

SECOND DIVISION

[G.R. NO. 156652, October 13, 2005]

DR. BENITA F. OSORIO, PETITIONER, VS. HON. ANIANO A. DESIERTO, AS OMBUDSMAN, HON. PRIMO C. MIRO, AS DEPUTY OMBUDSMAN FOR THE VISAYAS, HON. VIRGINIA PALANCA-SANTIAGO, OMBUDSMAN DIRECTOR FOR THE VISAYAS, AND HON. SAMUEL MALAZARTE, OMBUDSMAN INVESTIGATING PROSECUTOR FOR THE VISAYAS, RESPONDENTS.

DECISION

CHICO-NAZARIO, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the 13 December 2002 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 67511 which affirmed in toto the 12 January 2001 Resolution of the Office of the Ombudsman-Visayas in OMB-VIS-Crim-98-0811, as well as the order dated 17 July 2001 denying petitioner's motion for reconsideration.

This instant petition originated from a letter-complaint dated 27 January 1998 by Beatriz L. Tenorio, addressed to the Ombudsman Aniano A. Desierto, accusing petitioner Dr. Benita Osorio, principal of Dr. Cecilio Putong National High School (formerly Bohol National High School) of committing the following acts^[2]:

1. Failure to account for the rentals of the school facilities;
2. Non-remittance to the school trust funds of money from the sale of old newspapers to the school and appropriation of the said amount to herself;
3. Ready-made bidding with supplier of school-needed materials;
4. Double mandatory collection supposedly for the Boy and Girl Scouts of the Philippines, from all students of Bohol National High School and non-remittance of all the contributions to BSP and GSP;
5. Treatment of money from the school canteen as her personal money;
6. Conspiracy with treasure hunters in digging under the main ground of the school building for Yamashita treasures;
7. Falsification of travel document to claim bigger representation allowances; and
8. Other improper acts.

Acting on the complaint, the Office of the Ombudsman-Manila, on 29 January 1998, requested the National Bureau of Investigation (NBI) to conduct an investigation to

verify the alleged anomalies at the Dr. Cecilio Putong National High School.

Without delay, the NBI conducted an investigation. On 11 February 1998, the NBI submitted the results of the investigation which yielded the following findings: a) that petitioner Osorio authorized the sale of newspapers, but did not remit the proceeds thereof to the school; and b) that she issued a memorandum through which students were charged more than the allowable fees for their membership with Boy and Girl Scouts of the Philippines. The NBI suggested to the Office of the Ombudsman-Visayas that it ask the assistance of the Commission on Audit (COA) since the reported irregularities necessitated the conduct of proper auditing.

On 17 February 1998, the Office of the Ombudsman-Manila requested audit specialists from the COA to conduct a thorough investigation on the alleged anomalies at the Dr. Cecilio Putong National High School.

Meanwhile on 06 March 1998, the NBI submitted a follow-up report reiterating the findings stated in its previous report.

On 05 June 1998, COA auditors Anita G. Quitara, Ma. Violeta Lua Luta and Diana G. Tabinas submitted the report of their findings.

The NBI and COA findings were forwarded by the Office of the Ombudsman-Manila to the Office of the Ombudsman-Visayas for appropriate action.

The adverse findings made by the COA were summarized by the Office of the Ombudsman-Visayas as follows^[3]:

Allegation no. 1: "No accounting of rentals of the school facilities."

COA findings disclosed that no official receipt (OR) was issued by the school from the rentals of its facilities and as such no recording were reflected in the books.

Allegation no. 2: "Money from the sale of old newspapers was not remitted to the school trust funds but pocketed by Dr. Benita Osorio" - Proceeds from the sale of old newspapers totaling P2,621.75 were not receipted, recorded and accounted for in the books of the agency, instead these were allegedly turned over to the school principal.

Allegation no. 3: "Practice ready-made bidding with supplier of school-needed materials" - Supplies and materials were purchased from the same supplier and were delivered before the canvass papers were prepared, thereby casting doubts as to the regularity of the procurement.

