

FIRST DIVISION

[G.R. No. 230679, February 10, 2021]

**THE OFFICE OF THE OMBUDSMAN AND THE DEPARTMENT OF
INTERIOR AND LOCAL GOVERNMENT, PETITIONERS, VS. REXLON
T. GATCHALIAN, RESPONDENT.**

G.R. NOS. 232228-30

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. REXLON T.
GATCHALIAN, RENCHI MAY M. PADAYAO AND EDUARDO Y.
CARREON, RESPONDENTS.**

DECISION

ZALAMEDA, J.:

Before the Court are two consolidated Petitions which stemmed from the tragic fire on 13 May 2015 inside the premises of Kentex Manufacturing Corporation (Kentex) in Valenzuela City, which led to the death of seventy-four individuals and injury of several others.

In **G.R. No. 230679**, petitioners Office of the Ombudsman (Ombudsman) and the Department of Interior and Local Government (DILG) assail the Decision^[1] and Resolution^[2] dated 28 November 2016 and 20 March 2017, respectively, of the Court of Appeals (CA) in CA-GR SP No. 144428,^[3] dismissing the administrative cases for grave misconduct and gross neglect of duty against Mayor Rexlon T. Gatchalian (Mayor Gatchalian). The dispositive portion of the assailed Decision reads:

"WHEREFORE, the Petition for Certiorari is hereby GRANTED. Accordingly, this Court REVERSES and SETS ASIDE that portion of the Ombudsman's Joint Resolution involving OMB-P-A-15-0581 promulgated on 11 February 2016 in that Mayor Rexlon T. Gatchalian is found NOT ADMINISTRATIVELY LIABLE for GRAVE MISCONDUCT and/or GROSS NEGLIGENCE OF DUTY.

SO ORDERED."^[4]

On the other hand, in **G.R. Nos. 232228-30**, the People of the Philippines, through the Office of the Special Prosecutor, challenges the dismissal of the criminal cases docketed as SB-16-CRM-0802,^[5] SB-16-CRM-0803,^[6] and SB-16-CRM, 0804,^[7] against respondents Mayor Gatchalian, Atty. Renchi May Padayao (Atty. Padayao) and Eduardo Y. Carreon (Carreon), by the Sandiganbayan in its Joint Resolution^[8] dated 13 December 2016 and Resolution^[9] dated 8 June 2017. The dispositive portion of the Joint Resolution dated 13 December 2016 reads:

"WHEREFORE, in light of the foregoing, the Court hereby finds that no probable cause exists for the issuance of warrants of arrest against accused Rex T. Gatchalian, Renchi May Padayao, and Eduardo Carreon in [C]riminal [C]ases SB-16-CRM-0802, SB-16-CRM-0803, and SB-16-CRM-0804, and accordingly dismisses the instant cases.

SO ORDERED."^[10]

Antecedents

On 13 May 2015, a tragic fire occurred inside the compound of Kentex in Valenzuela City causing the death of seventy-four individuals and injury to several other persons. The Inter-Agency Anti-Arson Task Force^[11] (IATF) conducted an investigation on the tragic fire. In its Memorandum dated 29 May 2015^[12] submitted to then DILG Secretary and IATF Chairman Mar Roxas, the IATF Team^[13] found that the immediate cause of the fire was the stockpiling of 400 sacks or ten tons of Supercell Blowing Agent known as Azodicarbonamide,^[14] in an area not intended for such storage and adjacent to the welding activities near the stockpile. Due to the lack of fire exits, sixty-nine casualties were found at the second floor of Building 3, while three were found on the mezzanine stairs of Building 2, which indicated that they died due to lack of exit point.

Based on available records, Kentex was issued by the City of Valenzuela Business Permits for 2010 and 2011 despite the lack of Fire Safety Inspection Certificate (FSIC) for the years 2010 and 2011.^[15] On 18 December 2012, an FSIC was issued by the Valenzuela City Fire Station, which was valid for one year or until 18 December 2013. No subsequent FSIC was renewed or issued for the years thereafter.

