

FIRST DIVISION

[G.R. NO. 169098, October 12, 2006]

MANUEL BAVIERA, PETITIONER, VS. ROLANDO B. ZOLETA, IN HIS CAPACITY AS GRAFT INVESTIGATION AND PROSECUTION OFFICER II; MARY SUSAN S. GUILLERMO, IN HER CAPACITY AS DIRECTOR, PRELIMINARY INVESTIGATION AND ADMINISTRATIVE ADJUDICATION BUREAU-B; PELAGIO S. APOSTOL, IN HIS CAPACITY AS ASSISTANT OMBUDSMAN, PAMO; ORLANDO C. CASIMIRO, IN HIS CAPACITY AS ASSISTANT OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES; AND MA. MERCEDITAS N. GUTIERREZ (THEN) UNDERSECRETARY, DEPARTMENT OF JUSTICE, RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is a petition for review on *certiorari* of the Resolution^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 87472 dismissing the petition for *certiorari* filed by Manuel V. Baviera, assailing the resolution of the Office of the Ombudsman in OMB-C-C-03-0612-J, and the resolution of the CA denying the motion for reconsideration.

The Antecedents

Manuel V. Baviera filed several complaints^[2] against officers or directors of the Standard Chartered Bank (SCB), Philippine Branch, including Sridhar Raman, an Indian national who was the Chief Finance Officer of the bank, as respondents with the Securities and Exchange Commission (SEC), *Bangko Sentral ng Pilipinas* (BSP), Anti-Money Laundering Council (AMLC), National Labor Relations Commission (NLRC), and the Department of Justice (DOJ), to wit:

	CASE FILED	DOCKET NUMBER	LAW AND/OR RULES VIOLATED
BANGKO SENTRAL NG PILIPINAS	Administrative	Received by Supervision and Examination Sector, SED Dept. II	Violations of General Banking Law of 2000. The New Central Bank Act, various BSP-Circular letters and BSP Manual Regulations
SECURITIES AND EXCHANGE COMMISSION	Administrative	CED Case No. 03-2763	Securities Regulation Code, Corporation Code of the Philippines, and/or Various Rules and

			Regulations of the SEC
ANTI-MONEY LAUNDERING COUNCIL	Money Laundering	Received by Office of the Executive Director	Violation of Anti-Money Laundering Act as Amended
NATIONAL LABOR RELATIONS COMMISSION	Illegal Dismissal	NLRC-NCR Case No. 006-06-07434-2003	Labor Code of the Philippines
DEPARTMENT OF JUSTICE	Syndicated Estafa	I.S. No. 2003-1059	P.D. 1689 in connection with Article 315 of the Revised Penal Code
BUREAU OF INTERNAL REVENUE	Tax Fraud and Non-declaration of Income	Received by Commissioner's Office	National Internal Revenue Code

Baviera claimed that he was a former employee of the bank, and at the same time, an investor who was victimized by the officers or directors of SCB, all of whom conspired with one another in defrauding him as well as the investing public by soliciting funds in unregistered and unauthorized foreign stocks and securities.

On September 18, 2003, Baviera, through counsel, requested the Secretary of Justice for the issuance of a Hold Departure Order (HDO) against some of the officers and directors of SCB, including Raman.^[3]

On September 26, 2003, then Secretary of Justice Simeon Datumanong issued an Order^[4] granting the request of Baviera. He issued HDO No. 0193. A copy of the order was served on the Bureau of Immigration (BI) for implementation. On the same day, the BI issued an Order^[5] implementing that of the Secretary of Justice.

Meanwhile, Secretary Datumanong went to Vienna, Austria, to attend a conference. Undersecretary Merceditas Navarro-Gutierrez was designated as Acting Secretary of the DOJ.^[6]

On September 28, 2003, a Sunday, Raman arrived at the Ninoy Aquino International Airport (NAIA) for his trip to Singapore but was apprehended by BI agents and NAIA officials based on the HDO of the Secretary of Justice. However, the next day, September 29, 2003, Raman was able to leave the country via Singapore Airlines-SQ-71 at an 8:15 a.m. flight. He was to attend a conference in Singapore and to return to the Philippines on October 2, 2003.

