

EN BANC

[G.R. Nos. 217126-27, November 10, 2015]

CONCHITA CARPIO MORALES, IN HER CAPACITY AS THE OMBUDSMAN, PETITIONER, VS. COURT OF APPEALS (SIXTH DIVISION) AND JEJOMAR ERWIN S. BINAY, JR., RESPONDENTS.

DECISION

PERLAS-BERNABE, J.:

"All government is a trust, every branch of government is a trust, and immemorially acknowledged so to be[.]"^[1]

The Case

Before the Court is a petition for *certiorari* and prohibition^[2] filed on March 25, 2015 by petitioner Conchita Carpio Morales, in her capacity as the Ombudsman (Ombudsman), through the Office of the Solicitor General (OSG), assailing: (a) the Resolution^[3] dated March 16, 2015 of public respondent the Court of Appeals (CA) in **CA-G.R. SP No. 139453**, which granted private respondent Jejomar Erwin S. Binay, Jr.'s (Binay, Jr.) prayer for the issuance of a temporary restraining order (TRO) against the implementation of the Joint Order^[4] dated March 10, 2015 of the Ombudsman in OMB-C-A-15-0058 to 0063 (preventive suspension order) preventively suspending him and several other public officers and employees of the City Government of Makati, for six (6) months without pay; and (b) the Resolution^[5] dated March 20, 2015 of the CA, ordering the Ombudsman to comment on Binay, Jr.'s petition for contempt^[6] in **CA-G.R. SP No. 139504**.

Pursuant to the Resolution^[7] dated April 6, 2015, the CA issued a writ of preliminary injunction^[8] (WPI) in CA-G.R. SP No. 139453 which further enjoined the implementation of the preventive suspension order, prompting the Ombudsman to file a supplemental petition^[9] on April 13, 2015.

The Facts

On July 22, 2014, a complaint/affidavit^[10] was filed by Atty. Renato L. Bondal and Nicolas "Ching" Enciso VI before the Office of the Ombudsman against Binay, Jr. and other public officers and employees of the City Government of Makati (Binay, Jr., *et al*), accusing them of Plunder^[11] and violation of Republic Act No. (RA) 3019,^[12] otherwise known as "The Anti-Graft and Corrupt Practices Act," in connection with the five (5) phases of the procurement and construction of the Makati City Hall Parking Building (Makati Parking Building).^[13]

On September 9, 2014, the Ombudsman constituted a Special Panel of Investigators^[14] to conduct a fact-finding investigation, submit an investigation report, and file the necessary complaint, if warranted (1st Special Panel).^[15] Pursuant to the Ombudsman's directive, on March 5, 2015, the 1st Special Panel filed a complaint^[16] (OMB Complaint) against Binay, Jr., *et al*, charging them with six (6) administrative cases^[17] for Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service, and six (6) criminal cases^[18] for violation of Section 3 (e) of RA 3019, Malversation of Public Funds, and Falsification of Public Documents (OMB Cases).^[19]

As to Binay, Jr., the OMB Complaint alleged that he was involved in anomalous activities attending the following procurement and construction phases of the Makati Parking Building project, committed during his previous and present terms as City Mayor of Makati:

Binay, Jr.'s First Term (2010 to 2013)^[20]

(a) On **September 21, 2010**, Binay, Jr. issued the Notice of Award^[21] for **Phase III** of the Makati Parking Building project to Hilmarc's Construction Corporation (Hilmarc's), and consequently, executed the corresponding contract^[22] on **September 28, 2010**,^[23] without the required publication and the lack of architectural design,^[24] and approved the release of funds therefor in the following amounts as follows: (1) P130,518,394.80 on **December 15, 2010**;^[25] (2) P134,470,659.64 on January 19, 2011;^[26] (3) P92,775,202.27 on **February 25, 2011**;^[27] (4) P57,148,625.51 on **March 28, 2011**;^[28] (5) P40,908,750.61 on **May 3, 2011**;^[29] and (6) P106,672,761.90 on July 7, 2011;^[30]

(b) On **August 11, 2011**, Binay, Jr. issued the Notice of Award^[31] for Phase IV of the Makati Parking Building project to Hilmarc's, and consequently, executed the corresponding contract^[32] on August 18, 2011,^[33] without the required publication and the lack of architectural design,^[34] and approved the release of funds therefor in the following amounts as follows: (1) P182,325,538.97 on October 4, 2011;^[35] (2) P173,132,606.91 on October 28, 2011;^[36] (3) P80,408,735.20 on December 12, 2011;^[37] (4) P62,878,291.81 on February 10, 2012;^[38] and (5) P59,639,167.90 on October 1, 2012;^[39]