Despite the lack of FSIC, the City of Valenzuela issued a Business Permit on 15 January 2014 to Kentex. For the year 2015, the City likewise issued Kentex a Business Permit on 14 January 2015 after an application for renewal was filed by its President, Mr. Ong King Guan, before the Business Permits and Licensing Office (BPLO). The Business Permit for 2015 was issued upon the recommendation of Caireon, Licensing Officer IV and signed by Atty. Padayao, OIC, BPLO, for Mayor Gatchalian.^[16]

Aside from the absence of FSIC, the Fire Code Technical Support Group^[17] of the IATF Team noted other fire safety violations committed by Kentex at the time of the incident.^[18] Thus, the IATF recommended the filing of criminal and administrative charges against several individuals, including Mayor Gatchalian and Atty. Padayao. Consequently, the Fact-Finding Investigation Bureau-MGLEO (FFIB-MOLEO) filed an administrative complaint for Grave Misconduct, Gross Neglect of Duty, and Neglect of Duty before the Ombudsman against, among others, Mayor Gatchalian, Atty. Padayao and Carreon. It likewise filed criminal complaints for violation of Section 3 (e) and (j) of R.A. Nd. 3019^[19] and Reckless Imprudence Resulting to Multiple Homicides and Multiple Physical Injuries under Article 365 of the Revised Penal Code.

The Ombudsman later 'found Mayor Gatchalian, Atty. Padayao, Carreon liable for granting licenses and permits in 2014 and 2015 in favor of Kentex, despite the latter's failure to secure the required FSICs. Carreon recommended the approval of the permits while Atty. Padayao approved them for Mayor Gatchalian. The Ombudsman concluded that this constituted gross and inexcusable negligence in enforcing the law and their partiality to Kentex. In addition, the Ombudsman found conspiracy among the BFP-Valenzuela and the City of Valenzuela.

The dispositive portion of the Joint Resolution dated 11 February 2016,^[20] which then Ombudsman Conchita Carpio Morales approved on 17 February 2016, reads:

"WHEREFORE, premises considered -

x x x

3. For issuing a Business Permit to Kentex Manufacturing in 2015 despite its delinquent status, respondents REXLON T. GATCHALIAN, RENCHIE MAY M. PADAYAO, EDUARDO Y. CARREON and ONG KING GUAN a.k.a. TERENCE KING ONG are indicted for violation of Section 3 (e) of RA No. 3019. Let the corresponding Information be FILED before the proper court;

4. For issuing a Business Permit to Kentex Manufacturing in 2014 despite not being qualified or entitled thereto, respondents RJEXLON T. GATCHALIAN, RENCHIE MAY M. PADAYAO, [and] EDUARDO Y. CARREON are indicted for violation of Section 3(j) of RA 3019. Let the corresponding Information be FILED before the proper court;

5. For failure to perform their official duties of enforcing the precautionary measures under the Fire Code, respondents REXLON T. GATCHALIAN, RENCHIE MAY M. PADAYAO, EDUARDO Y. CARREON, MEL JOSE P. LAGAN, EDGROVER OCULAM, ROLANDO S. AVENDAN and ONG KING GUAN a.k.a. TERENCE KING ONG are indicted for Reckless Imprudence resulting in Multiple Homicides and Multiple Physical Injuries under Article 365 of the Revised Penal Code. Let the corresponding Information be FILED before the proper court;

6. There being substantial evidence, respondents REXLON T. GATCHALIAN, RENCHIE MAY M. PADAYAO, EDUARDO Y. CARREON x x x are found GUILTY of Grave Misconduct and Gross Neglect of Duty and are meted the penalty of DISMISSAL FROM THE SERVICE with the same accessory penalties of forfeiture of benefits and privileges and perpetual disqualification to hold office.

xxx

SO ORDERED."^[21]

Instead of filing a Petition for Review under Rule 43 of the Rules of Court (Rules) to assail the said Joint Resolution, Mayor Gatchalian filed on 03 March 2016 a Petition for *Certiorari* (with urgent prayer for issuance of a temporary restraining order and/or a writ of preliminary injunction)^[22] under Rule 65, before the CA, insisting

the lack of a plain, adequate and speedy remedy available to him. It was docketed as CA-GR SP No. 144428.

On 04 March 2016, the CA issued a temporary restraining order (TRO) against the implementation of the Ombudsman's Joint Resolution dated 11 February 2016. Consequently, the appellate court issued a Writ of Preliminary Injunction on 02 May 2016, enjoining the Ombudsman and the DILG from implementing the aforementioned Joint Resolution.^[23]

Mayor Gatchalian, *et al.*, also moved for the reconsideration of the Joint Resolution with respect to the criminal aspect, which the Ombudsman denied in its Joint Order dated 28 April 2016^[24] and approved by then Ombudsman Carpio Morales¹ on 05 May 2016. Accordingly, criminal informations were filed before the Sandiganbayan, docketed as SB-16-CRM-0802, SB-16-CRM-0803, and SB-16-CRM-0804. Eventually, however, the Sandiganbayan dismissed the same in its Joint Resolution^[25] dated 13 December 2016 and Resolution^[26] dated 08 June 2017.

