

## EN BANC

[ G.R. No. 135882, June 27, 2001 ]

**LOURDES T. MARQUEZ, IN HER CAPACITY AS BRANCH MANAGER, UNION BANK OF THE PHILIPPINES, PETITIONERS, VS. HON. ANIANO A. DESIERTO, (IN HIS CAPACITY AS OMBUDSMAN, EVALUATION AND PRELIMINARY INVESTIGATION BUREAU, OFFICE OF THE OMBUDSMAN, ANGEL C. MAYOR-ALGO, JR., MARY ANN CORPUZ-MANALAC AND JOSE T. DE JESUS, JR., IN THEIR CAPACITIES AS CHAIRMAN AND MEMBERS OF THE PANEL, RESPECTIVELY, RESPONDENTS.**

### D E C I S I O N

**PARDO, J.:**

In the petition at bar, petitioner seeks to--

a. Annul and set aside, for having been issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction, respondents' order dated September 7, 1998 in OMB-0-97-0411, In Re: Motion to Cite Lourdes T. Marquez for indirect contempt, received by counsel of September 9, 1998, and their order dated October 14, 1998, denying Marquez's motion for reconsideration dated September 10, 1998, received by counsel on October 20, 1998.

b. Prohibit respondents from implementing their order dated October 14, 1998, in proceeding with the hearing of the motion to cite Marquez for indirect contempt, through the issuance by this Court of a temporary restraining order and/or preliminary injunction.<sup>[1]</sup>

The antecedent facts are as follows:

Sometime in May 1998, petitioner Marquez received an Order from the Ombudsman Aniano A. Desierto dated April 29, 1998, to produce several bank documents for purposes of inspection *in camera* relative to various accounts maintained at Union Bank of the Philippines, Julia Vargas Branch, where petitioner is the branch manager. The accounts to be inspected are Account Nos. 011-37270, 240-020718, 245-30317-3 and 245-30318-1, involved in a case pending with the Ombudsman entitled, Fact-Finding and Intelligence Bureau (FFIB) v. Amado Lagdameo, et. al. The order further states:

"It is worth mentioning that the power of the Ombudsman to investigate and to require the production and inspection of records and documents is sanctioned by the 1987 Philippine Constitution, Republic Act No. 6770,

otherwise known as the Ombudsman Act of 1989 and under existing jurisprudence on the matter. It must be noted that R. A. 6770 especially Section 15 thereof provides, among others, the following powers, functions and duties of the Ombudsman, to wit:

x

x

x

(8) Administer oaths, issue subpoena and subpoena duces tecum and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;

(9) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein.

Clearly, the specific provision of R.A. 6770, a later legislation, modifies the law on the Secrecy of Bank Deposits (R.A. 1405) and places the office of the Ombudsman in the same footing as the courts of law in this regard.”<sup>[2]</sup>

The basis of the Ombudsman in ordering an *in camera* inspection of the accounts is a trail of managers checks purchased by one George Trivinio, a respondent in OMB-0-97-0411, pending with the office of the Ombudsman.

It would appear that Mr. George Trivinio, purchased fifty one (51) Managers Checks (MCs) for a total amount of P272.1 Million at Traders Royal Bank, United Nations Avenue branch, on May 2 and 3, 1995. Out of the 51 MCs, eleven (11) MCs

in the amount of P70.6 million, were deposited and credited to an account maintained at the Union Bank, Julia Vargas Branch.<sup>[3]</sup>

On May 26, 1998, the FFIB panel met in conference with petitioner Lourdes T. Marquez and Atty. Fe B. Macalino at the bank’s main office, Ayala Avenue, Makati City. The meeting was for the purpose of allowing petitioner and Atty. Macalino to view the checks furnished by Traders Royal Bank. After convincing themselves of the veracity of the checks, Atty. Macalino advised Ms. Marquez to comply with the order of the Ombudsman. Petitioner agreed to an *in camera* inspection set on June 3, 1998.<sup>[4]</sup>

However, on June 4, 1998, petitioner wrote the Ombudsman explaining to him that the accounts in question cannot readily be identified and asked for time to respond to the order. The reason forwarded by petitioner was that “despite diligent efforts and from the account numbers presented, we can not identify these accounts since the checks are issued in cash or bearer. We surmised that these accounts have long been dormant, hence are not covered by the new account number generated by the Union Bank system. We therefore have to verify from the Interbank records archives for the whereabouts of these accounts.”<sup>[5]</sup>

The Ombudsman, responding to the request of the petitioner for time to comply with the order, stated: “firstly, it must be emphasized that Union Bank, Julia Vargas Branch was the depositary bank of the subject Traders Royal Bank Manager’s Checks

(MCs), as shown at its dorsal portion and as cleared by the Philippine Clearing House, not the International Corporate Bank.