Allegation no. 4: "Double mandatory collection of BSP and GSP membership of all students of BNHS, and not all contribution were remitted to BSP and GSP but pocketed by Dr. Benita Osorio" -

(i) students were assessed for membership fees of Girl and Boy Scouts of the Philippines in excess of the rates authorized by DECS Order No. 27 and regardless of gender. The total amount irregularly collected was P202,282.00.

(ii) An additional fee of P1.00, or a total of P698 was collected from the fourth year students in the school year 1997-1998 without a stated purpose and authority from the DECS. Further, the donation paid by all students for the PNRC was in excess of the rate authorized by the DECS and actually remitted to the PNRC, resulting in excessive collection of P15,810.00.

Allegation no. 5: "Money of the school canteen was treated as her personal money" - Although recorded in the books as Trust Liability, collections from the canteen operations were not remitted intact, instead, daily expenses/purchases were deducted therefrom. Likewise, expenses incurred for the canteen operations totaling P269,890.92 were not recorded in the books. Further, a cash book was not maintained to record the total sales and expenses incurred during the day, hence, the actual sales for the day could not be ascertained.

Allegation no. 6: "Conspiring with treasure hunters in digging under main school building for Yamashita treasures" - No adverse findings.

Allegation no. 7: "Falsification of travel document to claim representation allowance" - This allegation could not be confirmed because the amount of daily per diem claimed was in accordance with existing regulations.

Allegation no. 8: "Other improper acts" - MOOE (Maintenance and Other Operating Expenses) funds were utilized in the purchase of construction materials totaling P82,717.75 for the construction of a modern guardhouse, in violation of Section 145 of GAAM, Vol. I, while the beautification projects costing P43,349.50 were given priority instead of the repair of the dilapidated windows and classrooms, resulting in the wasteful utilization of government funds.

After evaluating the report of the COA auditors, the Office of the Ombudsman-Visayas was convinced that allegations no. 1 to no. 4 were duly substantiated while the rest of the allegations were not. It found prima facie case of five (5) counts of Malversation of Public Funds against petitioner on the proceeds of the sale of the school's old newspapers on five occasions, i.e., on 15 March 1993, 01 September 1997, 02 December 1997, 11 December 1997 and 07 January 1998. It also found prima facie evidence for violations of Section 3(e) of Republic Act No. 3019, two (2) counts for the alleged irregularity in the purchase of school supplies, as evidenced by the purchase orders issued by petitioner dated 09 July 1997 and 16 July 1997, and another three (3) counts in relation to the assessment for membership fees of the Girl and Boy Scouts of the Philippines, which was in excess of the rates authorized under the Department of Education Culture and Sports Order No. 27. Petitioner's co-respondent, Mr. Nestor Robles, Supply Officer of the said school, was also found to have committed four (4) counts of Malversation of Public Funds in relation to his failure to account for the proceeds of the rentals of the school facilities. It docketed the criminal case as OMB-VIS-CRIM-98-0811. Based on the same findings the Office of the Ombudsman also filed an administrative case against petitioner which was docketed as OMB-VIS-ADM-98-0617.

Thereafter, the Office of the Ombudsman-Visayas directed the COA investigating

auditors to submit a sworn affidavit of their report and additional evidence necessary for the preliminary investigation of the cases.^[4]

On 17 December 1998, the investigating auditors submitted a sworn affidavit.

In an order dated 27 January 1999, the Office of the Ombudsman-Visayas issued an order placing petitioner and Mr. Nestor Robles under preventive suspension.

On 05 February 1999, the Office of the Ombudsman-Visayas ordered petitioner and Mr. Nestor Robles to file their respective counter-affidavits to the complaint.

On 01 March 1999, upon receipt of the order to file counter-affidavit and the order of preventive suspension, petitioner filed with the Office of the Ombudsman-Visayas a Joint Motion for Reconsideration and Recall of the Order of Preventive Suspension.

Later, on 15 March 1999, petitioner and co-respondent Robles submitted their respective counter-affidavits, denying participation in the alleged irregularities.

