

## **FIRST DIVISION**

**[ G.R.. No. 121017, February 17, 1997 ]**

**OLIVIA B. CAMANAG, PETITIONER, VS. THE HONORABLE JESUS F. GUERRERO IN HIS OFFICIAL CAPACITY AS CITY PROSECUTOR OF MANILA, NESTOR GONZALES, IN HIS OFFICIAL CAPACITY AS ASSISTANT PROSECUTOR OF MANILA, THE HONORABLE MARLNO DELA CRUZ IN HIS OFFICIAL CAPACITY AS PRESIDING JUDGE OF BRANCH 22 OF THE REGIONAL TRIAL COURT OF MANILA,**

**RESPONDENTS.**

### **D E C I S I O N**

**HERMOSISIMA, JR., J.:**

This case asks for and includes: (1) a Petition for Declaratory Relief under Rule 64 of the Revised Rules of Court which seeks the declaration of nullity of Sections 15 and 17 of the Ombudsman Act (R.A. No. 6770), insofar as it empowers the Ombudsman to conduct preliminary investigations and to directly undertake criminal prosecutions; (2) a Petition for Certiorari to declare as null and void, for allegedly having been rendered with grave abuse of discretion, the Resolution dated June 21, 1995 rendered in I.S. No. 95-D-12930 by respondent Assistant City Prosecutor Nestor D. Gonzales and approved by respondent City Prosecutor Jesus F. Guerrero; (3) a Petition for Mandamus to compel respondents City Prosecutor and Assistant City Prosecutor to conduct a preliminary investigation on the complaint for Falsification of Public Documents filed against petitioner; and (4) a Petition for Prohibition to enjoin respondent judge of the City of Manila from further proceeding with the cases stemming from the information charging petitioner with three (3) counts of falsification lodged with the trial court and to order the dismissal thereof.

The facts, as summarized in the Comment of the Office of the Solicitor General, are as follows:

"On August 2, 1993, the Professional Regulations Commission (PRC) issued the Table of Results of those who failed the May, 1993 Certified Public Accountant (CPA) Licensure Examinations. On Page 11 thereof, Sequence No. 493, petitioner Olivia B. Camanag was listed as having failed with a general average of 50.00% (Annex "1").

However, on December 15, 1993, petitioner in accomplishing her Personal Data sheet (CSC form No. 212) as employee of the Bureau of Internal Revenue (BIR) indicated under question No. 18 that she passed the May, 1993 Board Examinations with a rating of 75.42% (Annex "2").

On July 4, 1994, an anonymous letter was sent to PRC Chairman Hermogenes P. Pobre 'claiming that certain BIR employees allegedly passed the CPA Licensure Exams under anomalous circumstances' (Annex "3").

Still, on July 28, 1994, petitioner claimed to have received what was purportedly a 'Certified True Copy' of her passing rating sheet, allegedly signed by PRC Acting Assistant Chief Leandro O. Ordenes (Mr. Leandro O. Ordenes is actually the Records Officer of the PRC) (Pet., Annex "C").

On August 24, 1994, PRC Chairman Pobre wrote Ombudsman Conrado Vasquez that BIR employees Marilyn Lee, Connie Dimapilis, Eilene Purification, Elenita Villamor, Lodiminda Crizaldo, petitioner Olivia Camanag and Maria Rosario de los Reyes, did not actually pass the CPA licensure examinations (Annex "3").

On October 5, 1994, Associate Ombudsman Investigator (AOI) Joaquin S. Bumanlag set the fact-finding investigation of the matter on October 11, 1994 at 10:00 a.m. He also issued a Subpoena Duces Tecum to the Chief of the BIR Personnel Division (Annex "4").

On December 1, 1994, AOI Bumanglag concluded his fact-finding investigation with a Report finding probable cause against petitioner for violation of Article 171(4) of the Revised Penal Code. AOI Bumanglag recommended a preliminary investigation (Annex "5") to be conducted on the case, and at the same time, he executed under oath the corresponding affidavit-complaint against petitioner (Annex "6").

On December 19, 1994, Ombudsman Investigator (OI) Rainier C. Almazan, acting on the said affidavit-complaint, directed petitioner to submit her counter-affidavit (Annex "7").

On January 13, 1995, petitioner submitted her counter-affidavit with annexes alleging that she passed the CPA licensure examinations with a grade of 75.42% (Annex "8").

On January 31, 1995, PRC Records Section Chief Leandro O. Ordenes, issued a Certification, stating that petitioner failed in the CPA licensure examinations (Annex "9").

On February 27, 1995, OI Almazan issued a Resolution, finding ' . . . sufficient ground to engender a well-founded belief that the crimes of falsification of public documents . . . have been committed . . .' (Petition, Annex "F").

Under a 1st Indorsement of even date, Deputy Ombudsman for the Armed Forces of the Philippines (AFP) Manuel B. Casalang deputized respondent City Prosecutor of Manila Jesus Guerrero to file the corresponding charges against petitioner and to handle the prosecution of the cases (Annex "10").

On April 11, 1995, the Office of the City Prosecutor of Manila docketed the case as IS No. 95-D-12930 and herein respondent Nestor Gonzales, Assistant City Prosecutor of Manila, set it for another round of preliminary investigation on May 5 and 12, 1995 (Annex "11").

While the preliminary investigation was ongoing before the City

Prosecutor, petitioner filed a motion to reset preliminary investigation (Annexes "11-A" and "12"), Motion to Issue Subpoena and Subpoena Duces Tecum to Leandro Ordenes [OIC, Records Section] and Ernesto Jaurique [Exec. Director] (Petition, Annex "G"); and a Comment/Manifestation stating, among others, that 'another round of preliminary investigation should be conducted by the City Prosecutor.' Why petitioner should demand another round of preliminary investigation while one was already on-going is not clear on record.

