

## FIRST DIVISION

[ G.R. No. 202784, April 18, 2018 ]

**JONNEL D. ESPALDON, PETITIONER, V. RICHARD E. BUBAN IN HIS CAPACITY AS GRAFT INVESTIGATION AND PROSECUTION OFFICER II, MEDWIN S. DIZON IN HIS CAPACITY AS DIRECTOR, PIAB-A, ALEU A. AMANTE IN HIS CAPACITY AS ASSISTANT OMBUDSMAN, PAMO I, AND CONCHITA CARPIO MORALES IN HER CAPACITY AS OMBUDSMAN OF THE REPUBLIC OF THE PHILIPPINES, PETER L. CALIMAG, ASSISTANT SECRETARY, REVENUE AFFAIRS AND LEGAL AFFAIRS GROUP, DEPARTMENT OF FINANCE, RENATO M. GARBO III, MA. LETICIA MALMALATEO, MARLON K. TAULI, FRAYN M. BANAWA, AND JOHNNY CAGUIAT, ALL NBI AGENTS, NATIONAL BUREAU OF INVESTIGATION, ROGELIO M. SABADO, AND PRUDENCIO S. DAR, JR., RAILWAY POLICE, PHILIPPINE NATIONAL RAILWAYS, ANTONIO MARIANO ALMEDA, IRENEO C. QUIZON, ARIEL SARMIENTO, DOMINGO BEGUERAS, JOHN DOES/JANE DOES, NBI AND/OR PNR, RESPONDENTS.**

### D E C I S I O N

**TIJAM, J.:**

Through this petition for *certiorari* and *mandamus*<sup>[1]</sup> under Rule 65 of the Rules of Court, petitioner Jonnel D. Espaldon (Espaldon) seeks to nullify the Order<sup>[2]</sup> dated January 16, 2012 and Joint Order<sup>[3]</sup> dated March 12, 2012 of respondent Office of the Ombudsman (Ombudsman) in the criminal complaint docketed as OMB-C-C-11-0034-A, and thereafter, to compel the Ombudsman to take cognizance of Espaldon's complaint against respondents.

#### **The Antecedents**

Atty. Renato M. Garbo III (Atty. Garbo) of the National Bureau of Investigation (NBI) and detailed at the Revenue Operations and Legal Affairs Group of the Department of Finance (DOF), received information<sup>[4]</sup> that Ferrotech Steel Corporation and/or its President, Benito Keh (Keh) employed schemes to evade payment of taxes by failing to issue sales invoices and falsifying sales invoices, in violation of Section 264<sup>[5]</sup> in relation to Section 254<sup>[6]</sup> of the National Internal Revenue Code (NIRC). Upon verification of said information and by virtue of a Letter of Authority<sup>[7]</sup> dated December 7, 2010 issued by Secretary Cesar V. Purisima (Secretary Purisima) of the DOF, Atty. Garbo applied<sup>[8]</sup> for the issuance of search warrants to search the premises occupied and/or used by Ferrotech Steel Corporation and/or Keh before the regional trial court (RTC).<sup>[9]</sup>

On December 17, 2010, Search Warrant Nos. 10-17070 to 17073<sup>[10]</sup> were issued by the RTC of Manila, Branch 47 for the different offices and warehouses of Ferrotech Steel Corporation and/or Keh located in Valenzuela City and Makati City. Secretary Purisima likewise issued OSEC Mission Order No. 10-001,<sup>[11]</sup> directing the NBI to search the offices and warehouses of Metalex International Inc., and Metal Trade Sales Co. On even date, these search warrants were served by NBI agents, Philippine National Railways (PNR) personnel and private individuals, who are the respondents in this case.

Espaldon, the Corporate Secretary of Metal Exponents, Inc., and the counsel of Ferrotech Steel Corporation and Metalex International Inc., alleged that several irregularities attended the implementation of the search warrants, *i.e.*, heavily armed NBI agents were present; the non-NBI agents were not authorized in writing to participate in the search; private individuals orchestrated the search and pointed the items to be seized; documents and items belonging to Metalex International, Inc., Metal Exponents, Inc., and other companies not mentioned in the search warrants were also seized;<sup>[12]</sup> and the employees were illegally detained, prohibited from using their phones and leaving the office, and threatened with bodily harm.<sup>[13]</sup>

Consequently, Espaldon filed a complaint-affidavit<sup>[14]</sup> before the Ombudsman against respondents for violations of the Revised Penal Code (RPC), Republic Act (R.A) No. 3019 or the Anti-Graft and Corrupt Practices Act, Code of Conduct and Ethical Standards for Public Officials and Employees, NIRC, Tariff and Customs Code of the Philippines, Electronic Commerce Act of 2000 and the Code of Professional Responsibility. A supplemental complaint-affidavit praying for the preventive suspension of respondents was subsequently filed. The administrative aspect of the said complaint was subsequently docketed as OMB-C-A-11-0036-A for "Misconduct", while the criminal aspect was docketed as OMB-C-C-11-0034-A for "Violation of Articles 129 and 286 of the RPC and Section 3(e) of R.A. No. 3019."

