

SECOND DIVISION

[G.R. No. 115103, April 11, 2002]

**BUREAU OF INTERNAL REVENUE, REPRESENTED BY THE
COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
OFFICE OF THE OMBUDSMAN, RESPONDENT.**

DECISION

DE LEON, JR., J.:

Graft Investigation Officer II Christopher S. Soquilon of the Office of the Ombudsman (OMBUDSMAN, for brevity) received information from an "informer-for-reward" regarding allegedly anomalous grant of tax refunds to Distillera Limtuaco & Co., Inc. (Limtuaco, for brevity) and La Tondeña Distilleries, Inc. Upon receipt of the information, Soquilon recommended^[1] to then Ombudsman Conrado M. Vasquez that the "case" be docketed and subsequently assigned to him for investigation.^[2]

On November 29, 1993, the Ombudsman issued a subpoena *duces tecum*^[3] addressed to Atty. Millard Mansequiao of the Legal Department of the Bureau of Internal Revenue (BIR) ordering him to appear before the Ombudsman and to bring the complete original case dockets of the refunds granted to Limtuaco and La Tondeña.

The BIR, through Assistant Commissioner for Legal Service Jaime M. Maza, asked that it be excused from complying with the subpoena *duces tecum* because (a) the Limtuaco case was pending investigation by Graft Investigation Officer II Napoleon S. Baldrias; and (b) the investigation thereof and that of La Tondeña was mooted when the Sandiganbayan ruled in *People v. Larin*^[4] that "the legal issue was no longer in question since the BIR had ruled that the *ad valorem* taxes were erroneously paid and could therefore be the proper subject of a claim for tax credit."^[5]

Without resolving the issues raised by the BIR, the Ombudsman issued another subpoena *duces tecum*, dated December 9, 1993, addressed to BIR Commissioner Liwayway Vinzons-Chato ordering her to appear before the Ombudsman and to bring the complete original case dockets of the refunds granted to Limtuaco and La Tondeña.^[6]

The BIR moved to vacate the subpoena *duces tecum* arguing that (a) the second subpoena *duces tecum* was issued without first resolving the issues raised in its Manifestation and Motion dated December 8, 1993; (b) the documents required to be produced were already submitted to Graft Investigation Officer II Baldrias; (c) the issue of the tax credit of *ad valorem* taxes has already been resolved as proper by the Sandiganbayan; (d) the subpoena *duces tecum* partook of the nature of an omnibus subpoena because it did not specifically described the particular documents

to be produced; (e) there was no clear showing that the tax case dockets sought to be produced contained evidence material to the inquiry; (f) compliance with the subpoena *duces tecum* would violate Sec. 269^[7] of the National Internal Revenue Code (NLRC) on unlawful divulgence of trade secrets and Sec. 277^[8] on procuring unlawful divulgence of trade secrets; and (g) Limtuaco and La Tondeña had the right to rely on the correctness and conclusiveness of the decisions of the Commissioner of Internal Revenue.^[9]

The Ombudsman denied^[10] the Motion to Vacate the Subpoena *Duces Tecum*, pointing out that the Limtuaco tax refund case then assigned to Baldrias was already referred to the Fact-Finding and Investigation Bureau of the Ombudsman for consolidation with Case No. OMB-0-93-3248. The Ombudsman also claimed that the documents submitted by the BIR to Baldrias were incomplete and not certified. It insisted that the issuance of the subpoena *duces tecum* was not a “fishing expedition” considering that the documents required for production were clearly and particularly specified.

The BIR moved to reconsider^[11] the respondent’s Order dated February 15, 1994 alleging that (a) the matter subject of the investigation was beyond the scope of the jurisdiction of the Ombudsman; (b) the subpoena *duces tecum* was not properly issued in accordance with law; and (c) non-compliance thereto was justifiable. The BIR averred it had the exclusive authority whether to grant a tax credit and that the jurisdiction to review the same was lodged with the Court of Tax Appeals and not with the Ombudsman.

According to the BIR, for a subpoena *duces tecum* to be properly issued in accordance with law, there must first be a pending action because the power to issue a subpoena *duces tecum* is not an independent proceeding. The BIR noted that the Ombudsman issued the assailed subpoena *duces tecum* based only on the information obtained from an “informer-for-reward” and the report of Asst. Comm. Imelda L. Reyes. The BIR added that the subpoena *duces tecum* suffered from a legal infirmity for not specifically describing the documents sought to be produced.

Finding no valid reason to reverse its *Order* dated February 15, 1994, the Ombudsman denied the motion for reconsideration and reiterated its directive to the BIR to produce the documents.^[12] Instead of complying, the BIR manifested its intention to elevate the case on certiorari to this Court.^[13] The Ombudsman thus ordered Asst. Comm. Maza to show cause why he should not be cited for contempt for contumacious refusal to comply with the subpoena *duces tecum*.^[14]

However, before the expiration of the period within which Asst. Comm. Maza was required to file a reply to the show cause order of the Ombudsman, the BIR filed before this Court the instant Petition for Certiorari, Prohibition and Preliminary Injunction and Temporary Restraining Order.^[15]

Petitioner BIR insists that the investigative power of the Ombudsman is not unbridled. Particularly on the issue of tax refunds, the BIR maintains that the Ombudsman could validly exercise its power to investigate *only* when there exists an appropriate case and subject to the limitations provided by law.^[16] Petitioner opines that the fact-finding investigation by the Ombudsman is not *the proper* case

as it is only a step preliminary to the filing of recovery actions on the tax refunds granted to Limtuaco and La Tondeña.

