

SECOND DIVISION

[**G.R. Nos. 164166 & 164173-80, October 17, 2007**]

**RODOLFO S. DE JESUS, PETITIONER, VS. HON. SANDIGANBAYAN
AND OFFICE OF THE OMBUDSMAN, RESPONDENTS.**

DECISION

QUISUMBING, J.:

This special civil action for certiorari seeks the annulment of the Resolution^[1] dated March 2, 2004 of the Sandiganbayan in Criminal Cases Nos. 27894-27902, denying the motion to quash and its Resolution^[2] dated June 11, 2004, denying the motion for reconsideration.

Public respondent Office of the Ombudsman (Ombudsman) filed with the Sandiganbayan nine informations charging petitioner Rodolfo S. de Jesus and one Edelwina DG Parungao with falsification of public document under Article 171, paragraph 4 of the Revised Penal Code.^[3] These informations, except for the appointees' names,^[4] dates of appointment and salaries, similarly read as follows:

x x x x

That on December 12, 2001, or sometime prior or subsequent thereto, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused **RODOLFO S. DE JESUS** a high ranking public officer with Salary Grade 28, and **EDELWINA DG PARUNGAO**, a low ranking public officer with Salary Grade 26, being the Deputy Administrator and the Manager, HRMD, respectively, of the [Local] Water Utilities Administration (LWUA), Katipunan Road, Balara, Quezon City, conspiring and confederating together and helping each other, while in the performance of their official functions, committing the offense in relation to their office, and taking advantage of their official positions, with legal obligation to disclose the truth, did then and there wilfully, unlawfully and feloniously falsify, or cause to be falsified the appointment of one JESUSITO R. TOREN, a confidential staff of the Trustees of the said LWUA, which is a public document, by making it appear that the said appointment paper was prepared, approved and issued on October 15, 2001 and that the said appointee assumed office on the same date, thereby allowing the said appointee to withdraw or receive the salaries and allowances for the period from October 15, 2001 to December 31, 2001, when in truth and in fact the accused had known fully well that said appointee was officially appointed only on December 12, 2001, as shown by another set of appointment paper of said JESUSITO R. TOREN, endorsed and subsequently approved by the Civil Service Commission, thus making untruthful statement in a narration of facts.

CONTRARY TO LAW.^[5]

The arraignment was originally set for December 10, 2003.^[6] But, on December 1, 2003, petitioner and Parungao jointly filed a motion to quash.^[7] They contended that the Sandiganbayan lacked jurisdiction over the offense charged which was not committed in relation to their office. More so, the allegations of fact did not constitute the offense charged.

The prosecution in its comment contended that the informations were sufficient in form and substance considering that they constituted the various elements of the crime of falsification.^[8] In its rejoinder, it also claimed that the appointing power and the function to prepare the documents were inherent in their position.^[9]

The Sandiganbayan in its Resolution dated March 2, 2004, denied the motion to quash and re-set the arraignment on April 28, 2004. It ruled that it was inherent in the positions of petitioner and Parungao as Deputy Administrator and Manager of Human Resource Management Department (HRMD), respectively, to issue and approve appointment papers. Petitioner sought reconsideration but was likewise denied.

Hence this petition where petitioner contends:

I.

PUBLIC RESPONDENT SANDIGANBAYAN ERRED IN ASSUMING JURISDICTION OVER THE OFFENSE CHARGED.

II.

PUBLIC RESPONDENT SANDIGANBAYAN ERRED IN FINDING IT IS INHERENT IN BOTH POSITIONS OF ACCUSED-PETITIONER DE JESUS AS DEPUTY ADMINISTRATOR FOR ADMINISTRATIVE SERVICES, AND CO-ACCUSED PARUNGAO AS HUMAN RESOURCE MANAGEMENT DEPARTMENT MANAGER TO APPROVE APPOINTMENTS OF LWUA EMPLOYEES, PARTICULARLY THE CONFIDENTIAL STAFF OF THE LWUA BOARD OF TRUSTEES.

III.

PUBLIC RESPONDENT SANDIGANBAYAN ERRED IN AMENDING BY JUDICIAL LEGISLATION THE PROVISIONS OF P.D. 198, AS AMENDED, AND EXEC. ORDER NO. 286, S. 1995, RELATIVE TO APPOINTING AUTHORITIES.

IV.

PUBLIC RESPONDENT SANDIGANBAYAN ERRED IN FINDING THAT THE FACTS CHARGED IN THE NINE (9) INFORMATIONS CONSTITUTE AN OFFENSE.

V.

PUBLIC RESPONDENT SANDIGANBAYAN ERRED IN FINDING THAT THE ACCUSED-PETITIONER DE JESUS [WAS] DIRECTLY RESPONSIBLE FOR THE PAYMENT OF BACK SALARIES, ALLOWANCES AND OTHER BENEFITS OF THE BOARD'S CONFIDENTIAL STAFF.^[10]

Simply, the issue in this case is whether the resolutions of the Sandiganbayan denying petitioner's motion to quash were issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner contends that the Sandiganbayan has no jurisdiction over the offense charged since the informations did not show that his position as Deputy Administrator and Parungao's position as Manager of HRMD had a connection with the offense. According to him, the material facts proving the close intimacy of the offense charged and his official functions must be set forth in the informations and not mere conclusions of law.^[11] More so, the informations were based on the Ombudsman's erroneous belief that the power to appoint was inherent in the positions of petitioner and Parungao when in fact he could only sign appointment papers already approved by the appointing authority, in this case, the LWUA Trustees and Administrator.

Further, petitioner avers that the informations failed to disclose material facts with regard to the other set of appointment papers sent to the Civil Service Commission (CSC).

Lastly, petitioner claims that the allegations do not constitute an offense such that he does not have any legal obligation to disclose the truth of the facts narrated in the alleged fraudulent appointment papers and that the narration of facts therein is not false. He also asserts that he is not directly responsible for the payment of the back salaries, allowances and other benefits received by the appointees.

For its part, public respondent Ombudsman, through the Office of the Special Prosecutor, counters that the present petition is premature, considering that the Sandiganbayan granted petitioner's motion for reinvestigation.

It also avers that the very nature of the positions of petitioner and Parungao mandates them to disclose the truth when the nine confidential employees of the LWUA Board were officially appointed and when they actually assumed office.

Further, it maintains that petitioner can, under a delegated authority, sign the appointments previously approved by the Administrator or the Board of Trustees; he can advise the Administrator and the Board of Trustees on the legality of the appointments; and he was bound to prepare, approve and issue only correct appointments. Upon investigation, it was established that he had prepared, approved and issued the appointment papers with dates of appointment different from those when the appointees actually assumed office.^[12] It further claims that petitioner's admission that there are two sets of appointment papers more than sustains the prosecutorial indictments against him and Parungao.

Moreover, it maintains that the Ombudsman determined the existence of probable cause after it had evaluated the documents submitted by the parties. It could not

have gone beyond its function of determining probable cause and filing the informations. The alleged failure of the Ombudsman in its investigation would not affect the validity of the informations since the absence of preliminary investigation neither affects the court's jurisdiction over the case, nor impairs the validity of the informations.^[13]

Lastly, it contends that the allegations in the informations constitute an offense since petitioner and Parungao, in view of their positions, are required to disclose the truth of the facts they had narrated in the fraudulent documents, and such narration of facts in the appointment papers was false. For issuing the appointment papers, petitioner and Parungao are also directly responsible for the payment of back salaries, allowances and other benefits of the appointees.

At the outset, we stress the settled rule that criminal prosecutions may not be restrained, either through a preliminary or final injunction or a writ of prohibition, except in the following instances:

- (1) To afford adequate protection to the constitutional rights of the accused;
- (2) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- (3) When there is a prejudicial question which is sub-judice;
- (4) When the acts of the officer are without or in excess of authority;
- (5) Where the prosecution is under an invalid law, ordinance or regulation;
- (6) When double jeopardy is clearly apparent;
- (7) Where the Court has no jurisdiction over the offense;
- (8) Where it is a case of persecution rather than prosecution;
- (9) Where the charges are manifestly false and motivated by lust for vengeance;
- (10) When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied;
- (11) Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners.^[14]

Thus, while the Ombudsman has the full discretion to determine whether or not a criminal case should be filed, this Court is not precluded from reviewing the Ombudsman's action when there is an abuse of discretion, in which case Rule 65 of the Rules of Court may exceptionally be invoked pursuant to Section 1,^[15] Article VIII of the 1987 Constitution. Accordingly, where the finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, we have held that while there is no