(c) On September 6, 2012, Binay, Jr. issued the Notice of Award^[40] for Phase V of the Makati Parking Building project to Hilmarc's, and consequently, executed the corresponding contract^[41] on September 13, 2012,^[42] without the required publication and the lack of architectural design,^[43] and approved the release of the funds therefor in the amounts of P32,398,220.05^[44] and P30,582,629.30^[45] on December

20, 2012; and

Binay, Jr.'s Second Term (2013 to 2016)^[46]

(d) On July 3, 2013 and July 4, 2013, Binay, Jr. approved the release of funds for the remaining balance of the September 13, 2012 contract with Hilmarc's for Phase V of the Makati Parking Building project in the amount of P27,443,629.97;^[47] and

(e) On **July 24, 2013**, Binay, Jr. approved the release of funds for the remaining balance of the contract^[48] with MANA Architecture & Interior Design Co. (MANA) for the design and architectural services covering the Makati Parking Building project in the amount of P429,011.48.^[49]

On March 6, 2015, the Ombudsman created another Special Panel of Investigators to conduct a preliminary investigation and administrative adjudication on the OMB Cases (2nd Special Panel).^[50] Thereafter, on March 9, 2015, the 2nd Special Panel issued separate orders^[51] for each of the OMB Cases, requiring Binay, Jr., *et al.* to file their respective counter-affidavits.^[52]

Before Binay, Jr., *et al.*'s filing of their counter-affidavits, the Ombudsman, upon the recommendation of the 2nd Special Panel, issued on March 10, 2015, the subject preventive suspension order, placing Binay, Jr., *et al.* under preventive suspension for not more than six (6) months without pay, during the pendency of the OMB Cases.^[53] The Ombudsman ruled that the requisites for the preventive suspension of a public officer are present,^[54] finding that: (a) the evidence of Binay, Jr., *et al.*'s guilt was strong given that (1) the losing bidders and members of the Bids and Awards Committee of Makati City had attested to the irregularities attending the Makati Parking Building project; (2) the documents on record negated the publication of bids; and (3) the disbursement vouchers, checks, and official receipts showed the release of funds; and (b) (1) Binay, Jr., *et al.* were administratively charged with Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service; (2) said charges, if proven to be true, warrant removal from public service under the Revised Rules on Administrative Cases in the Civil Service (RRACCS), and (3) Binay, Jr., *et al.*'s respective positions give them access to public records and allow them to influence possible witnesses; hence, their continued stay in office may prejudice the investigation relative to the OMB Cases filed against them.^[55] Consequently, the Ombudsman directed the Department of Interior and Local Government (DILG), through Secretary Manuel A. Roxas II (Secretary Roxas), to immediately implement the preventive suspension order against Binay, Jr., *et al.*, upon receipt of the same.^[56]

On March 11, 2015, a copy of the preventive suspension order was sent to the Office of the City Mayor, and received by Maricon Ausan, a member of Binay, Jr.'s staff.^[57]

The Proceedings Before the CA

On even date,^[58] Binay, Jr. filed a petition for *certiorari*^[59] before the CA, docketed as **CA-G.R. SP No. 139453**, seeking the nullification of the preventive suspension order, and praying for the issuance of a TRO and/or WPI to enjoin its implementation.^[60] **Primarily, Binay, Jr. argued that he could not be held administratively liable** for any anomalous activity attending any of the five (5) phases of the Makati Parking Building project since: (a) Phases I and II were undertaken before he was elected Mayor of Makati in 2010; and (b) Phases III to V transpired during his first term and that **his re-election as City Mayor of Makati for a second term effectively condoned his administrative liability therefor**, if any, thus rendering the administrative cases against him moot and academic.^[61] **In any event, Binay, Jr. claimed that the Ombudsman's preventive suspension order failed to show that the evidence of guilt presented against him is strong**, maintaining that he did not participate in any of the purported irregularities.^[62] In support of his prayer for injunctive relief, Binay, Jr. argued that he has a clear and unmistakable right to hold public office, having won by landslide vote in the 2010 and 2013 elections, and that, in view of the condonation doctrine, as well as the lack of evidence to sustain the charges against him, his suspension from office would undeservedly deprive the electorate of the services of the person they have conscientiously chosen and voted into office.^[63]

On March 16, 2015, at around 8:24 a.m., Secretary Roxas caused the implementation of the preventive suspension order through the DILG National Capital Region - Regional Director, Renato L. Brion, CESO III (Director Brion), who posted a copy thereof on the wall of the Makati City Hall after failing to personally serve the same on Binay, Jr. as the points of entry to the Makati City Hall were closed. At around 9:47 a.m., Assistant City Prosecutor of Makati Billy C. Evangelista administered the oath of office on Makati City Vice Mayor Romulo V. Peña, Jr. (Peña, Jr.) who thereupon assumed office as Acting Mayor.^[64]

