

## SECOND DIVISION

[ G.R. NO. 129099, July 20, 2006 ]

**MA. CHONA M. DIMAYUGA, FELIPE T. AGUINALDO, AND NOEL C. INUMERABLE, PETITIONERS, VS. OFFICE OF THE OMBUDSMAN, RESPONDENT.**

### DECISION

**AZCUNA, J.:**

This is a petition for certiorari with a plea for temporary restraining order and writ of preliminary injunction. Petitioners, Ma. Chona M. Dimayuga, Felipe T. Aguinaldo and Noel C. Inumerable, seek to enjoin respondent, Office of the Ombudsman, from conducting a preliminary investigation and any further proceedings in OMB 0-95-0430. Petitioners likewise seek to annul the following: an order dated June 27, 1996, which denied a motion for the suspension of the preliminary investigation;<sup>[1]</sup> an order dated November 18, 1996, which denied a motion for reconsideration of the earlier order;<sup>[2]</sup> and an order dated March 13, 1997, which denied a letter-appeal questioning the last mentioned order.<sup>[3]</sup>

The factual antecedents are not in dispute:

Petitioners Maria Chona Dimayuga, Noel Inumerable and Felipe Aguinaldo were employees of the Traffic Regulatory Board (TRB) of [the] Department of Public Works and Highways (DPWH). Petitioner Dimayuga used to be the TRB's executive director.

In June 1992, an anonymous complaint was filed against petitioners concerning certain transactions of the TRB from 1989 to May 1992. Consequently, a special audit was conducted by the Special Audit Office (SAO) of the Commission on Audit (COA).

The SAO report, detailing the audit of selected transactions of the TRB was finalized on November 4, 1994. As a consequence of said report, certain irregularities were uncovered, in which petitioners were implicated. It therefore recommended appropriate action against petitioners.

Petitioners filed a motion for reconsideration of said report on February 28, 1995. The COA Chairman, however, denied the same on August 30, 1995. Undaunted, petitioners then filed a Notice of Appeal with a corresponding Motion for Extension of Time to File Memorandum on Appeal before the COA Chairman. In a letter addressed to petitioner Dimayuga, the COA Chairman acknowledged receipt of said documents and granted petitioners' request for extension of time to file their Memorandum on Appeal. Petitioners filed said Memorandum on Appeal on

November 20, 1995.

Meanwhile, the audit report was forwarded to the DPWH Secretary, who then indorsed the same to respondent Ombudsman for appropriate action on February 16, 1995. Accordingly, petitioners were charged with violation of the Anti-Graft Law or Republic Act 3019, docketed as OMB 0-95-0430. On June 15, 1995, respondent Ombudsman required state auditors Eleanor M. Tejada and Jose Rey Binamira of the COA's Special Action Team to submit their sworn complaint on the basis of their report for purposes of initiating the preliminary investigation, which was set on June 28, 1995. In view of this, petitioners filed a Motion for Suspension of Preliminary Investigation on June 26, 1996 with the Evaluation and Preliminary Investigation Bureau of respondent. In said motion, petitioners argue that the SAO report was not yet final, considering that their appeal with the Commission had not yet been resolved.

Respondent, however, denied petitioners' motion for reconsideration on June 27, 1996 x x x.

x x x

Unsatisfied with the said Order, petitioners filed an "Omnibus Motion for Reconsideration" dated June 27, 1996, reiterating as ground therefor, the pendency of their appeal before the Commission. In arguing for the suspension of the preliminary investigation before respondent, petitioners cited the supposedly similar case of COA v. Gabor, OMB-0-93-0718. The COA on the other hand, through the Special Audit Office, filed a Manifestation with Motion dated September 9, 1996, concurring with the position of respondent Ombudsman, denying the previous Motion for Reconsideration of petitioners.

On November 18, 1996, respondent denied petitioners' Omnibus Motion x x x.

x x x

Subsequent to these Motions, petitioners likewise filed a "Letter-Appeal" dated December 5, 1996, addressed to Ombudsman Aniano Desierto, based on the same grounds stated in previous motions. Respondent denied said "Letter- Appeal" in an Order dated March 13, 1997 x x x.<sup>[4]</sup>

On May 27, 1997, petitioners filed this petition. This Court issued a temporary restraining order on August 20, 1997 enjoining respondent from conducting a preliminary investigation and any further proceedings in OMB 0-95-0430.<sup>[5]</sup>

Petitioners raise the following issues:

I

THE INVESTIGATION OF THE CHARGES IN THE COMPLAINT FILED BY THE SAO-COA AGAINST PETITIONERS IS PREMATURE, BECAUSE THEIR APPEAL FROM THE FINDINGS OF THE SAO-COA IS STILL PENDING

RESOLUTION BEFORE THE COMMISSION PROPER. IN THE EXACTLY SIMILAR CASE OF COA V. GABOR, OMB 0-93-0714, RESPONDENT OMBUDSMAN HAD DISMISSED AND CONSIDERED UNDOCKETED THE COMPLAINT ON THE SAME GROUNDS.

## II

RESPONDENT OMBUDSMAN VIOLATED PETITIONERS' CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAWS, GUARANTEED UNDER SECTION 1 OF ARTICLE II OF THE CONSTITUTION, IN NOT AFFORDING PETITIONERS THE SAME RELIEF IT AFFORDED TO THE PUBLIC OFFICIAL INVOLVED IN COA V. GABOR, SUPRA.<sup>[6]</sup>

As to the first issue: In deference to the virtually unlimited investigatory and prosecutorial powers granted to the Ombudsman by the Constitution and by law, the Court has maintained a policy of non-interference with such powers. Sections 12 and 13, Article XI of the Constitution provide:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and results thereof.

Sec. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

Section 15 of the Ombudsman Act of 1989 states:

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;

x x x.<sup>[7]</sup>

This Court in *Quiambao v. Desierto*<sup>[8]</sup> stated that:

As a rule, we have consistently adopted a policy of non-interference in the conduct of preliminary investigations and provided sufficient latitude of discretion to the investigating prosecutor to determine what constitutes sufficient evidence as will establish probable cause. As we