

## FIRST DIVISION

[ G.R. No. 145368, April 12, 2002 ]

**SALVADOR H. LAUREL, PETITIONER, VS. HON. ANIANO A. DESIERTO, IN HIS CAPACITY AS OMBUDSMAN, RESPONDENT.**

### D E C I S I O N

#### **KAPUNAN, J.:**

On June 13, 1991, President Corazon C. Aquino issued Administrative Order No. 223 "constituting a Committee for the preparation of the National Centennial Celebration in 1998." The Committee was mandated "to take charge of the nationwide preparations for the National Celebration of the Philippine Centennial of the Declaration of Philippine Independence and the Inauguration of the Malolos Congress."<sup>[1]</sup>

Subsequently, President Fidel V. Ramos issued Executive Order No. 128, "reconstituting the Committee for the preparation of the National Centennial Celebrations in 1998." It renamed the Committee as the "National Centennial Commission." Appointed to chair the reconstituted Commission was Vice-President Salvador H. Laurel. Presidents Diosdado M. Macapagal and Corazon C. Aquino were named Honorary Chairpersons.<sup>[2]</sup>

Characterized as an "ad-hoc body," the existence of the Commission "shall terminate upon the completion of all activities related to the Centennial Celebrations."<sup>[3]</sup> Like its predecessor Committee, the Commission was tasked to "take charge of the nationwide preparations for the National Celebration of the Philippine Centennial of the Declaration of Philippine Independence and the Inauguration of the Malolos Congress."

Per Section 6 of the Executive Order, the Commission was also charged with the responsibility to "prepare, for approval of the President, a Comprehensive Plan for the Centennial Celebrations within six (6) months from the effectivity of" the Executive Order.

E.O. No. 128 also contained provisions for staff support and funding:

Sec. 3. The Commission shall be provided with technical and administrative staff support by a Secretariat to be composed of, among others, detailed personnel from the Presidential Management Staff, the National Commission for Culture and the Arts, and the National Historical Institute. Said Secretariat shall be headed by a full time Executive Director who shall be designated by the President.

Sec. 4. The Commission shall be funded with an initial budget to be drawn from the Department of Tourism and the president's Contingent

Fund, in an amount to be recommended by the Commission, and approved by the President. Appropriations for succeeding years shall be incorporated in the budget of the Office of the President.

Subsequently, a corporation named the Philippine Centennial Expo '98 Corporation (Expocorp) was created.<sup>[4]</sup> Petitioner was among the nine (9) Expocorp incorporators, who were also its first nine (9) directors. Petitioner was elected Expocorp Chief Executive Officer.

On August 5, 1998, Senator Ana Dominique Coseteng delivered a privilege speech in the Senate denouncing alleged anomalies in the construction and operation of the Centennial Exposition Project at the Clark Special Economic Zone. Upon motion of Senator Franklin Drilon, Senator Coseteng's privilege speech was referred to the Committee on Accountability of Public Officers and Investigation (The Blue Ribbon Committee) and several other Senate Committees for investigation.

On February 24, 1999, President Joseph Estrada issued Administrative Order No. 35, creating an ad hoc and independent citizens' committee to investigate all the facts and circumstances surrounding the Philippine centennial projects, including its component activities. Former Senator Rene A.V. Saguisag was appointed to chair the Committee.

On March 23, 1999, the Senate Blue Ribbon Committee filed with the Secretary of the Senate its Committee Final Report No. 30 dated February 26, 1999. Among the Committee's recommendations was "the prosecution by the Ombudsman/DOJ of Dr. Salvador Laurel, chair of NCC and of EXPOCORP for violating the rules on public bidding, relative to the award of centennial contracts to AK (Asia Construction & Development Corp.); for exhibiting manifest bias in the issuance of the NTP (Notice to Proceed) to AK to construct the FR (Freedom Ring) even in the absence of a valid contract that has caused material injury to government and for participating in the scheme to preclude audit by COA of the funds infused by the government for the implementation of the said contracts all in violation... of the anti-graft law."<sup>[5]</sup>

Later, on November 5, 1999, the Saguisag Committee issued its own report. It recommended "the further investigation by the Ombudsman, and indictment, in proper cases of," among others, NCC Chair Salvador H. Laurel for violations of Section 3(e) of R.A. No. 3019, Section 4(a) in relation to Section 11 of R.A. No. 6713, and Article 217 of the Revised Penal Code.