At any rate, the preliminary investigation conducted by the City Prosecutor yielded additional evidence of falsification against petitioner, to wit: Ordenes' Certification (Annex "9"), and the Table of Results-Failed, CPA Licensure Exams (Annex "1"), both submitted by the PRC showing that petitioner did flunk the CPA Licensure Exam of May, 1993.

On June 21, 1995, respondent City Prosecutor issued the questioned Resolution, 'x x x finding sufficient ground to hold petitioner for trial' and ordering the filing of the Information in court (Pet., Annex "I").

On July 17, 1995, three (3) Informations for falsification of public documents were filed against petitioner docketed as Criminal Cases No. 95-143922-24. The cases were raffled off to the sala of respondent Judge Marino M. dela Cruz, Regional Trial Court, Branch 22, Manila (Annex "13-A" - "13-C").

On July 25, 1995, petitioner filed a Motion to Reduce Bail Bond (Annex "14").

But even before respondent judge could act on his motion to reduce bail bond, petitioner filed the instant petition.

Thereafter, petitioner posted her cash bond with 'Waiver' viz:

"Pursuant to Letter of Instructions No. 40 dated November 10, 1972, issued by the President of the Philippines, following annotation is hereby incorporated in the CASH BOND posted for the account in the above-entitled cases.

The herein accused hereby agreed that in case she jumps bail or fails to appear for trial/arraignment despite due notice to her counsel, her right to be present is deemed waived, which failure shall to all intents and purposes authorize the Court to proceed with the hearing as if she were personally present."<sup>[1]</sup>

The issues raised in the instant case are the following:

## **I**

"WHETHER OR NOT SECTIONS 15 AND 17 OF REPUBLIC ACT 6770 WHICH EMPOWERS (SIC) THE OMBUDSMAN TO CONDUCT PRELIMINARY INVESTIGATIONS OF MATTERS AND/OR REFERRED TO IT IS (SIC) NULL AND VOID FOR BEING CONTRARY TO AND VIOLATIVE OF THE PROVISIONS OF THE CONSTITUTION.

## **II**

"WHETHER OR NOT UNDER THE CIRCUMSTANCES OBTAINING IN THE INSTANT CASE, THE HONORABLE PUBLIC RESPONDENTS CITY PROSECUTOR AND ASSISTANT CITY PROSECUTOR ARE DUTY BOUND AS SUCH TO BE DIRECTED TO CONDUCT THE REQUISITE PRELIMINARY INVESTIGATION OF THE ANONYMOUS COMPLAINT FILED AGAINST HEREIN PETITIONER.

### **III**

WHETHER OR NOT THE INFORMATIONS FILED BEFORE THE SALA OF THE HONORABLE RESPONDENT JUDGE WITHOUT THE BENEFIT OF A PRELIMINARY INVESTIGATION CONDUCTED BY RESPONDENT CITY PROSECUTOR ARE CHARACTERIZED BY SUCH FATAL DEFECTS AS TO WARRANT A WRIT OF PROHIBITION TO ENJOIN RESPONDENT JUDGE FROM TAKING ANY FURTHER ACTION THEREON EXCEPT TO ORDER THE OUTRIGHT DISMISSAL THEREOF."

### **I**

As to the first issue, petitioner assails as unconstitutional Sections 15 and 17 of the Ombudsman Act (R.A. No. 6770) insofar as it empowers the Office of the Ombudsman to conduct preliminary investigation and to directly undertake criminal prosecutions on three grounds: (1) such grant of powers to the Office of the Ombudsman has no constitutional basis and runs directly counter to the intent of the framers of the Constitution; (2) it violates the principle of separation of powers; and (3) it is in direct contravention of Article XI, Section 7 of the Constitution.

The assailed provisions of the Ombudsman Act read:

"SEC. 15. Powers, functions and duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

xxx xxx xxx

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act; Provided, That the refusal of any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be ground for disciplinary action against said officer."

"SEC. 17. Immunities. — In all hearings, inquiries, and proceedings of the Ombudsman, including preliminary investigations of offenses, no person subpoenaed to testify as a witness shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and/or other records on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to prosecution: Provided, That no person shall be prosecuted criminally for or on account of any matter concerning which he is compelled, after having claimed the privilege against self-incrimination, to testify and produce evidence, documentary or otherwise.

Under such terms and conditions as it may determine, taking into account the pertinent provisions of the Rules of Court, the Ombudsman may grant immunity from criminal prosecution to any person whose testimony or whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceedings being conducted by the Ombudsman or under its authority, in the performance of or in the furtherance of its constitutional functions and statutory objectives. The immunity granted under this and the immediately preceding paragraph shall not exempt the witness from criminal prosecution for perjury or false testimony nor shall he be exempt from demotion or removal from office.

Any refusal to appear or testify pursuant to the foregoing provisions shall be subject to punishment for contempt and removal of the immunity from criminal prosecution."

The Ombudsman Act, petitioner concedes, clearly empowers the Office of the Ombudsman to conduct preliminary investigation and to prosecute individuals on matters and/or complaints referred to it or filed before the said government agency. But, the vesting of powers to the Office of the Ombudsman to conduct preliminary investigations and to directly undertake criminal prosecutions, petitioner argues, is totally bereft of any constitutional basis. In support of this stand, petitioner cites that, under the 1987 Philippine Constitution, specifically in Section 13, Article XI, entitled "Accountability of Public Officers," the only powers of the present day Ombudsman are enumerated as follows:

"Section 13. The Office of the Ombudsman shall have the following powers, functions and duties:

- (1) Investigate on its own, or on complaint by any person, 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.
- (2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or