

## THIRD DIVISION

[ G.R. Nos. 169359-61, June 01, 2011 ]

**MARCELO G. GANADEN, OSCAR B. MINA, JOSE M. BAUTISTA AND ERNESTO H. NARCISO, JR. PETITIONERS, VS. HONORABLE OFFICE OF THE OMBUDSMAN AND ROBERT K. HUMIWAT, RESPONDENTS.**

### DECISION

**VILLARAMA, JR., J.:**

Before us is the petition for certiorari of petitioners Marcelo G. Ganaden, Oscar B. Mina, Jose M. Bautista and Ernesto H. Narciso, Jr. praying for the annulment of the May 22, 2003 Joint Resolution<sup>[1]</sup> of the Office of the Ombudsman in OMB-L-C-02-0923-I to OMB-L-C-02-0926-I, as well as the August 21, 2003 and April 26, 2005 Orders<sup>[2]</sup> in OMB-L-C-02-0926-I and the July 7, 2005 Joint Order<sup>[3]</sup> in OMB-L-C-02-0923-I to OMB-L-C-02-0926-I, finding probable cause to indict them for violation of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act.

The facts that initiated the present controversy were summarized in the assailed Joint Resolution as follows:

A group of employees<sup>[4]</sup> of the National [P]ower Corp. [NPC], District IV (Cagayan Valley Area) filed a complaint against Marcelo Ganaden, NPC-Area Manager, Oscar B. Mina, Employee, NPC-Substation, Josephine V. Atal, Cashier, NPC-Substation, Jose M. Bautista, Ernesto H. Narciso, Jr. and Virgilio M. Rimando for allegedly committing the following:

1. Printing and sale of raffle tickets using NPC Resources under the direction of Mr. Ganaden by making it appear to be the project of Cagayan Valley Area Employees Association but without consultation with the NPC-District IV employees and the required permit from appropriate agencies. The employees, security guards and janitors were given tickets ranging from P200 to P1,000.00 with the instruction that [the tickets were] considered sold. However, the tickets were not drawn nor the monies collected...returned.
2. By making it appear that the assembly, erection, mounting of beams, gantry towers and steel towers at the 230 KV and 69 KV switchyard at Tuguegarao substation was thru "Pakyaw Labor" [contract for piece of work] done by the linemen of Tuguegarao substation as shown in their daily [t]ime record. In fact, based [o]n the Security In and Out Logbook and Security Attendance Sheet, there was no entry of [the alleged contractors] Mr. De Gracia nor

Jojo Mateo for the period March 29, 1999 to April 22, 1999, the period the pakyaw work [was supposedly done].

3. Mr. Ganaden influenced a certain Perfecto D. Lazaro, husband of the proprietress of Remy D. Lazaro Builders and Construction Supplier to agree that the volume of soil to be removed and hauled from the 230 KV switchyard of Tuguegarao substation be increased from the actual volume of about 5 cubic meters to 253 cubic meters with the excess payment be given to him (Ganaden).
4. On Dec[ember] 14 and 23, 2000, Mr. Ganaden's personal car with plate [n]o. TDF 366 refueled at Solano Caltex but [it was made to appear that the gas was] loaded to an NPC vehicle.
5. Mr. Ganaden, also reassigned employees from one province to another by virtue of his Office Order No. AO-99-418. However, said order was based on a fictitious and unapproved Table of Organization which was not approved by the higher management.
6. Purchase and withdrawal of tires in CY 2000 purposely to replace the tires of NPC service vehicle with Plate [No.] SEW 454, his service vehicle, but said tires were installed to his personal Nissan Pick-up car with Plate [No.] ADL 157.
7. Withdrawal and delivery of ceramic tiles in CY 2000 from SANTIAGO Substation to his house at Fairview, Quezon City which was undergoing renovation.<sup>[5]</sup>

Petitioners defended themselves through their counter-affidavits, basically offering explanations and clarifications to the alleged acts and denying having committed any illegality.

On May 22, 2003, the Office of the Deputy Ombudsman for Luzon issued the assailed Joint Resolution.<sup>[6]</sup> In said Joint Resolution, the Ombudsman found the charge that petitioners used NPC resources for printing and selling raffle tickets devoid of merit. Also, the charge that petitioner Ganaden misappropriated NPC resources (gasoline, tires and ceramic tiles) for his personal benefit were found to be unsupported by evidence. However, on the other charges, the Deputy Ombudsman for Luzon found probable cause to charge petitioners with violation of the Anti-Graft and Corrupt Practices Act. The dispositive portion of the Joint Resolution reads:

**WHEREFORE, premises considered**, it is hereby recommended that respondents **GANADEN, NARCISO and BAUTISTA** be charged with Violation of Sec. 3 (e) of R.A. 3019.

Likewise, **GANADEN and MINA** should also be charged with Violation of Sec. 3 (b) of R.A. 3019 before the proper court.

However, as to other respondents, finding no sufficient evidence to

include them in the information, case is hereby **DISMISSED**.

**SO RESOLVED.**<sup>[7]</sup>

Petitioners sought reconsideration of the resolution but their motion was denied in an Order<sup>[8]</sup> dated August 21, 2003. They subsequently filed a motion for reinvestigation and reopening but said motion was also denied in an Order<sup>[9]</sup> dated April 26, 2005. Undaunted, petitioners filed a second motion for reconsideration, which, however, was likewise denied by the Ombudsman for lack of merit in an Order<sup>[10]</sup> dated July 7, 2005.

Meanwhile, considering the denial by the Ombudsman of petitioners' motion for reconsideration on August 21, 2003, the Regional Trial Court, Branch III, of Tuguegarao City issued an Order<sup>[11]</sup> on July 11, 2005 setting petitioners' arraignment for September 16, 2005 at 8:30 in the morning.

On September 7, 2005, petitioners filed with this Court the present petition for certiorari with prayer for the issuance of a temporary restraining order and writ of preliminary injunction.<sup>[12]</sup> Petitioners pray that the Court annul the May 22, 2003 Joint Resolution, the August 21, 2003 and April 26, 2005 Orders and the July 7, 2005 Joint Order of the Office of the Ombudsman and order the dismissal of the criminal complaints against them for lack of merit.

Petitioners argue that the complaints filed against them are purely intended for harassment and done in retaliation to the reorganization petitioner Ganaden did in 1999 when he was still the NPC Area Manager in District IV-Cagayan Valley Area. They believe that the complaint is a part of a bigger persecution plan against them, pointing out that it is just one of more than thirty-four (34) pending complaints filed against them in different courts, prosecution offices, and administrative agencies.

<sup>[13]</sup>

Petitioners state that the complaint only relies on self-serving testimonies of persons who are motivated by vengeance and ill will. Petitioners aver that the Office of the Ombudsman blatantly disregarded the December 5, 2001 Comprehensive Internal Audit Report which would show that the complaints filed lack factual and legal basis. Also, petitioners point out that the Ombudsman disregarded several affidavits of workers who performed the actual hauling of soil to prove that actual hauling was indeed done. Petitioners contend that by reason of these evidentiary oversights, the Office of the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>[14]</sup>

Petitioners further question the Ombudsman's finding of conspiracy among them.<sup>[15]</sup> They argue that the findings of the Ombudsman are mere conclusions of law unsupported by any evidence that petitioner Ganaden acted in unison with other petitioners in perpetuating the alleged crime. Petitioners insist that the elements of conspiracy are simply inexistent.

Essentially, the question for our resolution is whether the Office of the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in