The Reports of the Senate Blue Ribbon and the Saguisag Committee were apparently referred to the Fact-finding and Intelligence Bureau of the Office of the Ombudsman. On January 27, 2000, the Bureau issued its Evaluation Report, recommending:

1. that a formal complaint be filed and preliminary investigation be conducted before the Evaluation and Preliminary Investigation Bureau (EPIB), Office of the Ombudsman against former NCC and EXPOCORP chair Salvador H. Laurel, former EXPOCORP President Teodoro Q. Peña and AK President Edgardo H. Angeles for violation of Sec. 3(e) and (g) of R.A. No. 3019, as amended in relation to PD 1594 and COA Rules and Regulations;

2. That the Fact Finding and Intelligence Bureau of this Office, act as the nominal complainant.<sup>[6]</sup>

In an Order dated April 10, 2000, Pelagio S. Apostol, OIC-Director of the Evaluation and Preliminary Investigation Bureau, directed petitioner to submit his counter-affidavit and those of his witnesses.

On April 24, 2000, petitioner filed with the Office of the Ombudsman a Motion to Dismiss questioning the jurisdiction of said office.

In an Order dated June 13, 2000, the Ombudsman denied petitioner's motion to dismiss.

On July 3, 2000, petitioner moved for a reconsideration of the June 13, 2000 Order but the motion was denied in an Order dated October 5, 2000.

On October 25, 2000, petitioner filed the present petition for certiorari.

On November 14, 2000, the Evaluation and Preliminary Investigation Bureau issued a resolution finding "probable cause to indict respondents SALVADOR H. LAUREL and TEODORO Q. PEÑA before the Sandiganbayan for conspiring to violate Section 3(e) of Republic Act No. 3019, in relation to Republic Act No. 1594." The resolution also directed that an information for violation of the said law be filed against Laurel and Peña. Ombudsman Aniano A. Desierto approved the resolution with respect to Laurel but dismissed the charge against Peña.

In a Resolution dated September 24, 2001, the Court issued a temporary restraining order, commanding respondents to desist from filing any information before the Sandiganbayan or any court against petitioner for alleged violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.

On November 14, 2001, the Court, upon motion of petitioner, heard the parties in oral argument.

Petitioner assails the jurisdiction of the Ombudsman on the ground that he is not a public officer because:

A.

EXPOCORP, THE CORPORATION CHAIRED BY PETITIONER LAUREL WHICH UNDERTOOK THE FREEDOM RING PROJECT IN CONNECTION WITH WHICH VIOLATIONS OF THE ANTI-GRAFT AND CORRUPT PRACTICES WERE ALLEGEDLY COMMITTED, WAS A PRIVATE CORPORATION, NOT A GOVERNMENT-OWNED OR CONTROLLED CORPORATION.

B.

THE NATIONAL CENTENNIAL COMMISSION (NCC) WAS NOT A PUBLIC OFFICE.

C.

PETITIONER, BOTH AS CHAIRMAN OF THE NCC AND OF EXPOCORP WAS NOT A "PUBLIC OFFICER" AS DEFINED UNDER THE ANTI-GRAFT & CORRUPT PRACTICES ACT.<sup>[7]</sup>

In addition, petitioner in his reply<sup>[8]</sup> invokes this Court's decision in *Uy vs. Sandiganbayan*,<sup>[9]</sup> where it was held that the jurisdiction of the Ombudsman was limited to cases cognizable by the Sandiganbayan, i.e., over public officers of Grade 27 and higher. As petitioner's position was purportedly not classified as Grade 27 or higher, the Sandiganbayan and, consequently, the Ombudsman, would have no jurisdiction over him.

This last contention is easily dismissed. In the Court's decision in *Uy*, we held that "it is the prosecutor, not the Ombudsman, who has the authority to file the corresponding information/s against petitioner in the regional trial court. The Ombudsman exercises prosecutorial powers only in cases cognizable by the Sandiganbayan."