### **The Ruling of the Ombudsman**

The administrative complaint<sup>[15]</sup> and the criminal complaint were dismissed by the Ombudsman in separate but similarly-worded Orders<sup>[16]</sup> dated January 16, 2012. The dismissal of both the administrative and the criminal complaints were grounded on Section 20(1) of R.A. No. 6770,<sup>[17]</sup> which provides:

Sec. 20. Exceptions. The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

- (1) The complainant has a[n] adequate remedy in another judicial or quasi-judicial body.

x x x x

In dismissing the administrative and the criminal complaints, the Ombudsman continued with identical ratiocination and disposed, as follows:

As the complaint essentially involves the application and interpretation of the Tariff and Customs Code, raising the matter with the Commissioner of Customs and/or the Department of Finance and/or the Court of Tax Appeals could provide adequate remedy.

It need not be underscored that the actions taken by these tribunals would have a bearing on an investigation of the respondents' possible criminal liability. It is on this account that this Office resolves to dismiss the complaint.

**WHEREFORE**, the criminal complaint is hereby **DISMISSED**.

**SO ORDERED.**<sup>[18]</sup>

Espaldon's motion for reconsideration<sup>[19]</sup> met similar denial from the Ombudsman through its Joint Order<sup>[20]</sup> dated March 12, 2012 on the ground that said motion for reconsideration was neither based on new evidence nor on errors of law or commission of irregularities prejudicial to the interest of the movant as provided under Section 27 of R.A. No. 6770.

The dismissal of the administrative complaint and the criminal complaint respectively spurred Espaldon's petition for review<sup>[21]</sup> under Rule 43 before the Court of Appeals (CA) and the instant petition for *certiorari* and *mandamus* under Rule 65.

In their respective comments, respondents<sup>[22]</sup> and the Ombudsman<sup>[23]</sup> implore the Court's policy of non-interference with the Ombudsman's exercise of its investigatory powers.

### **The Issue**

At its core, the present petition raises the issue of whether or not the Ombudsman gravely abused its discretion in refusing to conduct an investigation on the criminal act complained of on the basis of Section 20(1) of R.A. No. 6770.

### **The Ruling of the Court**

**There is merit in the petition.**

Section 19 of R.A. No. 6770 enumerates the acts or omissions that could be the subject of administrative complaints, thus:

Sec. 19. *Administrative Complaints*. — The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

- (1) Are contrary to law or regulation;
- (2) Are unreasonable, unfair, oppressive or discriminatory;
- (3) Are inconsistent with the general course of an agency's functions, though in accordance with law;
- (4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
- (5) Are in the exercise of discretionary powers but for an improper purpose; or
- (6) Are otherwise irregular, immoral or devoid of justification.

Going further, the full text of Section 20 of R.A. No. 6770, reads:

Section 20. *Exceptions*. — The Office of the Ombudsman may not conduct the necessary investigation of any **administrative act or omission** complained of if it believes that:

- (1) The complainant has an adequate remedy in another judicial or quasi-judicial body;
- (2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;
- (3) The complaint is trivial, frivolous, vexatious or made in bad faith;
- (4) The complainant has no sufficient personal interest in the subject matter of the grievance; or
- (5) The complaint was filed after one year from the occurrence of the act or omission complained of. (Emphasis ours)

Section 20 has been clarified<sup>[24]</sup> by Administrative Order No. 17,<sup>[25]</sup> amending Administrative Order No. 07.<sup>[26]</sup> As thus amended, Section 4, Rule III on the *procedure in administrative cases* presently provides:

Sec. 4. Evaluation. - Upon receipt of the complaint, the same shall be evaluated to determine whether the same may be:

- a) **dismissed outright for any of the grounds stated under Section 20 of Republic Act No. 6770, provided, however, that the dismissal thereof is not mandatory and shall be discretionary on the part of the Ombudsman or the Deputy Ombudsman concerned;**
- b) treated as a **grievance/request for assistance** which may be referred to the Public Assistance Bureau, this Office, for appropriate action under Section 2, Rule IV of this Rules;
- c) referred to other **disciplinary authorities** under paragraph 2, Section 23, R.A. 6770 for the taking of **appropriate administrative proceedings;**
- d) referred to the appropriate office/agency or official for the conduct of further fact-finding investigation; or
- e) **docketed as an administrative case** for the purpose of **administrative adjudication** by the Office of the Ombudsman. (Emphasis ours)

Jurisprudence has so far settled that dismissal based on the grounds provided under Section 20 is not mandatory and is discretionary on the part of the evaluating Ombudsman or Deputy Ombudsman evaluating the *administrative complaint*.<sup>[27]</sup> Clearly, as the law, its implementing rules, and interpretative jurisprudence<sup>[28]</sup> stand, the dismissal by the Ombudsman on grounds provided under Section 20 is applicable only to *administrative complaints*. Its invocation in the present criminal case is therefore misplaced.

Contrariwise, the procedure in criminal cases requires that the Ombudsman evaluate the complaint and after evaluation, to make its recommendations in accordance with Section 2, Rule II of the Administrative Order No. 07, as follows:

Section 2. Evaluation – Upon evaluating the complaint, the investigating officer **shall recommend** whether it may be:

- a) **dismissed outright for want of palpable merit;**
- b) referred to respondent for comment;
- c) indorsed to the proper government office or agency which