

## FIRST DIVISION

[ G.R. NOS. 158613-14, February 22, 2006 ]

**EMMANUEL T. PONTEJOS, PETITIONER, VS. OFFICE OF THE  
OMBUDSMAN AND RESTITUTO AQUINO, RESPONDENTS.**

### DECISION

#### **PANGANIBAN, CJ:**

The Constitution and the Ombudsman Act of 1989 have endowed the Office of the Ombudsman (OMB) with a wide latitude of investigatory and prosecutorial powers -- virtually free from legislative, executive or judicial intervention -- in order to insulate it from outside pressure and improper influence. Unless tainted with grave abuse of discretion, the judgments and orders of the OMB shall not be reversed, modified or otherwise interfered with by this Court.

#### The Case

Before us is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the Rules of Court, assailing the February 19, 1999 Joint Resolution,<sup>[2]</sup> May 21, 2002 Review and Recommendation<sup>[3]</sup> and March 14, 2003 Order<sup>[4]</sup> of the Evaluation and Preliminary Investigation Bureau of the OMB. The challenged Resolution disposed as follows:

"WHEREFORE, premises considered, the following are respectfully recommended, thus:

*'1. That an Information for Estafa (one count) be filed against respondent EMMANUEL T. PONTEJOS before the Regional Trial Court of Quezon City;*

*'2. That an Information for Direct Bribery be filed against respondent Atty. EMMANUEL T. PONTEJOS before the Regional Trial Court of Quezon City;*

*'3. That an Information for Unauthorized Practice of Profession in violation of R.A. 6713 be filed against Atty. EMMANUEL T. PONTEJOS before the Metropolitan Trial Court of Quezon City; and*

*'4. That the complaint against Director WILFREDO I. IMPERIAL and RODERICK NGO be dismissed for insufficiency of evidence; and*

*'5. That respondent CARMENCITA ATOS Y. RUIZ be extended immunity from criminal prosecution in accordance with Section 17 of R.A. 6770 and be utilized as a state witness.'"*<sup>[5]</sup>

The Review and Recommendation disapproved Assistant City Prosecutor De Guzman's recommendation to amend the Information for estafa by including Atos as

a co-accused; while the Order denied reconsideration.

### **The Facts**

Sometime in 1998, Restituto P. Aquino filed an Affidavit/Complaint before the Ombudsman against Emmanuel T. Pontejos (arbiter), Wilfredo I. Imperial (regional director) and Carmencita R. Atos (legal staff), all of them officials of the Housing and Land Use Regulatory Board (HLURB), and Roderick Ngo, a private individual.<sup>[6]</sup>

Aquino accused Pontejos and Atos of conspiring to exact money in exchange for a favorable decision of a case against Roderick Ngo then pending in the HLURB. He further averred that Pontejos acted as his counsel during the time when the latter was the hearing officer of the case.<sup>[7]</sup> Moreover, Atos allegedly received P10,000 in check, which was part of the consideration for a favorable decision. Imperial was implicated as an alleged accomplice.<sup>[8]</sup>

During preliminary investigation, the following documents were adduced:

"a. Affidavit-complaint of Restituto P. Aquino, dated 14 August 1998 whereby the complainant narrated at length the charges against respondents;

"b. Affidavit of Ruth Adel in corroboration of Mr. Aquino's affidavit;

"c. Another affidavit of Mr. Restituto P. Aquino wherein he revealed the months and dates where he had meetings with Atty. Pontejos and Carmen Atos at Alps Restaurant, Racks Restaurant, Little Quiapo (Q.C.) and Chowking Restaurant;

"d. Another affidavit of Ruth Adel, wherein the affiant revealed that Ms. Carmen Atos received P10,000.00 in check and had it encashed;

"e. Affidavit of Rowena Alcovindas corroborating Adel's affidavit;

"f. A copy of the encashed check showing Ms. Atos signature at the back of the check;

"g. Copies of several drafts of decision and petitions either prepared in handwriting of Atty. Pontejos or in typewritten form with corrections from Atty. Pontejos in his handwriting;

"h. NBI Examination Report revealing that the samples and questioned documents were authored by one person (Atty. Pontejos) x x x.

"i. Another affidavit dated 15 February 1999, of [C]omplainant Aquino, wherein he mentioned the places and dates of supposed meetings with Pontejos and Atos as well as the amounts received by them in exchange of legal services and/or favor promised."<sup>[9]</sup>

The respondents filed separate Counter-Affidavits to refute the charges.<sup>[10]</sup> They claimed that the meetings mentioned by Aquino did not take place. Neither did they

receive any money from him.<sup>[11]</sup>

Pontejos added that there were three cases involving Aquino. The first one, REM-8652 was filed in 1995 against Aquino by buyers of lots in a subdivision which he allegedly failed to develop. The second one, REM-9526 was filed by Aquino against Hammercon Inc. (allegedly owned by Roderick Ngo) for revocation of registration and license. The third case, REM-9817 was filed by Aquino against Hammercon for specific performance or rescission of contract.<sup>[12]</sup> Pontejos decided the first and third cases against Aquino. The second case, handled by Imperial, was also decided against Aquino. It was allegedly implausible to side with Aquino, who lost all of the cases.<sup>[13]</sup>

Imperial denied all links to the extortion allegedly perpetrated by Pontejos and Atos. Moreover, he could not have shared with the alleged pay-off money given in January 1998, because he decided the case as far back as September 1997.<sup>[14]</sup>

Atos justified receipt of the P10,000 from Aquino, claiming that it was payment for hams and cold cuts ordered in December 1996 and January 1997 by Ruth Adel, one of the affiants.<sup>[15]</sup> In support of this defense, she submitted Joint-Affidavits of her officemates and neighbors confirming her business activities.<sup>[16]</sup>

Subsequently, Atos issued two Affidavits where she retracted her original defense.<sup>[17]</sup> She encashed the check allegedly to accommodate Pontejos, who was her boss. She also recounted attending at least four meetings with Pontejos, Aquino and Adel during which Pontejos offered legal services to Aquino and discussed Aquino's pending cases.<sup>[18]</sup>

### **Ruling of the Overall Deputy Ombudsman**

The Overall Deputy Ombudsman found probable cause against Pontejos for the crimes of estafa, direct bribery and illegal practice of profession in violation of RA 6713.