In its Resolution of February 22, 2000, the Court expounded:

The clear import of such pronouncement is to recognize the authority of the State and regular provincial and city prosecutors under the Department of Justice to have control over prosecution of cases falling within the jurisdiction of the regular courts. The investigation and prosecutorial powers of the Ombudsman relate to cases rightfully falling within the jurisdiction of the Sandiganbayan under Section 15 (1) of R.A. 6770 ("An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for other purposes") which vests upon the Ombudsman "primary jurisdiction over cases cognizable by the Sandiganbayan..." And this is further buttressed by Section 11 (4a) of R.A. 6770 which emphasizes that the Office of the Special Prosecutor shall have the power to "conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan." Thus, repeated references to the Sandiganbayan's jurisdiction clearly serve to limit the Ombudsman's and Special Prosecutor's authority to cases cognizable by the Sandiganbayan. [Emphasis in the original.]

The foregoing ruling in *Uy*, however, was short-lived. Upon motion for clarification by the Ombudsman in the same case, the Court set aside the foregoing pronouncement in its Resolution dated March 20, 2001. The Court explained the rationale for this reversal:

The power to investigate and to prosecute granted by law to the Ombudsman is plenary and unqualified. It pertains to **any act or omission of any public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient.** The law does not make a distinction between cases cognizable by the Sandiganbayan and those cognizable by regular courts. It has been held that the clause "any illegal act or omission of any public official" is broad enough to embrace any crime committed by a public officer or employee.

The reference made by RA 6770 to cases cognizable by the Sandiganbayan, particularly in Section 15(1) giving the Ombudsman primary jurisdiction over cases cognizable by the Sandiganbayan, and Section 11(4) granting the Special Prosecutor the power to conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan, should not be construed as confining

the scope of the investigatory and prosecutory power of the Ombudsman to such cases.

Section 15 of RA 6770 gives the Ombudsman primary jurisdiction over cases cognizable by the Sandiganbayan. The law defines such primary jurisdiction as authorizing the Ombudsman "to take over, at any stage, from any investigatory agency of the government, the investigation of such cases." The grant of this authority does not necessarily imply the exclusion from its jurisdiction of cases involving public officers and employees by other courts. The exercise by the Ombudsman of his primary jurisdiction over cases cognizable by the Sandiganbayan is not incompatible with the discharge of his duty to investigate and prosecute other offenses committed by public officers and employees. Indeed, it must be stressed that the powers granted by the legislature to the Ombudsman are very broad and encompass all kinds of malfeasance, misfeasance and non-feasance committed by public officers and employees during their tenure of office.

Moreover, the jurisdiction of the Office of the Ombudsman should not be equated with the limited authority of the Special Prosecutor under Section 11 of RA 6770. The Office of the Special Prosecutor is merely a component of the Office of the Ombudsman and may only act under the supervision and control and upon authority of the Ombudsman. Its power to conduct preliminary investigation and to prosecute is limited to **criminal cases within the jurisdiction of the Sandiganbayan**. Certainly, the lawmakers did not intend to confine the investigatory and prosecutory power of the Ombudsman to these types of cases. The Ombudsman is mandated by law to act on all complaints against officers and employees of the government and to enforce their administrative, civil and criminal liability in every case where the evidence warrants. To carry out this duty, the law allows him to utilize the personnel of his office and/or designate any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist in the investigation and prosecution of certain cases. Those designated or deputized to assist him work under his supervision and control. The law likewise allows him to direct the Special Prosecutor to prosecute cases outside the Sandiganbayan's jurisdiction in accordance with Section 11 (4c) of RA 6770.

The prosecution of offenses committed by public officers and employees is one of the most important functions of the Ombudsman. In passing RA 6770, the Congress deliberately endowed the Ombudsman with such power to make him a more active and effective agent of the people in ensuring accountability in public office. A review of the development of our Ombudsman law reveals this intent. [Emphasis in the original.]

Having disposed of this contention, we proceed to the principal grounds upon which petitioner relies. We first address the argument that petitioner, as Chair of the NCC, was not a public officer.

The Constitution<sup>[10]</sup> describes the Ombudsman and his Deputies as "protectors of the people," who "shall act promptly on complaints filed in any form or manner