Issues

From the pleadings submitted, the following are the issues raised for consideration of this Court:

1. Whether Mayor Gatchalian correctly filed a Petition for *Certiorari* under Rule 65 instead of a Petition for Review under Rule 43 of the Rules of Court before the CA;
2. Whether Mayor Gatchalian is administratively liable for grave misconduct and gross neglect of duty, as head of the City Government of Valenzuela City when its BPLO issued business permits to Kentex despite the absence of FSICs;^[27]
3. Whether the Sandiganbayan gravely erred when it dismissed the cases against Mayor Gatchalian, *et al.*, on the basis of *Ordinance No. 62, Series of 2012, Joint Memorandum Circular No. 01, Series of 2016 and other Issuances*, as against the express mandate of the Fire Code - a national law - on the requirement of a Fire Safety Inspection Certificate; and despite facts and circumstances clearly showing the existence of probable cause against the respondents for the offenses charged, thus depriving the State of the fundamental right to due process; and
4. Whether the Sandiganbayan gravely erred when it supplanted the Ombudsman's finding of probable cause and went beyond its judicial authority of determining the propriety of issuing warrant of arrest.^[28]

Ruling of the Court

The petitions lack merit.

*On the filing of Petition for Certiorari
under Rule 65 vis-a-vis a Petition for*

Review under Rule 43 of the Rules of Court to challenge the decision of the Office of the Ombudsman

In **G.R. No. 230679**, the Court is asked to rule on whether Mayor Gatchalian correctly filed a Petition for *Certiorari*, instead of a Petition for Review, and whether substantial evidence exists to hold petitioner administratively liable for grave misconduct and gross neglect of duty.

Petitioners, the Ombudsman and DILG, insist that the proper remedy is to file a Petition for Review under Rule 43 of the Rules, and that it could have incorporated therein an application for TRO or writ of injunction, in the same manner -as he incorporated such application in the erroneous Petition for *Certiorari*. Later on, however, they backtracked and claimed that whether or not the case is an appeal or a petition for *certiorari*, the CA cannot enjoin the Ombudsman from implementing the Joint Resolution since it would be an encroachment on the latter's rule-making powers.^[29]

Mayor Gatchalian, who filed the Petition for *Certiorari* before the CA, just a day after he received a copy of the Joint Resolution, contends that a Petition for Review was not the plain, adequate and speedy remedy considering that an order of dismissal issued by the Ombudsman is immediately executory. This would affect his bid to seek a fresh mandate from his constituents as the accessory penalty of perpetual disqualification is likewise executory.

It is significant to note that petitioners Ombudsman and the DILG did not assail the issuance of the TRO and the writ of injunction by the CA by filing a motion for reconsideration or a *certiorari* petition before this Court. On the contrary, it was a non-party to the case, a certain Arthur Morales I (Morales), who filed an administrative complaint^[30] against CA Associate Justices Leoncia Real-Dimagiba, Jhosep Y. Lopez, and Ramon Garcia for gross ignorance of the law in issuing an injunctive writ.^[31]

Although the Court did not squarely rule on the correctness of the issuance of the TRO, the Court observed in its Resolution dated 11 October 2016 disposing the administrative charge filed by Morales that

The Fifteenth Division of the CA is not without basis in acting on the petition of Mayor Gatchalian. In the decision in *Carpio-Morales v. Binay, Jr.*, this Court declared the second paragraph of Section 14 of R.A. No. 6770 UNCONSTITUTIONAL, while the policy against the issuance of provisional injunctive writs by courts other than the Supreme Court to enjoin an investigation conducted by the Office of the Ombudsman under the first paragraph of the said provision was DECLARED ineffective until the Court adopts the same as part of the rules of procedure through an administrative circular duly issued therefor.

Although the case of Erwin Binay, Jr. pertains to a preventive suspension, the pronouncement therein may arguably apply to any other OMB case since this Court did not make any distinction. The doctrine laid down in the case is that the CA has the authority to issue TRO and injunctive