

EN BANC

[G.R. No. 193092, February 21, 2017]

**DENNIS M. VILLA-IGNACIO, PETITIONER, VS. OMBUDSMAN
MERCEDITAS N. GUTIERREZ, THE INTERNAL AFFAIRS BOARD OF
THE OFFICE OF THE OMBUDSMAN, REPRESENTED BY ITS
CHAIRMAN, ORLANDO C. CASIMIRO, ELVIRA C. CHUA, AND THE
SANDIGANBAYAN, RESPONDENTS.**

DECISION

SERENO, C.J.:

At bench is a special civil action for certiorari^[1] filed by Dennis M. Villa-Ignacio, the former head of the Office of the Special Prosecutor (OSP) of the Office of the Ombudsman. He assails the Resolution^[2] and Joint Order^[3] of the Office of the Ombudsman's Internal Affairs Board (IAB). These issuances were approved by the Ombudsman,^[4] resulting in the filing of an Information for *estafa* against petitioner before the Sandiganbayan.

FACTUAL ANTECEDENTS

In January 2005, during a flag ceremony, petitioner asked the employees of the OSP what to do with the monetary contributions solicited in their December 2004 Christmas party charity drive. Earlier, they had given their donations in kind to the Kapuso Foundation of GMA 7 Network.

The employees agreed that the monetary proceeds of their project would be donated to the typhoon victims in Quezon province, specifically for the construction of manual deep wells. Immediately after the flag ceremony, private respondent Assistant Special Prosecutor Elvira C. Chua donated P26,660 to the charity drive. Erlina C. Bernabe, who pooled the funds, issued a receipt^[5] in the name of Chua, stating that the donation was for the purchase of water pumps.

According to petitioner, he told the OSP employees in the succeeding flag assemblies that the contractor of the deep wells had declined the project. After soliciting suggestions on the use of the funds they had raised, he proposed that these be donated to the Gawad Kalinga Community Development Foundation, Inc. (Gawad Kalinga). He claimed that the employees participated in the discussion and eventually agreed to donate the funds to Gawad Kalinga.

On 1 September 2006, petitioner instructed Bernabe to apply for a manager's check amounting to P52,000, payable to Gawad Kalinga.^[6] The beneficiary issued an Official Receipt,^[7] which was posted on the bulletin board of the OSP for the information of all of its employees.

Two years after the charity drive, Chua contested the donation to Gawad Kalinga. In a letter dated 18 March 2008,^[8] she wrote Bernabe asking about the P26,660

donation. Bernabe replied that, as instructed by petitioner, the funds donated by private respondent had already been included in the OSP employees' donation to Gawad Kalinga.^[9]

PROCEEDINGS BEFORE THE IAB

Claiming that petitioner and Bernabe had committed *estafa* when they gave her P26,660 to an entirely different beneficiary, Chua lodged a Complaint^[10] against them before the IAB on 27 March 2008. The IAB, then chaired by Overall Deputy Ombudsman Orlando C. Casimiro, is the body that investigates the officials and personnel of the Office of the Ombudsman.

In her defense, Bernabe claimed that she never exercised any kind of authority or discretion over the funds, and that her actions were done only in compliance with the directives of petitioner, who was her superior. Furthermore, she averred that Chua had made a donation to the OSP, and not to Bernabe or petitioner. Bernabe highlighted the fact that the donation had not been received in trust or under any obligation to deliver it. She further asserted that even if the donor had violated the condition of the donation, the remedy was to institute a civil case for the revocation of the donation, and not to institute a criminal case for *estafa*.

For his part, petitioner consistently questioned the proceedings of the IAB before Casimiro. He claimed that under the IAB's own rules, Casimiro should be disqualified from the proceedings because both the latter and Chua belonged to the same unit - the Office of the Ombudsman's Central Office. Petitioner maintained that the Complaint of private respondent was motivated by a vendetta against him. He insisted that he had not converted Chua's contribution to an unintended purpose. He also pointed out that during the flag assemblies, the employees had agreed with his suggestion to donate to Gawad Kalinga.

On the basis of a Manifestation dated 4 September 2008 and signed by 28 officials of the OSP, Chua claimed that the majority of them had not agreed to donate the funds to Gawad Kalinga.^[11] She also disclaimed any involvement in the discussions related to the donation of her monetary contribution.

In its Resolution dated 4 February 2010, which was affirmed in its Joint Order dated 4 June 2010, the IAB believed Bernabe and resolved to dismiss the Complaint against her. It held that she had merely acted at the behest of petitioner.

With respect to petitioner, the IAB recommended the filing before the Sandiganbayan of an Information for *estafa* with abuse of confidence under Article 315 (1) (b) of the Revised Penal Code. The IAB ruled that petitioner had misappropriated the funds of the charity drive by giving the money to Gawad Kalinga, instead of using it to construct deep wells for the typhoon victims.

