

SECOND DIVISION

[G.R. No. 218530, January 13, 2021]

**LUIS G. QUIOGUE, PETITIONER, VS. BENITO F. ESTACIO, JR.
AND OFFICE OF THE OMBUDSMAN, RESPONDENTS.**

RESOLUTION

LOPEZ, J.:

This Petition for *Certiorari* under Rule 65 of the Rules of Court assails the Resolution^[1] dated October 13, 2014 and Order^[2] dated March 10, 2015 issued by the Office of the Ombudsman (Ombudsman) in OMB-C-C-12-0288-G, dismissing the complaint against private respondent Benito F. Estacio, Jr. (Estacio) for violation of Section (Sec.) 3 (e) of Republic Act (RA) No. 3019 or the "Anti-Graft and Corrupt Practices Act," for lack of probable cause.

ANTECEDENTS

In January 2007, upon recommendation of then President Gloria Macapagal-Arroyo to the Chairman of the Presidential Commission on Good Government (PCGG), Estacio was elected as member of the board of directors of Independent Realty Corporation Group of Companies (IRC), composed of various corporations surrendered by former Marcos crony Jose Y. Campos to the government, and presently supervised by the PCGG.^[3] Although Estacio's term is set to expire on June 30, 2010, he sat in the IRC board until December 2010, and served as concurrent Vice-President in mid-2010. Prior to the expiration of his term, Estacio and the other IRC board of directors, passed Resolution No. 2010-05-181^[4] dated May 21, 2010, which granted separation benefits to IRC officers. Based on the Resolution, Estacio received P467,308.20^[5] separation pay as IRC Vice-President, P56,870.00^[6] as 14th month pay, and P20,000.00^[7] extra bonus or a total of P544,178.20.^[8] This prompted the filing of a Complaint-affidavit^[9] before the Ombudsman by petitioner Luis G. Quiogue (Quiogue), IRC's General Manager on the ground that Estacio's receipt of the emoluments caused undue injury to the government, in violation of Sec. 3 (e) of RA No. 3019.

Quiogue alleged that under Memorandum Circular (MC) No. 40,^[10] Series of 1993, of the office of the President, PCGG-nominated directors of sequestered corporations may only receive representation and transportation allowances not exceeding P3,400.00 per month, in addition to the basic director's fee not exceeding P120,000.00 per year. Also, under MC No. 66, Series of 1993,^[11] PCGG-nominated directors cannot assume line functions nor accept appointment to any other position in the sequestered or surrendered corporation wherein he is a Director, unless expressly authorized in writing by the Office of the President. The directors are not entitled to any form of profit sharing, nor to any retirement benefits. If they are granted, the benefits must be returned to the National Treasury through the PCGG.

For his defense, Estacio countered that the Ombudsman has no jurisdiction over him as he is not a public officer. He explained that while the IRC was sequestered by the government and is being supervised by the PCGG, it remains a private corporation. He further argued that MC Nos. 40 and 66 do not apply to him. Also, his designation as Vice-President of IRC does not require the President's approval since he was not a PCGG-nominated director. As for the separation pay, 14th month pay and extra bonus, Estacio maintained that the release of these benefits was pursuant to a board resolution passed in good faith, hence, is valid under the principle of "business judgment rule."^[12]

On October 13, 2014,^[13] the Ombudsman dismissed the complaint for lack of probable cause. The Ombudsman ruled that Estacio is a public officer since the State owns 481,181 out of the 481,184 subscribed shares of IRC, making it a government-owned or controlled corporation (GOCC). However, it found no violation of Sec. 3 (e) of RA No. 3019 since Estacio's act of receiving the questioned benefits was not done in the performance of judicial, administrative, or official functions, which is an essential element of the offense. As for the IRC *Resolution*^[14] granting separation benefits equivalent to 3 months' salary for every year of service for the IRC President and 2 and 1/2 months' salary for every year of service for other IRC officers, the Ombudsman ruled that Estacio's participation in the approval thereof is not tainted with manifest partiality, or evident bad faith, or gross inexcusable negligence, thus:

MC Nos. 40 & 66 are only applicable to PCGG-nominated Directors. The subject Resolution, however, granted separation pay benefit to *all corporate officers*, like the corporate secretary and corporate treasurer who at the time material to the case were not PCGG-nominated Directors.