This Court is not persuaded. No less than the 1987 Constitution enjoins that 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 case, notify the complainants of the action taken and the result thereof."^[17]

Clearly, there is no requirement of a pending action before the Ombudsman could wield its investigative power. The Ombudsman could resort to its investigative prerogative on its own^[18] or upon a complaint filed in any form or manner. Even when the complaint is verbal or written, unsigned or unverified, the Ombudsman could, on its own, initiate the investigation.^[19] Thus –

There can be no objection to this procedure in the Office of the Ombudsman where anonymous letters suffice to start an investigation because it is provided in the Constitution itself. In the second place, it is apparent that in permitting the filing of complaints "in any form and manner," the framers of the Constitution took into account the well-known reticence of the people which keep them from complaining against official wrongdoings. As this Court had occasion to point out, the Office of the Ombudsman is different from other investigatory and prosecutory agencies of the government because those subject to its jurisdiction are public officials who, through official pressure and influence, can quash, delay or dismiss investigations held against them. On the other hand complainants are more often than not poor and simple folk who cannot afford to hire lawyers.^[20]

The term "in an appropriate case" has already been clarified by this Court in *Almonte v. Vasquez*,^[21] thus –

Rather than referring to the form of complaints, therefore, the phrase "in an appropriate case" in Art. XI, §12 means any case concerning official act or omission which is alleged to be "illegal, unjust, improper, or inefficient," The phrase "subject to such limitations as may be provided by law" refers to such limitations as may be provided by Congress or, in the absence thereof, to such limitations as may be imposed by courts.

Plainly, the pendency of an action is not a prerequisite before the Ombudsman can start its own investigation.

Petitioner next avers that the determination of granting tax refunds falls within its exclusive expertise and jurisdiction and that its findings could no longer be disturbed by the Ombudsman purportedly through its investigative power as it was a valid exercise of discretion. Petitioner suggests that what respondent should have done was to appeal its decision of granting tax credits to Limtuaco and La Tondeña to the Court of Tax Appeals since it is the proper forum to review the decisions of the Commissioner of Internal Revenue.

This contention of the BIR is baseless. The power to investigate and to prosecute

which was granted by law to the Ombudsman is plenary and unqualified.^[22] The Ombudsman Act makes it perfectly clear that the jurisdiction of the Ombudsman encompasses "all kinds of malfeasance, misfeasance and nonfeasance that have been committed by any officer or employee xxx during his tenure of office."^[23]

Concededly, the determination of whether to grant a tax refund falls within the exclusive expertise of the BIR. Nonetheless, when there is a suspicion of even just a tinge of impropriety in the grant of the same, the Ombudsman could rightfully ascertain whether the determination was done in accordance with law and identify the persons who may be held responsible thereto. In that sense, the Ombudsman could not be accused of unlawfully intruding into and intervening with the BIR's exercise of discretion.

As correctly posited by the Office of the Solicitor General –

xxx (T)he Ombudsman undertook the investigation "not as an appellate body exercising the power to review decisions or rulings rendered by a subordinate body, with the end view of affirming or reversing the same, but as an investigative agency tasked to discharge the role as 'protector of the people'^[24] pursuant to his authority 'to investigate xxx 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.'^[25] The OSG insists that the "mere finality of petitioner's ruling on the subject of tax refund cases is not a legal impediment to the exercise of respondent's investigative authority under the Constitution and its Charter (RA 6770) which xxx is so encompassing as to include 'all kinds of malfeasance, misfeasance and nonfeasance that have been committed by any officer or employee during his tenure of office.'^[26]

Indeed, the clause "any [illegal] act or omission of any public official" is broad enough to embrace any crime committed by a public official. The law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate. It does not require that the act or omission be related to or be connected with or arise from the performance of official duty.^[27]

Petitioner fears that the fact-finding investigation being conducted by respondent would only amount to "a general inquisitorial examination on the 'case dockets' with a view to search through them to gather evidence"^[28] considering that the subpoena *duces tecum* did not describe with particularity the documents sought to be produced.

This Court is unimpressed. We agree with the view taken by the Solicitor General that the assailed subpoena *duces tecum* indeed particularly and sufficiently described the records to be produced. There is every indication that petitioner knew precisely what records were being referred to as it even suggested that the tax dockets sought to be produced may not contain evidence material to the inquiry and that it has already submitted the same to Baldrias.

The records do not show how the production of the subpoenaed documents would necessarily contravene Sec. 269^[29] of the National Internal Revenue Code (NIRC) on unlawful divulgence of trade secrets and Sec. 277^[30] of the same Code on