Without explanation, Ombudsman Merceditas N. Gutierrez approved the recommendation of the IAB. As a result, an Information for *estafa*, docketed as Criminal Case Number SB-10-CRM-0110, was filed against petitioner before the Sandiganbayan.^[12]

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the instant Petition for Certiorari under Rule 65 of the Rules of Court against the IAB's recommendation, which was affirmed by the Ombudsman.

In our Resolution dated 11 January 2011, we noted and granted the Manifestation and Manifestation in Lieu of Comment dated 21 December 2010 filed by the Office of the Solicitor General (OSG). The OSG manifested that the IAB and Ombudsman Ma. Merceditas N. Gutierrez had gravely abused their discretion in allowing Casimiro to actively participate in the proceedings *a quo*. Thus, the Office of the Ombudsman through its own counsel filed its comment on the present action.^[13] Respondents stood by the validity of the indictment against petitioner.^[14]

On 23 October 2012, this Court required the parties to move in the premises.^[15] On 18 March 2013, petitioner manifested that the Court of Appeals (CA) Decision dated 8 October 2012 had already absolved him in a related administrative case finding him liable for simple misconduct.^[16] However, neither of the parties indicated whether that CA Decision has already attained finality. Private respondent Chua manifested that the Special Second Division of the Sandiganbayan had deferred the proceedings against petitioner for *estafa* in SB-10-CRM-0110 until the resolution of the instant case by this Court.^[17] For its part, the Office of the Ombudsman manifested that there was no relevant supervening development that might cause the present case to become moot and academic.

In this special civil action for certiorari, petitioner claims that respondents gravely abused their discretion by violating their own rules of procedure when they charged him with *estafa*.

RULING OF THE COURT

We grant the petition. Respondents committed grave abuse of discretion when they failed to observe their own rules in the conduct of their proceedings against petitioner.

Violation of Administrative Order No. 16

Administrative Order No. (A.O.) 16, Series of 2003, entitled "Creation of an Internal Affairs Board," outlines the procedure for handling complaints against officials and employees of the Office of the Ombudsman. In arguing for the disqualification of Casimiro, petitioner invokes Section III(N) of A.O. 16, which reads:

N. Disqualifications

The Chairman, Vice Chairman or any member of the IAB, as well as any member of the IAB Investigating Staff, shall be automatically disqualified from acting on a complaint or participating in a proceeding under the following circumstances:

1. He is a party to the complaint, either as a respondent or complainant;
- 2. He belongs to the same component unit as any of the parties to the case;**
- 3. He belongs or belonged to the same component unit as any of the parties to the case during the period when the act complained of transpired;**

4. He is pecuniarily interested in the case or is related to any of the parties within the sixth degree of affinity or consanguinity, or to counsel within the fourth degree, computed according to the provisions of civil law; or
5. He has, at one time or another, acted upon the matter subject of the complaint or proceeding. x x x (Emphases supplied)

In this case, there is no dispute that Chua reports to the Central Office, which is the same as the unit of Casimiro.^[18] Straightforwardly, the latter should have been disqualified from acting on her complaint against petitioner.

Despite the protest of petitioner at the very onset of the case,^[19] Casimiro continued to handle the proceedings against the former. Casimiro signed several Orders requiring the submission of counter-affidavits, supporting evidence,^[20] position papers,^[21] and rejoinders;^[22] and eventually issued the assailed resolutions. The IAB did not rule on the objection of petitioner until it had already concluded the proceedings against him.

The IAB ventured to justify the inclusion of Casimiro only when it issued its assailed Resolution dated 4 February 2010. It ruled that A.O. 16 did not apply, since the questioned charity drive transpired prior to the assignment of Chua to the Central Office in 2006.^[23]

The appreciation of the IAB is utterly incorrect. As can be read in paragraphs 2 and 3, Section III(N) of A.O. 16 patently disqualifies a person who belongs to the same component unit as any of the parties to the case, regardless of the timeframe that the acts complained of transpired. Clearly, the operative ground for disqualification arises when a member of the investigating and adjudicatory body is connected to the same unit as that of any of the parties to the case.

Now, before this Court, the Office of the Ombudsman points out that during the pendency of the proceedings before the IAB, A.O. 21 entitled "Revised Rules of the Internal Affairs Board" amended A.O. 16.^[24] A.O. 21 deleted paragraphs 2 and 3 of Section III(N), thereby removing the disqualification of IAB members belonging to the same component unit as any of the parties to the cases before them.

This amendment acquired a questionable character, as it was sought to be implemented *subsequent* to the breach by the IAB of its own rules.^[25] In our view, the supervening revision of A.O. 16 contravenes the avowed policy of the Office of the Ombudsman to "adopt and promulgate stringent rules that shall ensure fairness, impartiality, propriety and integrity in all its actions."^[26]

Changing regulations in the middle of the proceedings without reason, after the violation has accrued, does not comply with fundamental fairness, or in other words, due process of law.^[27] In *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*,^[28] this Court characterized due process of law in this manner:

It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and