Further PCGG-nominated Directors who *were appointed to assume line functions or responsibilities through committee membership or otherwise and whose appointments were pre-approved by the Office of the President* are not covered by the limitations set forth in MC Nos. 40 & 66 and are instead governed by the affected corporations' by-laws and corporate policies, as provided by MC [No.] 175, Series of 1998 dated March 11, 1998.

Finally, there is no showing that the grant of separation pay benefit is contrary to IRC's by-laws, or IRC was saddled by losses that the grant of separation pay benefit would not be justifiable.

In LIGHT of the foregoing, probable cause for violation of Section 3 (e) of RA 3019 is not appreciated against respondent.^[15] (Citations omitted.)

On March 10, 2015, the Ombudsman denied petitioner's motion for reconsideration.^[16] Hence, this recourse.^[17] The petitioner imputes grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Ombudsman for its alleged unjust refusal to file the appropriate Information against Estacio for violation of Sec. 3 (e) of RA No. 3019.

RULING

The petition is unmeritorious.

The Ombudsman assumed jurisdiction over Estacio's case based on its finding that IRC is a GOCC since 481,181 out of the company's 481,184 subscribed shares are State-owned. Being a director in a GOCC, the Ombudsman concluded that Estacio is a public officer. Yet, who are considered public officers? Section 2 (b) of RA No. 3019 states that the term public officer includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government. Meanwhile, Article (Art.) 203 of the Revised Penal Code, defines a public officer as any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government, or in any of its branches, public duties as an employee, agent, or subordinate official, of any rank or class, shall be deemed to be a public officer. Thus, to be a *public officer*, one must be:

(1) Taking part in the performance of public functions in the government, or Performing in said Government or any of its branches public duties as an employee, agent, or subordinate official, of any rank or class; and

(2) That his authority to take part in the performance of public functions or to perform public duties must be —

- a. by direct provision of the law, or
- b. by popular election, or
- c. by appointment by competent authority.^[18]

In *Javier v. Sandiganbayan (First Division)*,^[19] we held that persons from the private sector who are invested with some portion of the sovereign functions of the government, to be exercised by them for the benefit of the public, are public officers.^[20] In that case, the petitioner was appointed by the President of the Philippines to sit as member of the National Book Development Board (NBDB). The NBDB was created pursuant to RA No. 8047^[21] or the "Book Publishing Industry Development Act." Though she came from the private sector, the Court held that petitioner's appointment to the Board made her a "public officer" as she was invested with some of the sovereign functions to achieve the government objective of cultivating the book publishing industry. The same is true in the case of Estacio.

As in *Javier*, Estacio was appointed by the President of the Philippines as a public officer. Then President Macapagal-Arroyo wrote a letter addressed to former PCGG Chairman Camilo Sabio expressing her desire for Estacio to be elected as member of the IRC board of directors.^[22] In *Maligalig v. Sandiganbayan*,^[23] the Court probed into the nature of such "Desire Letter," and ruled against petitioner's contention that he is not a public officer. The Court quoted with approval the PCGG's position that members of the board of directors of sequestered companies, like BASECO, were elected by virtue of "Desire Letters" issued by the President of the Republic of the Philippines. The petitioner in that case sat as President and Director of BASECO by virtue of the appointing power of the President, and as such, he is considered a public officer exercising functions for public benefit, namely, management of sequestered corporation and earning income for the government.

