION

[CA – G.R. SP NO. 118304, May 15, 2014]

**MARIETTA B. BANGAWAN, PETITIONER, V. SONNY C. PACUNLA
AND OFFICE OF THE OMBUDSMAN, RESPONDENTS.**

D E C I S I O N

GALAPATE-LAGUILLES, J:

Before this Court is a *Petition for Review*^[1] under Rule 43 of the Rules of Court assailing, viz: 1.) the *Decision*^[2] dated 27 May 2009 in OMB-L-A-07-0679-I of the respondent Office of the Deputy Ombudsman for Luzon, Office of the Ombudsman (hereinafter Ombudsman), finding petitioner Marietta B. Bangawan (hereinafter Ombudsman) guilty of the administrative offense of Serious Dishonesty and imposing upon her the penalty of dismissal from the service; 2.) the *Resolution*^[3] dated 27 May 2009 in OMB-L-C-07-0838-I of the Ombudsman finding probable cause to hold petitioner criminally liable for Falsification of Public Documents; and 3.) the *Joint Order*^[4] dated 26 July 2010 of the Ombudsman denying petitioner's *Motion for Reconsideration*.

The following are the facts:

Petitioner was the former Municipal Treasurer of the Municipality of Diffun, Province of Quirino while respondent Sonny C. Pacunla (hereinafter respondent) is the Municipal Agricultural Technologist of the Office of the Municipal Agriculturist of the said municipality.

Sometime on the third week of March 2006, respondent went to the Office of the Disbursing Officer of the Municipality of Diffun, Quirino to claim his salary for March 1 to 15, 2006 in the amount of Three Thousand Seven Hundred Pesos (Php 3,700.00).^[5] Aida A. Sabigan (hereinafter Sabigan), the Disbursing Officer II of the Municipal Treasurer's Office, failed to give him the said salary as the same was already drawn by petitioner.^[6] He was only paid the said amount on April 4, 2006.^[7]

Sometime on the last week of June 2006, respondent reported for work after his sick leave from May 27 to June 27, 2006.^[8] He then went to the Office of the Disbursing Officer of the Municipality of Diffun, Quirino to claim his salary for June 1 to 15, 2006 in the amount of Four Thousand Six Hundred Pesos (Php 4,600.00).^[9] Sabigan informed him that petitioner had already drawn the said salary and affixed her (petitioner) initial on the payroll opposite his name.^[10] Despite repeated demands, the said salary was not paid.^[11]

By reason of the foregoing incidents, respondent filed a *Complaint-Affidavit*^[12] dated 25 July 2006 against petitioner and Sabigan before the Grievance Committee of the Municipality of Diffun, Quirino for Dishonesty, Falsification, Grave Misconduct

and Graft and Corruption.^[13] Petitioner and Sabigan then executed their respective Counter-Affidavits, both dated 15 August 2006.^[14] Thereafter, respondent executed his *Consolidated Reply-Affidavit* dated 5 September 2006.^[15]

Respondent also wrote a letter^[16] to the Auditor General of the Province of Quirino requesting for the latter to conduct an audit investigation on the utilization and accounting of the cash advances of petitioner which were drawn purposely for the salaries for March 1 to 15, 2006 and June 1 to 15, 2006.^[17] Giving due cognizance to the said request, the Office of the Team Leader of the Commission on Audit, Cabarroguis, Quirino conducted an audit investigation on 24 August to 26 September 2006.^[18]

Meanwhile, the Grievance Committee of the Municipality of Diffiun, Quirino convened on 5 September 2006 to amicably settle respondent's *Complaint*.^[19] The committee opted to continue with the case despite the absence of petitioner as she was on official business in Metro Manila. In its *Committee Report*,^[20] it resolved to elevate the said case to the "higher concerned authority" since there was no amicable settlement reached.^[21]

In its undated *Report*,^[22] the Audit Team made the following recommendation:

X X X

Stop Petitioner from making illegitimate drawings of cash from the accountable officers of Diffun without prejudice to the institution of administrative and criminal actions against her as the circumstances may warrant for deliberately causing the falsification of the date of O.R. No. 9689249 B if only to pave the way for the insertion of the date June 26, 2006 on O.R. No. 9689250 B to make it appear that the cash of P 4,600.00, representing the unpaid claim of Sonny Pacunla was returned to her on June 26, 2006 so as to conceal her illegitimate receipt of the amount.

