

THIRD DIVISION

[G.R. No. 148076, January 12, 2011]

**ANTONIO M. CARANDANG, PETITIONER, VS. HONORABLE
ANIANO A. DESIERTO, OFFICE OF THE OMBUDSMAN,
RESPONDENT.**

[G.R. NO. 153161]

**ANTONIO M. CARANDANG, PETITIONER, VS. SANDIGANBAYAN
(FIFTH DIVISION), RESPONDENT.**

D E C I S I O N

BERSAMIN, J.:

Petitioner Antonio M. Carandang (Carandang) challenges the jurisdiction over him of the Ombudsman and of the Sandiganbayan on the ground that he was being held to account for acts committed while he was serving as general manager and chief operating officer of Radio Philippines Network, Inc. (RPN), which was not a government-owned or -controlled corporation; hence, he was not a public official or employee.

In G.R. No. 148076, Carandang seeks the reversal of the decision^[1] and resolution^[2] promulgated by the Court of Appeals (CA) affirming the decision^[3] of the Ombudsman dismissing him from the service for grave misconduct.

In G.R. No. 153161, Carandang assails on *certiorari* the resolutions dated October 17, 2001^[4] and March 14, 2002^[5] of the Sandiganbayan (Fifth Division) that sustained the Sandiganbayan's jurisdiction over the criminal complaint charging him with violation of Republic Act No. 3019 (*Anti-Graft and Corrupt Practices Act*).

Antecedents

Roberto S. Benedicto (Benedicto) was a stockholder of RPN, a private corporation duly registered with the Securities and Exchange Commission (SEC).^[6] In March 1986, the Government ordered the sequestration of RPN's properties, assets, and business. On November 3, 1990, the Presidential Commission on Good Government (PCGG) entered into a compromise agreement with Benedicto, whereby he ceded to the Government, through the PCGG, all his shares of stock in RPN. Consequently, upon motion of the PCGG, the Sandiganbayan (Second Division) directed the president and corporate secretary of RPN to transfer to the PCGG Benedicto's shares representing 72.4% of the total issued and outstanding capital stock of RPN.

However, Benedicto moved for a reconsideration, contending that his RPN shares ceded to the Government, through the PCGG, represented only 32.4% of RPN's outstanding capital stock, not 72.4%. Benedicto's motion for reconsideration has

remained unresolved to this date.^[7]

Administrative Complaint for Grave Misconduct

On July 28, 1998, Carandang assumed office as general manager and chief operating officer of RPN.^[8]

On April 19, 1999, Carandang and other RPN officials were charged with grave misconduct before the Ombudsman. The charge alleged that Carandang, in his capacity as the general manager of RPN, had entered into a contract with AF Broadcasting Incorporated despite his being an incorporator, director, and stockholder of that corporation; that he had thus held financial and material interest in a contract that had required the approval of his office; and that the transaction was prohibited under Section 7 (a) and Section 9 of Republic Act No. 6713 (*Code of Conduct and Ethical Standards for Public Officials and Employees*), thereby rendering him administratively liable for grave misconduct.

Carandang sought the dismissal of the administrative charge on the ground that the Ombudsman had no jurisdiction over him because RPN was not a government-owned or -controlled corporation.^[9]

On May 7, 1999, the Ombudsman suspended Carandang from his positions in RPN.

On September 8, 1999, Carandang manifested that he was no longer interested and had no further claim to his positions in RPN. He was subsequently replaced by Edgar San Luis.^[10]

In its decision dated January 26, 2000,^[11] the Ombudsman found Carandang guilty of grave misconduct and ordered his dismissal from the service.

Carandang moved for reconsideration on two grounds: (a) that the Ombudsman had no jurisdiction over him because RPN was not a government-owned or -controlled corporation; and (b) that he had no financial and material interest in the contract that required the approval of his office.^[12]

The Ombudsman denied Carandang's motion for reconsideration on March 15, 2000.^[13]

On appeal (CA G.R. SP No. 58204),^[14] the CA affirmed the decision of the Ombudsman on February 12, 2001, stating:

The threshold question to be resolved in the present case is whether or not the Office of the Ombudsman has jurisdiction over the herein petitioner.

It is therefore of paramount importance to consider the definitions of the following basic terms, to wit: A public office "is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the

state to be exercised by him for the benefit of the public." (San Andres, Catanduanes vs. Court of Appeals, 284 SCRA 276: Chapter I, Section 1, Mechem, A Treatise on Law of Public Offices and Officers). The individual so invested is called the public officer which "includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exemption service receiving compensation, even nominal, from the government as defined in xxx [Sec. 2 (a) of Republic Act No. 3019 as amended]." (Sec. 2 (b) of Republic Act No. 3019 as amended. Unless the powers conferred are of this nature, the individual is not a public officer.

With these time-honored definitions and the substantial findings of the Ombudsman, We are constrained to conclude that, indeed, the herein petitioner (Antonio M. Carandang) is a public officer. Precisely, since he (Antonio M. Carandang) was appointed by then President Joseph Ejercito Estrada as general manager and chief operating officer of RPN-9 (page 127 of the Rollo). As a presidential appointee, the petitioner derives his authority from the Philippine Government. It is *lucē clarius* that the function of the herein petitioner (as a presidential appointee), relates to public duty, i.e., to represent the interest of the Philippine Government in RPN-9 and not purely personal matter, thus, the matter transcends the petitioner's personal pique or pride.

