

FIRST DIVISION

[G.R. NO. 163089, December 06, 2006]

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. JESUS FRANCISCO, JERRY MAKALATAN AND EMILY DE CASTRO, RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is a Petition for Review on *Certiorari* of the Decision^[1] of the Court of Appeals (CA) in G.R. SP No. 68011 reversing the decision of the Ombudsman in OMB-ADM-0-00-0112.

The Fact-Finding and Intelligence Bureau (FFIB) of the Office of the Ombudsman received an anonymous letter-complaint regarding an alleged anomalous garbage collection contract between the Municipality of Bacoor, Cavite, with Hinterland Freightliners, Inc., and other illegal transactions. In a newspaper report, reference was made to "Colorum Dumpsites" against concerned Directors and the following illegal acts of the Municipal Mayor of Bacoor and his wife:

- a. Negotiated purchase in 1999 of overpriced and expired medicines for the poor amounting to P2.7 million;
- b. Purchase of 1999 of assorted furnitures and fixtures amounting to P4 million without the benefit of public bidding;
- c. Purchase of monobloc chairs, tables and tents without the benefit of public bidding and the renting out of the same by the wife of the Municipal Mayor;
- d. Unlawful removal or transfer of civil service eligibles in the municipal government who are perceived to have opposed the alleged illegal acts of the Municipal Mayor.^[2]

The FFIB of the Office of the Ombudsman resolved to investigate the complaint and newspaper report, docketed as CPL 99-2703.

On August 10, 1999, Bacoor Municipal Mayor Jessie B. Castillo issued a Memorandum^[3] to all Department Heads of the municipality, directing them "not to release any important document and/or records in [their] respective departments" without his prior approval; failure to comply would mean disciplinary action.

The Officer-in-Charge of the FFIB issued Mission Order No. 99-177 directing FFIB Investigators Benhur J. Villamora, Rodolfo M. Dayrit, Pedro R. Abuzman, Jr., Roy Roque D. A. Dator and Eduardo F. Olaveria, Jr. to proceed to the Municipal Hall of

Bacoar, Cavite, on August 25, 1999, to investigate and gather documents and information relative to the news report and to thereafter submit a report.

Thereafter, Assistant Graft Investigation Officers Pedro R. Abuzman, Jr. and Rodolfo M. Dayrit issued a subpoena *duces tecum* dated August 24, 1999 ordering the municipal officers to immediately submit to the FFIB certified true copies of the following documents:

(1) Mr. JESUS FRANCISCO

Municipal Planning and Development Officer

1. Bidding Documents (In re: Garbage Collection, Medicines and Furnitures)

- a. Contract to bid
- b. Notice of Award
- c. Publication
- d. Abstract
- e. List of PBAC members
- f. Other relevant documents

(2) Mr. JERRY MAKALATAN

Municipal Accountant

- a. Financial Statement for the year 1998 to present;
- b. Journals (Cash Disbursement Journal, Check Disbursement Journal and Cash Receipt Journal); and
- c. Disbursement Vouchers.

(3) THE PERSONNEL OFFICER

Municipal Hall

1. Personal Data Sheets. Service Records and SALN of the following:

- a. Mayor Jessie B. Castillo
- b. Salome Esagunde
- c. Elvira Guerrero
- d. Councilor Bañas
- e. Councilor Cortez
- f. Councilor Ocampo
- g. Councilor Del Rosario
- h. Mr. Jerry Makalatan
- i. Mr. Jesus Francisco^[4]

A separate subpoena was issued to the provincial auditor directing him to submit certified copies of the decision. The latter informed the agents, however, that he did not have the requested documents. The agents accepted the explanation of the provincial auditor.

The municipal officers named in the subpoena failed to comply, stating that the documents were voluminous.^[5] They also told the agents that they had been prohibited by the municipal Mayor from releasing any important document and record without his prior approval. They requested the agents to ask the Mayor to allow them to release the documents, but the agents refused. The officers were

given up to August 27, 1999 within which to comply with the order.

On August 30, 1999, Mayor Castillo issued another Memorandum,^[6] reiterating his directive to Department Heads not to release any document without his approval "or in his absence, that of Municipal Administrator Roel M. Zoleta." This included "photocopies of documents since there exists no appropriation in the municipal budget where xerox copiers can be made into use for any other purpose except internally." The Mayor warned that in the government service, "even a single centavo unaccounted for is still a graft case."

When the FFIB agents returned to the Municipal Hall to secure the documents, the municipal officers again refused to comply with the subpoena. They also informed the FFIB agents that they had no other recourse but to comply with the Mayor's Memoranda and asked them to talk to the Mayor about it. The agents refused to do so, stating that the municipal officers were mandated to comply with the subpoena in spite of the Memoranda issued by the Mayor.

The investigators returned to the Bacoor Municipal Hall to enforce the subpoena against the concerned municipal officers, but they still refused to comply. Thus, on August 31, 1999, the FFIB issued an Order^[7] directing the municipal officers "to comply with the subpoena and explain within three (3) days why they should not be cited for contempt."

For his part, the Mayor filed an administrative complaint for harassment, oppression and grave abuse of authority with the Office of the Ombudsman against the FFIB agents. He alleged that there was only one investigation (CPL No. 99-2703) related to the complaint for "colorum dumpsites", but the FFIB agents had ordered the municipal officers who belonged to the political party to which he was affiliated to produce "unrelated" documents. The Mayor requested that the fact-finding investigators be suspended pending final resolution of his complaint.