X X X

Thereafter, Check No. 409865 dated 5 January 2007 was issued to respondent covering his salary for June 1 to 15, 2006.^[23]

Respondent then filed a *Complaint*^[24] dated 26 September 2007 against petitioner before the Ombudsman for Dishonesty, Grave Misconduct, Malversation of Public Funds, Falsification of Document, Perjury and Violation of R.A. 3019, docketed as OMB-L-A-07-0679-I and OMB-L-C-07-0838-I.

On 27 May 2009, the Ombudsman rendered a *Decision*^[25] in OMB-L-A-07-0697-I with respect to the administrative aspect of respondent's *Complaint* against petitioner for alleged Dishonesty and Gross Misconduct, the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding the respondent **MARIETTA BANGAWAN, guilty of SERIOUS DISHONESTY. This not being the first offense of the respondent MARIETTA BANGAWAN, she is hereby meted out the penalty of**

DISMISSAL from the service, pursuant to Sec. 10, Rule III, Administrative Order No. 07, as amended by Administrative Order No. 17, in relation to Sec. 25 of R.A. 6770, with cancellation of civil service eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service.

The Honorable Secretary, Department of Finance is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Sec. 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1, series of 2006, dated 11 April 2006, and to promptly inform this Office of the action taken thereon.

SO DECIDED.”

On even date, the Ombudsman issued a *Resolution*^[26] in OMB-L-C--7-0838-I pertaining to the criminal aspect of respondent’s *Complaint* against petitioner, finding probable cause to hold the latter liable for Falsification of Public Document. The decretal portion of the *Resolution* reads:

“**WHEREFORE**, premises considered, it is respectfully recommended that a criminal information for Falsification of Public Document be filed against respondent, MARIETTA BANGAWAN, with the proper court.

SO RESOLVED.”

Aggrieved, petitioner moved for reconsideration^[27] of the aforestated *Decision* and *Resolution*, but the same was denied by the Ombudsman in its *Joint Order*^[28] dated 26 July 2010.

Hence, the instant *Petition for Review* raising the following issues^[29] for the Court's resolution, viz:

(a)

THE OMBUDSMAN ERRED TO DETERMINE THAT THE CONTROVERSY AND ISSUES INVOLVED WERE ALREADY SETTLED BEFORE THE GRIEVANCE COMMITTEE OF THE LOCAL GOVERNMENT UNIT TO OUST THE JURISDICTION AND INVESTIGATION OF THE OFFICE OF THE OMBUDSMAN AS THE DOCTRINE OF PRIMARY JURISDICTION APPLIES;

(b)

THE OMBUDSMAN ERRED IN CONSIDERING THE EVIDENCES (sic) OF HEREIN RESPONDENT/PETITIONER THAT THE DELAY IN THE PAYMENT OF SALARIES INVOLVED WAS JUST A REGULAR PROCESS OF THE GOVERNMENT ACCOUNTING SYSTEM;

(c)

IF ONLY THE HONORABLE OMBUDSMAN CONSIDERED THE NEWLY DISCOVERED EVIDENCE THAT IS THE AFFIDAVIT OF MARIA FATIMA GOTONG RUNAS, IT WOULD HAVE CHANGED ITS VIEW AND WOULD HAVE EXONERATED RESPONDENT/PETITIONER MARIETTA BANGAWAN; AND

(d)

THE PENALTY OF DISMISSAL IS TOO HARSH AGAINST
RESPONDENT/PETITIONER MARIETA BANGAWAN.

From the foregoing, We reduce the issues to the following:

1.) Whether or not the Ombudsman erred in taking cognizance of the Complaint of respondent; 2.) Whether or not the Ombudsman erred in finding petitioner administratively liable for Serious Dishonesty and imposing upon her the penalty of dismissal from the service; and 3.) Whether or not the Ombudsman erred in finding probable cause to hold petitioner criminally liable for Falsification of Public Documents.