At noon of the same day, the CA issued a Resolution^[65] (dated March 16, 2015), granting Binay, Jr.'s prayer for a TRO,^[66] notwithstanding Pena, Jr.'s assumption of duties as Acting Mayor earlier that day.^[67] Citing the case of *Governor Garcia, Jr. v. CA*,^[68] the CA found that it was more prudent on its part to issue a TRO in view of the extreme urgency of the matter and seriousness of the issues raised, considering that if it were established that the acts subject of the administrative cases against Binay, Jr. were all committed during his prior term, then, applying the condonation doctrine, Binay, Jr.'s re-election meant that he can no longer be administratively charged.^[69] The CA then directed the Ombudsman to comment on Binay, Jr.'s petition for *certiorari*.^[70]

On March 17, 2015, the Ombudsman manifested^[71] that the TRO did not state what act was being restrained and that since the preventive suspension order had already been served and implemented, there was no longer any act to restrain.^[72]

On the same day, Binay, Jr. filed a petition for contempt,^[73] docketed as **CA-G.R. SP No. 139504**, accusing Secretary Roxas, Director Brion, the officials of the Philippine National Police, and Pena, Jr. of deliberately refusing to obey the CA, thereby allegedly impeding, obstructing, or degrading the administration of justice.

[74] The Ombudsman and Department of Justice Secretary Leila M. De Lima were subsequently impleaded as additional respondents upon Binay, Jr.'s filing of the amended and supplemental petition for contempt^[75] (petition for contempt) on March 19, 2015.^[76] Among others, Binay, Jr. accused the Ombudsman and other respondents therein for willfully and maliciously ignoring the TRO issued by the CA against the preventive suspension order.^[77]

In a **Resolution**^[78] **dated March 20, 2015**, the CA ordered the consolidation of CA-G.R. SP No. 139453 and CA-G.R. SP No. 139504, and, **without necessarily giving due course to Binay, Jr.'s petition for contempt**, directed the Ombudsman to file her comment thereto.^[79] The cases were set for hearing of oral arguments on March 30 and 31, 2015.^[80]

The Proceedings Before the Court

Prior to the hearing of the oral arguments before the CA, or on March 25, 2015, the Ombudsman filed the present petition before this Court, assailing the CA's March 16, 2015 Resolution, which granted Binay, Jr.'s prayer for TRO in CA-G.R. SP No. 139453, and the March 20, 2015 Resolution directing her to file a comment on Binay, Jr.'s petition for contempt in CA-G.R. SP No. 139504.^[81] The Ombudsman claims that: (a) the CA had no jurisdiction to grant Binay, Jr.'s prayer for a TRO, citing Section 14 of RA 6770,^[82] or "The Ombudsman Act of 1989," which states that no injunctive writ could be issued to delay the Ombudsman's investigation unless there is prima facie evidence that the subject matter thereof is outside the latter's jurisdiction;^[83] and (b) the CA's directive for the Ombudsman to comment on Binay, Jr.'s petition for contempt is illegal and improper, considering that the Ombudsman is an impeachable officer, and therefore, cannot be subjected to contempt proceedings.^[84]

In his comment^[85] filed on April 6, 2015, Binay, Jr. argues that Section 1, Article VIII of the 1987 Constitution specifically grants the CA judicial power to review acts of any branch or instrumentality of government, including the Office of the Ombudsman, in case of grave abuse of discretion amounting to lack or excess of jurisdiction, which he asserts was committed in this case when said office issued the preventive suspension order against him.^[86] Binay, Jr. posits that it was incumbent upon the Ombudsman to have been apprised of the condonation doctrine as this would have weighed heavily in determining whether there was strong evidence to warrant the issuance of the preventive suspension order.^[87] In this relation, Binay, Jr. maintains that the CA correctly enjoined the implementation of the preventive suspension order given his clear and unmistakable right to public office, and that it is clear that he could not be held administratively liable for any of the charges against him since his subsequent re-election in 2013 operated as a condonation of any administrative offenses he may have committed during his previous term.^[88] As regards the CA's order for the Ombudsman to comment on his petition for contempt, Binay, Jr. submits that while the Ombudsman is indeed an impeachable officer and, hence, cannot be removed from office except by way of impeachment, an action for contempt imposes the penalty of fine and imprisonment, without necessarily resulting in removal from office. Thus, the fact that the Ombudsman is an impeachable officer should not deprive the CA of its inherent power to punish