Thereafter, the Chief Legal Counsel of the Office of the Ombudsman declared in a legal opinion that the FFIB investigation was not limited to the complaint on "colorum dumpsites" but included other matters like collection, medicine, furniture, among others.^[8]

The municipal officers submitted their written explanation^[9] as required by the FFIB. They declared that they were proscribed from complying with the FFIB's subpoena without prior notice and approval of the Mayor, who is their superior.

On February 29, 2000, the Graft Investigator issued an Order^[10] preventively suspending respondents.

Meantime, on July 21, 2000, FFIB Director Gerardo B. Lantoria, Jr. issued *subpoena duces tecum ad testificandum* to the Acting Municipal Accountant to appear before the FFIB, Office of the Ombudsman at 10:00 a.m. on April 5, 2000, and submit certified true copies of disbursement vouchers together with all the supporting documents relative to the following transactions of the Municipal Government of Bacoor, Cavite:

1. Purchase in 1999 of medicines for the poor;

2. Purchase in 1999 of assorted furniture and fixtures; and,
3. Purchase in 1999 of monobloc chairs, tables and tents.^[11]

The municipal accountant was reminded that the investigation was confidential and that the documents must be handled pursuant to Section 3, Rule IV of the Implementing Rules of R.A. No. 6713.

A separate subpoena^[12] was issued to the Personnel Officer requesting him to appear before the FFIB, Office of the Ombudsman at 10:00 a.m. on April 5, 2000, and submit the following:

1. Records showing the transfers or movements of personnel within the Municipal Government of Bacoor, Cavite in 1998 and 1999; and
2. Records of official travel abroad of the officials and employees of the Municipal Government of Bacoor, Cavite in 1998 and 1999.

The officer was similarly reminded of the confidential nature of the investigation.

On March 28, 2000, the Mayor issued a Memorandum^[13] dated March 21, 2000 to Municipal Accountant Makalatan and Personnel Officer De Castro to comply with the *subpoena duces tecum* of the FFIB in the interest of the service.

The municipal officers filed a motion for reconsideration of the Graft Investigator's February 29, 2000 Order. They declared that they were ready to comply with the *subpoena* of the FFIB Investigators.

On April 3 and 5, 2000, respondents De Castro and Makalatan partially complied with the *subpoena* of the FFIB Director and submitted the following documents:

1. Purchase in 1999 of medicines for the poor;
 2. Purchase in 1999 of assorted furniture and fixtures; and
 3. Purchase in 1999 of monobloc chairs, tables and tents.
- (1) Records showing the transfers or movements of personnel within the Municipal Government of Bacoor, Cavite in 1998 and 1999;
- (2) Records of official travel abroad of the officials and employees of the Municipal Government of Bacoor, Cavite in 1998 and 1999.^[14]

On March 28, 2000, the municipal officers' motion to lift their preventive suspension was denied for lack of merit.^[15]

The FFIB agents thereafter submitted their joint affidavit on the complaint of the Mayor which, in part, reads:

20. That the undersigned investigators categorically deny that this investigation is politically motivated. To repeat, the case emanated from our Intelligence and Special Operations Group (ISOG), and we have accordingly acted on their recommendation. The undersigned investigators have no knowledge that the Mayor and some of the concerned officials belong to the same political party. Their records

were subpoenaed based on information that these officers traveled abroad without travel authority. Be that as it may, complaints of this nature should be proceeded accordingly based on the merits, and not on the pretext that it is politically motivated;

21. That we believe that the act of the Mayor in filing the complaint against the undersigned investigators is to delay the conduct of the investigation, to muddle the issues and to make him appear as a martyr in the eyes of his constituents. The Honorable Mayor appears to a firm believer in the adage, that the "best defense is offense"; x x x^[16]

For refusing to comply with the subpoena issued by the FFIB, the agents filed an administrative complaint for grave misconduct against Municipal Mayor Jessie B. Castillo, Municipal Treasurer Salome Esagunde, Municipal Accountant Jerry Makalatan, Municipal Personnel Head Emily de Castro and Municipal Planning Development Officer Jesus Francisco. The case was docketed as OMB-ADM-0-00-0112 (OMB-0-00-0261) and was investigated by the Administrative Adjudication Bureau of the Office of the Ombudsman.

In their joint counter-affidavit,^[17] Makalatan, Francisco and De Castro alleged that when the investigators arrived in their office on August 25, 1999, they were informed to keep silent about their (agents') presence. Being naive of such kind of legal procedure and considering the volume of the vital municipal documents the agents were requesting, they informed the Mayor. After reading the subpoena, they noticed that the documents were not related to the subject matter of the investigation as shown by the caption of the subpoena. They insisted that this violated the mandate of Section 3, Rule 21 of the Revised Rules of Civil Procedure and the well settled rule on subpoena *duces tecum*.^[18] They averred that the documents demanded by the agents may be secured from the COA through the provincial auditor.

In the preliminary conference conducted in the administrative case, the parties agreed on the following issues:

1. Whether or not the non-compliance by the respondents of the Subpoena Duces Tecum dated August 24, 1999 constitute Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service? and,
2. Whether or not the issuance by respondent Castillo of the Memorandum dated August 10, 1999 to all the Department Heads of Bacoor, Cavite constitute Grave Misconduct or Conduct Prejudicial to the Best Interest of the Service?^[19]

During the investigation, Atty. Eduardo F. Olaveria, Jr. declared that although respondents were subordinates of the Mayor, they were still obliged to comply with the subpoena.

In the meantime, Mayor Castillo was reelected during the May 14, 2001 elections.

On September 7, 2001, the Ombudsman approved a decision submitted by the