The Petition must fail.

On the first issue, petitioner argues that the controversy was already resolved at the level of the Municipal Government of Diffun, Quirino through its Grievance Committee which first acquired jurisdiction over the controversy. The resolution of the said committee should have been respected for the same ousts the Ombudsman of its jurisdiction over the matter pursuant to the doctrine of primary jurisdiction.^[30]

The argument has no merit.

The Ombudsman has defined prosecutorial powers and possesses adjudicative competence over administrative disciplinary cases filed against public officers.^[31] It was created by no less than the Constitution.^[32] It is tasked to exercise disciplinary authority over all elective and appointive officials, save only for impeachable officers.^[33]

The fundamental law has named the Ombudsman and his Deputies as the protectors of the people who shall act promptly on complaints filed in any form or manner against public officials or employees of the government.^[34] To fulfill this mandate, R.A. No. 6770, or the Ombudsman Act of 1989, was enacted.^[35] Section 21 of R.A. No. 6770 clearly provides, viz:

“Section 21. Official Subject to Disciplinary Authority; Exceptions. — The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.”

Expounding on the powers of the Office of the Ombudsman, the Supreme Court declared in the case of **Office of the Ombudsman v. De Leon**^[36] that:

x x x Indeed, the power of the Office of the Ombudsman to investigate extends to all kinds of malfeasance, misfeasance, and non-feasance that have been committed during his tenure of office by any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations. The Office of the Ombudsman also has the power to act on

all complaints relating, but not limited, to acts or omissions that (1) are contrary to law or regulation; (2) are unreasonable, unfair, oppressive or discriminatory; (3) are inconsistent with the general course of an agency's functions, though in accordance with law; (4) proceed from a mistake of law or an arbitrary ascertainment of facts; (5) are in the exercise of discretionary powers but for an improper purpose; or (6) are otherwise irregular, immoral or devoid of justification. At the same time, the Office of the Ombudsman, in the exercise of its administrative disciplinary authority, can impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault. The exercise of all such powers is well founded on the Constitution and on Republic Act No. 6770.

x x x

...(T)he Ombudsman under the 1987 Constitution and R.A. No. 6770 is intended to play a more active role in the enforcement of laws on anti-graft and corrupt practices and other offenses committed by public officers and employees. The Ombudsman is to be an "activist watchman," not merely a passive one. He is vested with broad powers to enable him to implement his own actions.

The Ombudsman has concurrent jurisdiction over administrative cases which are within the jurisdiction of the regular courts or administrative agencies.^[37] Any act or omission of a public officer or employee occupying a salary grade lower than 27 is within the concurrent jurisdiction of the said office and of the regular courts or other investigative agencies.^[38]

In administrative cases involving the concurrent jurisdiction of two or more disciplining authorities, the body where the complaint is filed first, and which opts to take cognizance of the case, acquires jurisdiction to the exclusion of other tribunals exercising concurrent jurisdiction.^[39]

Here, the Ombudsman and the Municipal Government of Diffun, Quirino exercise concurrent administrative disciplinary jurisdiction over petitioner. It will be noted that respondent's *Complaint*^[40] against petitioner dated 25 July 2006 was initially filed with the Grievance Committee of the Municipality of Diffun, Quirino. However, a careful reading of the *Grievance Committee Report*^[41] on the hearing that was conducted on 5 September 2006 would reveal that the said committee resolved to terminate the said case and elevate the same to the "higher concerned authority" since there was no amicable settlement reached.^[42] Thereafter, respondent filed his *Complaint* dated 26 September 2007 before the Ombudsman.

Irrefutably, the Ombudsman took cognizance of respondent's case only *after* the termination of the proceedings before the Municipal Government of Diffun, Quirino and only upon the filing of respondent's *Complaint* before it. Hence, it is not barred from opting to take cognizance of the said case. Its exercise of jurisdiction over the same case is to the exclusion of other administrative bodies, including the Municipal Government of Diffun, Quirino. To hold otherwise would be tantamount to abdicating its salutary functions as the guardian of public trust and accountability.^[43]