There was estafa because Pontejos allegedly made false pretenses to Aquino in order to receive P25,000.<sup>[19]</sup> He supposedly assured the cancellation of Hammercon's license to sell and registration certificate, notwithstanding the contrary decision issued by Imperial.<sup>[20]</sup>

Pontejos was guilty of direct bribery for demanding and receiving P100,000 from Aquino in exchange for a favorable decision.<sup>[21]</sup> Further, Pontejos should be charged with unauthorized practice of law for providing legal services to Aquino and receiving litigation expenses.<sup>[22]</sup> He purportedly prepared the pleadings that Aquino submitted; these pleadings were confirmed by the NBI to have been authored by him.<sup>[23]</sup>

The Overall Deputy Ombudsman ruled that Atos should be extended immunity from criminal prosecution and discharged as state witness.<sup>[24]</sup> According to him, Atos was merely a subordinate who could have acted only upon the prodding of Pontejos. Also, her testimony was necessary to build a case against Pontejos.<sup>[25]</sup>

On June 21, 1999, then Ombudsman Aniano A. Desierto issued a Resolution extending immunity to Atos on the condition that she would appear and testify against Pontejos in accordance with the Affidavits she submitted during the preliminary investigation.<sup>[26]</sup> The Resolution noted that Atos' testimony was extremely necessary to prove the offenses charged against Pontejos and that the available evidence showed that, being a mere clerk, she did not appear to be the most guilty.<sup>[27]</sup>

The criminal cases for estafa and direct bribery against Pontejos were filed before the Regional Trial Court of Quezon City.<sup>[28]</sup> On May 13, 1999, Pontejos filed a Motion for Reinvestigation<sup>[29]</sup> to be conducted by the City Prosecutor without remanding the case to the Ombudsman. The prosecution had no objection. Thus, hearing of the case was held in abeyance pending the outcome of the reinvestigation.<sup>[30]</sup>

Assistant City Prosecutor Ma. Teresa E. De Guzman conducted the reinvestigation and thereafter recommended to amend the Information for estafa to include Atos as co-accused. According to her, the power to grant immunity pertains solely to the courts, not to the prosecution which can only recommend.<sup>[31]</sup> The Overall Deputy Ombudsman disapproved De Guzman's report in the May 21, 2002 Review and Recommendation.

The March 14, 2003 Order denied reconsideration. Thereafter, Pontejos filed this Petition.<sup>[32]</sup>

### **The Issues**

Petitioner raises the following issues:

"1. Whether or not the Ombudsman erred in not declaring that petitioner was denied due process when to this date he was never officially furnished a copy of the Affidavit dated 18 February 1999 of Ms. Atos amounting to lack of or excess of jurisdiction;

"2. Whether or not proceedings before the Ombudsman was tainted with ill motives amounting to lack of or excess of jurisdiction;

"3. Whether or not the Ombudsman committed grave abuse of discretion amounting to lack of or excess of jurisdiction when it granted an immunity to Ms. Atos to become a state witness on almost the same date the Affidavit was executed and submitted;

"4. Whether or not the Ombudsman erred in singling out petitioner for criminal prosecution amounting to lack of or excess of jurisdiction;

"5. Whether or not the Ombudsman erred in giving weight to the Affidavit dated 18 February 1999 of Ms. Atos despite an earlier affidavit which totally contradicts her averments therein."<sup>[33]</sup>

### **The Court's Ruling**

The Petition is unmeritorious.

**First Issue:**  
**Finding of Probable Cause**

Probable cause is defined as such facts and circumstances that would engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial.<sup>[34]</sup> Its determination during a preliminary investigation is a function left to the government prosecutor, which in this case is the OMB.<sup>[35]</sup> As a rule, the courts do not interfere with the OMB's exercise of discretion in determining probable cause unless there are compelling reasons.<sup>[36]</sup> This policy is based on constitutional, statutory and practical considerations. The Constitution and RA 6770 (the Ombudsman Act of 1989) grants the OMB with a wide latitude of investigatory and prosecutorial powers that is virtually free from executive, legislative or judicial intervention, in order to insulate it from outside pressure and improper influence.<sup>[37]</sup>

However, there are certain instances when this Court may intervene in the prosecution of cases. *Brocka v. Enrile*<sup>[38]</sup> cited some of these exceptions, as follows: (1) when necessary 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 the lust for vengeance; and (10) when there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied.<sup>[39]</sup>

The remedy to challenge the OMB's orders or resolutions in criminal cases is through a petition for certiorari under Rule 65 to this Court.<sup>[40]</sup>

**Grave Abuse of Discretion**

A petition for certiorari is the remedy when a government officer has acted with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no other plain, speedy, and adequate remedy in the ordinary course of law.<sup>[41]</sup>

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction.<sup>[42]</sup> The exercise of power must have been done in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.<sup>[43]</sup>

Petitioner theorizes that the OMB resolved the Complaint against him for reasons other than the merits of the case. He specifically charges HLURB Commissioner Teresita Desierto, the spouse of Ombudsman Desierto, as the "unseen hand" behind the filing of the criminal cases.<sup>[44]</sup> Commissioner Desierto allegedly harbored