Relative to this, we stress that while IRC was organized under the Corporation Code, it is a sequestered corporation subject to the fiscal supervision of the PCGG and is a

GOCC which is under the direct supervision of the Office of the President.^[24] Section 2 (13) of the Administrative Code of 1987^[25] defines GOCC as:

(13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: *Provided*, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.^[26]

This definition is also found in Sec. 3 (o) of the "GOCC Governance Act of 2011,"^[27] which reads:

(o) *Government-Owned or -Controlled Corporation (GOCC)* refers to any agency organized as a stock or nonstock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock: *Provided, however*, That for purposes of this Act, the term "GOCC"- shall include GICP/GCE and GFI as defined herein.

In *Leyson, Jr. v. Office of the Ombudsman*,^[28] we broke down the definition of GOCC into three requisites, namely: (1) any agency organized as a stock or non-stock corporation; (2) vested with functions relating to public needs whether governmental or proprietary in nature; and, (3) owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least 51% of its capital stock.^[29] Possession of all three attributes is necessary to consider an entity a GOCC.^[30]

The *first* requisite is present as it is undisputed that IRC is a stock corporation organized under the Corporation Code. IRC also meets the *second* requisite. Like BASECO, the income and assets of IRC as a sequestered corporation are remitted to the PCGG and then turned over to the Bureau of Treasury. This means that the individual running the affairs of IRC is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public, and this makes Estacio a public officer.^[31] Lastly, we have long recognized in *Cuenca v. PCGG*,^[32] that IRC is among the several corporations organized, established, and managed for, and on behalf of former President Ferdinand E. Marcos, by Mr. Jose Y. Campos. The shares of IRC were later surrendered and turned over to PCGG, which effectively transferred ownership thereof to the Government. This satisfies the *third* requisite on government ownership.

Next, we discuss the Ombudsman's authority to act on criminal complaints against erring public officials and employees, and the main issue on the existence of probable cause for violation of Sec. 3 (e) of RA No. 3019. The Ombudsman's

mandate as "the champion of the people" and "preserver of the integrity of the public service" have both the constitutional and statutory bases.^[33] The powers, functions, and duties of the Ombudsman are found in Sec. 12^[34] and 13,^[35] Art. XI of the 1987 Constitution, and in RA No. 6770^[36] or the "Ombudsman Act of 1989." Section 15 (1) of RA No. 6770, specifically states the Ombudsman's authority to investigate and prosecute criminal cases, thus:

SEC. 15. *Powers, Functions and Duties.* — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the *Sandiganbayan* and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases[.]

As an independent constitutional body, the power of the Ombudsman to investigate is plenary and unqualified such that it has full discretion to determine whether a criminal case should be filed or not based on the attendant facts and circumstances of each case. Generally, the Court does not review the Ombudsman's finding as to the existence or absence of probable cause, consistent with the policy of non-interference with the exercise of its constitutionally mandated powers.^[37] Following this principle of non-interference, the Court exercises restraint in reviewing the Ombudsman's finding of probable cause. Since this Court is not a trier of facts, it generally defers to the sound judgment of the Ombudsman, as it is in a better position to assess the facts and circumstances necessary to find probable cause.^[38] The only exception is when there is grave abuse of discretion amounting to lack or excess of jurisdiction.^[39]

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. This means that the Ombudsman must have exercised its investigatory and prosecutory powers in an arbitrary or despotic manner, which must be as patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law.^[40] A mere disagreement with the Ombudsman's findings is not enough to constitute grave abuse of discretion.^[41] In this case, even if the Court were to liberally adopt the exception to the general rule against the review of the findings of the Ombudsman, still, the petition must be dismissed as petitioner failed to demonstrate that the Ombudsman's Resolution and Order, which found no basis to charge Estacio for violation of Sec. 3 (e)^[42] of RA No. 3019, were tainted with grave abuse of discretion.

In *Uriarte v. People*,^[43] the Court explained that Sec. 3 (e) of RA No. 3019 may be committed either by **dolo**, as when the accused acted with evident bad faith or manifest partiality, or by **culpa** as when the accused committed gross inexcusable negligence. **Manifest partiality** signifies a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. Meanwhile, evident bad faith entails not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse