

FIRST DIVISION

[G.R. NO. 159949, February 27, 2006]

VADM. MARIANO J. DUMANGCAS, JR., PETITIONER, VS. HON. SIMEON V. MARCELO, OMBUDSMAN, DENNIS M. VILLAINACIO, SPECIAL PROSECUTOR, ROBERT E. KALLOS, DEPUTY SPECIAL PROSECUTOR, HUMPHREY T. MONTEROSO, DIRECTOR, PROSECUTION BUREAU AND DANILO S. LOPEZ, SPECIAL PROSECUTION OFFICER III, OFFICE OF THE OMBUDSMAN, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

This special civil action for *certiorari* under Rule 65 of the Rules of Court seeks to annul and set aside the order^[1] dated 25 November 2002 in OMB-4-97-0965, affirming and reinstating *in toto* the memorandum dated 12 December 2001, and the order^[2] dated 17 September 2003 denying petitioner's motion for reconsideration.

The instant petition appears to have originated from the special audits conducted by the Commission on Audit (COA) on the Headquarters of the Philippine Navy (HPN).^[3] After perusal and evaluation of the pertinent documents in HPN, the COA auditors allegedly found evidence of violations of accounting and auditing rules. Thus, the COA auditors filed complaints before the Office of the Ombudsman based on the adverse findings they uncovered.

The findings of the COA auditors were embodied in the two audit reports, namely: (1) SAO Report No. 92-128^[4] which pertains to the transactions of the HPN for the period July 1991 to June 1992 and a portion of transactions for the period January to June 1991; and (2) SAO Report No. 94-98 which covered selected procurements or transactions made by the same agency during CYs 1990 and 1991 that were paid in 1992 and 1993.^[5]

In SAO Report No. 94-98,^[6] the audit team made the following findings and observations, *viz*:

1. Funds obligated in 1984 and 1985 amounting to P153,497,882.40 intended for payment of previous year's accounts payable were used to pay transactions incurred in 1990 and 1991 amounting to P85,854,775.50; and to cover check payments made in 1992 in the amount of P67,643,106.90 in violation of Sec. 85 of PD 1445. Moreover, these funds were not reverted to the unappropriated surplus of the General Fund of the National government in violation of Sec. 33 of PD 1177.

2. Check payments amounting to P67,643,106.95 charged against Journal Voucher No. 3159289 dated December 29, 1986 were not accounted for.
- 3.a Procurement of items costing more than P50,000 were not made through public bidding, in violation of COA Circular No. 85-55A. Instead, purchases worth P55,537,282.23 were made through emergency purchase although the items were not urgently needed or absolutely indispensable to prevent immediate danger to, or loss of life or property or to avoid detriment to the public service. As a result, purchase price of at least 131 items of medicines, medical supplies, office and construction supplies in the amount of P10,000,709.00 exceeded the prevailing market price by P6,146,444.29; the excess prices ranging from 4.90% to 1,071.25% per item. Comparison of Purchase Orders revealed a price difference of P356,690.20 on similar items procured by the command.
- 3.b Alterations were noted in the dates of Sales Invoices, Purchase Orders, Requisition and Issue Vouchers (RIVs) and other documents for paid purchases amounting to P19,949,884.50. Moreover, two suppliers who purportedly participated in the canvass as shown in the Canvass Proposals for purchases amounting to P17,692,829.07 denied having quoted the prices indicated in the canvass form nor participated in the canvass.
- 3.c Purchases of medicines and medical supplies in 1990 and 1991 worth P53,998,124.00 were not accounted for. Moreover, the alleged deliveries of medicines and medical supplies at Cavite Naval Hospital and at the Office of the Chief Surgeon amounting to P16,195,519.87 and P23,879,397.00, respectively, were in excess of the normal three-month supply requirement of these offices, in violation of COA Circular No. 85-55A dated September 8, 1985.
- 3.d Construction and asphaltting materials amounting to P31,269,562.66 could not be accounted for. No documents could be presented by the concerned officials to show that these materials were actually received by the Phil. Navy units nor were they able to pinpoint the exact location of the projects where these materials were used. Moreover, no approved program of work were submitted for these projects contrary to the Implementing Rules and Regulations of PD 1594. These purchases were made through the Emergency mode of procurement and no bidding was conducted in violation of COA Cir. No. 85-55A dated September 8, 1985.
- 3.e Deliveries of construction materials and supplies used at the Subic Command totaling P10.4M could not be validated since delivery receipts furnished by the command did not indicate the Sales Invoice to which these pertains; and most DR's were not acknowledged by the recipients. Furthermore, the former SUBCOM Supply Accountable Officer certified that the signatures on the documents in support of claims amounting

to P3.2M were not genuine signatures. Lastly, P9.3M worth of these construction materials as well as those used at Naval District I in San Fernando, La Union amounting to P1,093,910 were purchased in Metro Manila instead of within the locality of Zambales and La Union, in violation of Section 11 of PD 1342.

- 3.f Office and construction materials worth P12M were substituted with office equipments and supplies and lesser quantity of construction materials without any amendment or changes in the Purchase Orders. Furthermore, items worth P4,498,710.00 were delivered beyond the prescribed date of delivery but liquidated damages amounting to P895,947 was not deducted from the payments made to supplier for items purchased, in violation of Provision III CI.7 of the Implementing Rules and Regulations of PD 1594.
- 3.g The validity of the purchase of various supplies and materials and vehicle/ship spare parts worth P6.88M was not established due to absence of pertinent supporting documents or submission of documents of doubtful authenticity, in violation of Section 4(6) of PD No. 1445.
- 3.h Spare parts amounting to P886,000 were purchased from a supplier who did not quote the lowest price; with a price difference (from that of the lowest bidder) of P85,750. Moreover an overpayment of P13,180 was noted in at least five claims due to erroneous computations. Further, it was noted that hospital supplies amounting to P999,741 were paid in 1992 but the Sales Invoice attached was dated August 26, 1994.
- 3.i Medicines, medical supplies, construction materials, and office supplies delivered were not subjected to quality test, in violation of Sec. 481 of the Government Accounting and Auditing Manual (GAAM). Moreover, no report of inspection of medicines delivered were submitted to COA within 24 hours as required under COA Cir. No. 89-299-A and SEC. 465 of GAAM.
- 3.j The Certification of Availability of Fund on the Purchase Orders dated April to August 1990 in the total amount of P10,560,830.00 were signed by an unauthorized official.
- 4.a Four suppliers who transacted business at HPN for supply of items worth P47,381,428.50 could not be found at their reported business addresses; casting doubt on the legitimacy of the transaction.
- 4.b Purchase Orders amounting to P54,398,743.56 were split to avoid review and approval of higher authorities in violation of COA Cir. No. 76-41 dated July 30, 1976 and Naval Logistics Directive No. 05-88 dated October 17, 1988. Likewise, Purchase Orders for items worth P1,050,740 were not acknowledged by the Supplier contrary to the provisions of COA Cir. No. 78-84 dated August 8, 1978.

5.a Twenty-two checks totaling P18,860,945.64 issued on July 30, 1993 were not supported by duly approved disbursement vouchers and were not included in the Report of Checks Issued by Deputized Disbursing Officer (RCIDDO); and all payments were deposited to one bank account.

5.b Checks amounting to P26,304,180.70 were dated one day to six months prior to the processing of the related disbursement vouchers, indicative that checks were prepared and issued without the duly processed and approved vouchers in violation of Sec. 4(b) of PD 1445.^[7]

Resident Ombudsman for the Department of National Defense, Atty. Merba A. Waga, conducted a preliminary investigation on the allegations in SAO Report No. 94-98. In a memorandum dated 17 March 1997, Atty. Waga recommended to the then Ombudsman Aniano A. Desierto that a further preliminary investigation be conducted by the Office of the Deputy Ombudsman for the Military (ODOM) on the audit findings and observations of the COA, particularly for findings numbered 1, 2, 3.a, 3.c, 3.d, 3.e, 3.h, and 5.a.

The ODOM prosecutors conducted the preliminary investigation. The case was docketed as OMB-4-97-0965. In a resolution dated 18 March 1999, the ODOM prosecutors recommended the dismissal of the said case. The resolution was forwarded to the Office of the Special Prosecutor for review.

In a memorandum dated 11 August 1999, Special Prosecution Officers (SPO) Antonio T. Manzano and Florita S. Linco recommended that the 18 March 1999 resolution of the ODOM investigators be set aside and that the OSP be allowed to conduct a preliminary investigation and reinvestigation of the case. The recommendation was approved by Ombudsman Desierto.

After conducting the preliminary investigation and reinvestigation of the case, SPO Linco, in a memorandum dated 12 December 2001, recommended that petitioner, among other respondents in OMB-4-97-0965, be indicted for 170 counts of violation of Section 3(e), Republic Act No. 3019, 21 counts of Malversation of Public Funds Thru Falsification of Public Documents and one count of violation of Section 4(a) of Rep. Act 6713. Ombudsman Desierto approved the recommendation and accordingly, informations were filed before the Sandiganbayan. The cases were docketed as Criminal Case Nos. 27234-27429 and were raffled to the third division thereof.

Petitioner filed a motion for reconsideration or reinvestigation before the Sandiganbayan which was granted by the said court.

In an order dated 25 November 2002, Special Prosecution Officer II Cicero D. Jurado, Jr. recommended the dismissal of Criminal Case Nos. 27234-27429. Ombudsman Simeon V. Marcelo disapproved the said recommendation and affirmed the 12 December 2001 memorandum recommending the filing of informations against, among other accused, petitioner, viz:

The recommended dismissal of the charges against respondents VAdm. Dumangcas, et al. is denied, while the implied recommended continuation of the prosecution of respondents Capt. Batestil, et al. is

approved. Otherwise stated, the Resolution dated Dec. 12, 2001 (approved on Mar. 1, 2002) is affirmed *in toto*, there being no cogent reason to set aside or modify the same.^[8]

Aggrieved, petitioner filed a motion for reconsideration. The said motion was denied in an order dated 17 September 2003.

Hence, the instant petition.

The sole issue in this petition is whether or not the Ombudsman has acted with grave abuse of discretion amounting to lack or excess of jurisdiction in setting aside the recommendation of SPO Cicero D. Jurado, Jr. to dismiss the charges against petitioner in Criminal Case Nos. 27234-27429.

Petitioner contends that the Ombudsman committed grave abuse of discretion in finding probable cause against him. He asserts that there exists no probable cause to indict him as shown by the foregoing proceedings: first, in a case filed in OMB-4-97-0965 involving P53 million, the same was dismissed by the Office of the Ombudsman on the ground that the COA auditors made the admission that an error was committed in the conduct of their audit; second, in Criminal Case Nos. 25362-25385 (another separate cases filed before the Sandiganbayan), the charges against him were dropped as there was no probable cause to include him in the said cases. Petitioner argues that since the foregoing proceedings were based on SAO Report No. 92-128 in the same manner as the instant indictments, then to hold him liable of the latter is baseless considering his exculpation in the former.

He likewise bewails the manner in which the Ombudsman resolved the motion for reconsideration/reinvestigation by merely making a marginal note. Said marginal note which does not clearly and distinctly state the facts and the law on which it is based offends his right to due process.

On the other hand, the Ombudsman, through the Office of the Special Prosecutor maintains that the present indictments against petitioner, *i.e.*, Criminal Case Nos. 27234-27429 have reference to COA SAO Report No. 92-128 contrary to the asseveration of the petitioner. The Ombudsman points out that SAO Report No. 92-128 is not the subject of any of the cases in the instant indictments.

Petitioner's argument is not meritorious.

Petitioner anchors his contention on the belief that SAO Report No. 92-128 is the basis of OMB-4-97-0965, memorandum dated 12 December 2001 and ultimately Criminal Case Nos. 27234-27429. A closer examination of the records of this case reveals the contrary view.

It must be noted that the subject matter of memorandum dated 17 March 1997 is the SAO Report No. 94-98, *viz*:

x x x The first audit report, SAO Report No. 92-128 was the subject of our earlier Memorandum for the Honorable Ombudsman dated March 21, 1997. Instant Memorandum pertained to the audit report (SAO Report No. 94-98) of the second audit team.^[9] (Emphasis supplied.)