In a resolution dated 12 January 2001, the Office of the Ombudsman-Visayas found probable cause against petitioner for five (5) counts of Malversation of Public Funds and five (5) counts of violations of Section 3(e) of Rep. Act No. 3019, as amended. Prima facie evidence was also found against Mr. Nestor Robles for four (4) counts of malversation of public funds.

On 07 March 2001, petitioner filed with the Office of the Ombudsman-Visayas a motion for reconsideration and the Deferral of the Filing or Recall of the Filed Information.

Meanwhile, the necessary Informations were filed against the petitioner and Robles before the Regional Trial Courts of Tagbilaran City, Branches 4 and 47, respectively. Their respective arraignments were both deferred on the basis of pending Motions for Reconsideration before the Office of the Ombudsman-Visayas.

The Office of the Ombudsman-Visayas denied petitioner's motion for reconsideration in its order dated 17 July 2001.

This denial prompted petitioner to file before the Court of Appeals a Petition for Certiorari under Rule 65 of the Rules of Court interposing the following grounds:

1. Respondents committed abuse of discretion when it ruled that they no longer needed to conduct clarificatory hearing considering that the conduct of the same is discretionary on their part.
2. Respondent committed abuse of discretion in filing the questioned information considering that there is want of evidence establishing probable cause against herein petitioner.

In a decision dated 13 December 2002, the Court of Appeals dismissed the petition and affirmed in toto the Resolution dated 12 January 2001, as well as the order dated 17 July 2001 of the Ombudsman.

Hence, the instant appeal by certiorari.

Petitioner raises the following issues:

1. Whether the Court of Appeals is correct in ruling that the Honorable Office of the Ombudsman did not commit any grave abuse of discretion when it opted not to conduct a clarificatory hearing in the case of herein petitioner.
2. Whether the Court of Appeals erred in ruling that the other issues raised by herein petitioner on certiorari are purely questions of evidence and not of law.

At the outset, it must be pointed out that the remedy availed by petitioner is flawed. The title of this petition shows that petitioner filed the petition under Rule 45 of the Rules of Court. The remedy from resolutions of the Ombudsman in preliminary investigations of criminal cases is a petition for certiorari under Rule 65.

In *Estrada v. Desierto*,^[5] we held that the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in criminal cases or non-administrative cases, when tainted with grave abuse of discretion, is to file an original action for certiorari with this Court and not with the Court of Appeals. By availing of the wrong remedy, the petition should be dismissed outright. Nevertheless, we will consider the present petition as one filed under Rule 65 of the Rules of Court since a perusal of the contents reveals that petitioner is imputing grave abuse of discretion on the part of the Office of the Ombudsman when it issued the Resolution dated 12 January 2001 and the Order dated 17 July 2001, finding probable cause for the filing of Informations against petitioner and co-accused Robles.

On the first issue raised by petitioner, she bewails respondent court's ruling decreeing that a clarificatory hearing in the instant criminal case is optional on the part of the investigating prosecutor. Petitioner believes that without a clarificatory hearing, it is impossible for the investigating prosecutor to resolve numerous irreconcilable issues and arrive at a lawful indictment. In particular, petitioner faults the Office of the Ombudsman's finding of probable cause to charge her for five (5) counts of Malversation relative to the sale of old newspapers. She insists that the two (2) gate passes issued by her, allowing utility worker Pergentina Baay to leave the school premises in order to sell the old newspapers of the school, do not support the fact that would lead to the conclusion that she received and misappropriated the proceeds of the sale, thus making her answerable for malversation. She said that the two gate passes merely prove that she approved the departure of the utility worker from the school campus in order to sell the old newspapers. She added that since the pieces of evidence submitted to the investigating prosecutor are susceptible to equivocal interpretation, he should have conducted a clarificatory hearing.

In finding probable cause for the indictment of petitioner for malversation, the Office of the Ombudsman-Visayas ratiocinated:

On allegation no. 2 above, the evidence on record tends to support a well-founded belief that the crime of Malversation of Public Funds, on five (5) counts, was committed and that herein respondent Dr. Benita F.