Notwithstanding the fact that the checks were payable to cash or bearer, nonetheless, the name of the depositor(s) could easily be identified since the account numbers x x x where said checks were deposited are identified in the order.

Even assuming that the accounts xxx were already classified as "dormant accounts," the bank is still required to preserve the records pertaining to the accounts within a certain period of time as required by existing banking rules and regulations.

And finally, the *in camera* inspection was already extended twice from May 13, 1998 to June 3, 1998, thereby giving the bank enough time within which to sufficiently comply with the order."<sup>[6]</sup>

Thus, on June 16, 1998, the Ombudsman issued an order directing petitioner to produce the bank documents relative to the accounts in issue. The order states:

Viewed from the foregoing, your persistent refusal to comply with Ombudsman's order is unjustified, and is merely intended to delay the investigation of the case. Your act constitutes disobedience of or resistance to a lawful order issued by this office and is punishable as Indirect Contempt under Section 3(b) of R.A. 6770. The same may also constitute obstruction in the lawful exercise of the functions of the Ombudsman which is punishable under Section 36 of R.A. 6770."<sup>[7]</sup>

On July 10, 1998, petitioner together with Union Bank of the Philippines, filed a petition for declaratory relief, prohibition and injunction<sup>[8]</sup> with the Regional Trial Court, Makati City, against the Ombudsman.

The petition was intended to clear the rights and duties of petitioner. Thus, petitioner sought a declaration of her rights from the court due to the clear conflict between R. A. No. 6770, Section 15 and R. A. No. 1405, Sections 2 and 3.

Petitioner prayed for a temporary restraining order (TRO) because the Ombudsman and other persons acting under his authority were continuously harassing her to produce the bank documents relative to the accounts in question. Moreover, on June 16, 1998, the Ombudsman issued another order stating that unless petitioner appeared before the FFIB with the documents requested, petitioner manager would be charged with indirect contempt and obstruction of justice.

In the meantime,<sup>[9]</sup> on July 14, 1998, the lower court denied petitioner's prayer for a temporary restraining order and stated thus:

"After hearing the arguments of the parties, the court finds the application for a Temporary Restraining Order to be without merit.

"Since the application prays for the restraint of the respondent, in the exercise of his contempt powers under Section 15 (9) in relation to

paragraph (8) of R.A. 6770, known as "The Ombudsman Act of 1989", there is no great or irreparable injury from which petitioners may suffer, if respondent is not so restrained. Respondent should he decide to exercise his contempt powers would still have to apply with the court. x x x Anyone who, without lawful excuse x x x refuses to produce documents for inspection, when thereunto lawfully required shall be subject to discipline as in case of contempt of Court and upon application of the individual or body exercising the power in question shall be dealt with by the Judge of the First Instance (now RTC) having jurisdiction of the case in a manner provided by law (section 580 of the Revised Administrative Code). Under the present Constitution only judges may issue warrants, hence, respondent should apply with the Court for the issuance of the warrant needed for the enforcement of his contempt orders. It is in these proceedings where petitioners may question the propriety of respondent's exercise of his contempt powers. Petitioners are not therefore left without any adequate remedy.

"The questioned orders were issued with the investigation of the case of Fact-Finding and Intelligence Bureau vs. Amado Lagdameo, et. el., OMB-0-97-0411, for violation of R.A. 3019. Since petitioner failed to show prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman, no writ of injunction may be issued by this Court to delay this investigation pursuant to Section 14 of the Ombudsman Act of 1989."<sup>[10]</sup>

On July 20, 1998, petitioner filed a motion for reconsideration based on the following grounds:

- a. Petitioners' application for Temporary Restraining Order is not only to restrain the Ombudsman from exercising his contempt powers, but to stop him from implementing his Orders dated April 29, 1998 and June 16, 1998; and
- b. The subject matter of the investigation being conducted by the Ombudsman at petitioners' premises is outside his jurisdiction.<sup>[11]</sup>

On July 23, 1998, the Ombudsman filed a motion to dismiss the petition for declaratory relief<sup>[12]</sup> on the ground that the Regional Trial Court has no jurisdiction to hear a petition for relief from the findings and orders of the Ombudsman, citing R. A. No. 6770, Sections 14 and 27. On August 7, 1998, the Ombudsman filed an opposition to petitioner's motion for reconsideration dated July 20, 1998.<sup>[13]</sup>

On August 19, 1998, the lower court denied petitioner's motion for reconsideration,<sup>[14]</sup> and also the Ombudsman's motion to dismiss.<sup>[15]</sup>

On August 21, 1998, petitioner received a copy of the motion to cite her for contempt, filed with the Office of the Ombudsman by Agapito B. Rosales, Director, Fact Finding and Intelligence Bureau (FFIB).<sup>[16]</sup>