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Having declared earlier that the herein petitioner is a public officer, it follows therefore that, that jurisdiction over him is lodged in the Office of the Ombudsman.

It is worth remembering that as protector of the people, the Ombudsman has the power, function and duty to act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any, subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people. (Section 13 of Republic Act No. 6770).

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Accordingly, the Office of the Ombudsman is, therefore, clothed with the proper armor when it assumed jurisdiction over the case filed against the herein petitioner. x x x

x x x

It appears that RPN-9 is a private corporation established to install, operate and manage radio broadcasting and/or television stations in the Philippines (pages 59-79 of the Rollo). On March 2, 1986, when RPN-9 was sequestered by the Government on ground that the same was considered as an illegally obtained property (page 3 of the Petition for Review; page 2 of the Respondent's Comment; pages 10 and 302 of the

Rollo), RPN-9 has shed-off its private status. In other words, there can be no gainsaying that as of the date of its sequestration by the Government, RPN-9, while retaining its own corporate existence, became a government-owned or controlled corporation within the Constitutional precept.

Be it noted that a 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 government 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) percent of its capital stock; Provided, That government-owned or controlled corporations may be further categorized by the department of Budget, the Civil Service, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations." (Section 2 ^[13], Executive Order No. 292).

Contrary to the claim of the petitioner, this Court is of the view and so holds that RPN-9 perfectly falls under the foregoing definition. For one, "the government's interest to RPN-9 amounts to 72.4% of RPN's capital stock with an uncontested portion of 32.4% and a contested or litigated portion of 40%." (page 3 of the Petition for Review; pages 8-9 of the Respondent's Comment). On this score, it ought to be pointed out that while the forty percent (40%) of the seventy two point four percent (72.4%) is still contested and litigated, until the matter becomes formally settled, the government, for all interests and purposes still has the right over said portion, for the law is on its side. Hence, We can safely say that for the moment, RPN-9 is a government owned and controlled corporation. Another thing, RPN 9, though predominantly tackles proprietary functions--those intended for private advantage and benefit, still, it is irrefutable that RPN-9 also performs governmental roles in the interest of health, safety and for the advancement of public good and welfare, affecting the public in general.

x x x

Coming now to the last assignment of error- While it may be considered in substance that the "latest GIS clearly shows that petitioner was no longer a stockholder of record of AF Broadcasting Corporation at the time of his assumption of Office in RPN 9 x x x" (Petitioner's Reply [to Comment]; page 317 of the Rollo), still severing ties from AF Broadcasting Corporation does not convince this Court fully well to reverse the finding of the Ombudsman that Antonio Carandang "appears to be liable for Grave Misconduct" (page 10 of the Assailed Decision; page 36 of the Rollo). Note that, as a former stockholder of AF Broadcasting Corporation, it is improbable that the herein petitioner was completely oblivious of the developments therein and unaware of the contracts it (AF Broadcasting Corporation) entered into. By reason of his past (Antonio Carandang) association with the officers of the AF Broadcasting Corporation, it is unbelievable that herein petitioner could

simply have ignored the contract entered into between RPN-9 and AF Broadcasting Corporation and not at all felt to reap the benefits thereof. Technically, it is true that herein petitioner did not directly act on behalf of AF Broadcasting Corporation, however, We doubt that he (herein petitioner) had no financial and/or material interest in that particular transaction requiring the approval of his office--a fact that could not have eluded Our attention.

x x x

WHEREFORE, premises considered and pursuant to applicable laws and jurisprudence on the matter, the present Petition for Review is hereby DENIED for lack of merit. The assailed decision (dated January 26, 2000) of the Office of the Ombudsman in OMB-ADM-0-99-0349 is hereby AFFIRMED in toto. No pronouncement as to costs.

SO ORDERED.^[15]

After the denial of his motion for reconsideration,^[16] Carandang commenced G.R. No. 148076.

Violation of Section 3 (g), Republic Act No. 3019

On January 17, 2000, the Ombudsman formally charged Carandang in the Sandiganbayan with a violation of Section 3 (g) of RA 3019 by alleging in the following information, ^[17] viz:

That sometime on September 8, 1998 or thereabouts, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, accused ANTONIO M. CARANDANG, a high ranking officer (HRO) being then the General Manager of Radio Philippines Network, Inc. (RPN-9), then a government owned and controlled corporation, did then and there willfully, unlawfully and criminally give unwarranted benefits to On Target Media Concept, Inc. (OTMCI) through manifest partiality and gross inexcusable negligence and caused the government undue injury, by pre-terminating the existing block time contract between RPN 9 and OTMCI for the telecast of "Isumbong Mo Kay Tulfo" which assured the government an income of Sixty Four Thousand and Nine Pesos (P 64,009.00) per telecast and substituting the same with a more onerous co-production agreement without any prior study as to the profitability thereof, by which agreement RPN-9 assumed the additional obligation of taking part in the promotions, sales and proper marketing of the program, with the end result in that in a period of five (5) months RPN-9 was able to realize an income of only Seventy One Thousand One Hundred Eighty Five Pesos (P 71,185.00), and further, by waiving RPN-9's collectible from OTMCI for August 1-30, 1998 in the amount of Three Hundred Twenty Thousand and Forty Five Pesos (P 320,045.00).

Carandang moved to quash the information,^[18] arguing that Sandiganbayan had no