It turned out that Acting Secretary of Justice Merceditas N. Gutierrez had verbally allowed the departure of Raman. On the same day, Raman, through counsel, wrote Secretary Datumanong for the lifting of the HDO insofar as his client was concerned. ^[7] Acting Secretary Gutierrez issued an Order^[8] allowing Raman to leave the country. In said Order, she stated that the Chief State Prosecutor had indicated that he interposed no objection to the travel of Raman to Singapore.

On October 3, 2003, Baviera filed a Complaint-Affidavit with the Office of the Ombudsman charging Undersecretary Ma. Merceditas N. Gutierrez for violation of Section 3(a), (e), and (j) of Republic Act (RA) No. 3019, as amended.

The complainant alleged, *inter alia*, in his complaint that upon verbal instruction of respondent Gutierrez to the BI agents and NAIA officials, Raman was allowed to leave the country despite the HDO issued by Secretary Simeon Datumanong. He averred that the actuations of respondent Gutierrez were illegal, highly irregular and questionable for the following reasons:

- a) DOJ Sec. Datumanong issued a Hold Departure Order (HDO) against three foreign nationals, including Raman, on September 26, 2003;
- b) Also on September 26, 2003, BID Commissioner Danilo Cueto issued the necessary order and notification to all airports, seaports and exit points for the implementation of the aforesaid HDO;
- c) Raman went to the NAIA for departure out of the Philippines on Sunday, September 28, 2003;
- d) Raman was stopped by Immigration officials from leaving the country on Sunday on the strength of the HDO;
- e) Usec. Gutierrez admitted having interceded on behalf of the Indian national, thus allowing him to leave the country for Singapore at about 8:15 a.m. of Monday, September 29, 2003;
- f) Obviously, the appeal of Raman to be allowed to leave the country was made verbally either by him or thru counsel;
- g) There is no written application for temporary stay of the HDO in respect to Raman's departure;
- h) There is likewise no written order by Usec. Gutierrez allowing Raman to leave;
- i) Usec. Gutierrez claims that she cleared the matter with DOJ Sec. Datumanong who was in Vienna, Austria;
- j) If she did so, then she could have made the consultation only either by telephone or e-mail
 - i) If she consulted Sec. Datumanong by telephone, then she must have gone out of her way to go to the Department of Justice on a Sunday to use the DOJ telephone;
 - ii) If she did not go to the DOJ on a Sunday, then she must have used her own telephone and shouldered the expense to call Sec. Datumanong on behalf of her beloved Indian national or the latter's counsel;

- iii) If she cleared the matter with Sec. Datumanong by e-mail, then the burden is on her to prove that she did so by that means;
- k) It is obvious that Usec. Gutierrez went out of her way to accommodate an Indian national or the latter's lawyer on a Sunday (verbally, secretly, and when nobody was looking) to allow the Indian national to leave the country --despite an existing HDO- thus giving the Indian national unwarranted, undue preference, benefit and advantage, to the damage and prejudice of complainant.
- l) There are indications that Usec. Gutierrez will also allow the other Indian national (Ajay Kanwal) to leave for permanent posting outside the Philippines despite the existing HDO. But that's another story. Surely, another criminal charge.^[9]

Baviera further alleged that the verbal special permission granted to Raman by respondent Gutierrez was illegal as there is no specific law or DOJ rule allowing the grant of special permission or exception to an HDO. Worse, the complainant alleged, respondent Gutierrez made her verbal order on a weekend, on the basis of allegedly strong representations made by Raman. Respondent Gutierrez thus displayed arrogance of power and insolence of office, thereby extending unwarranted preference, benefits and advantage to Raman.

In her Counter-Affidavit, respondent Gutierrez denied the allegations against her. She averred that she did not violate any law or rule, in allowing Raman to leave the country. She merely upheld his rights to travel as guaranteed under the Constitution. Moreover, the DOJ may allow persons covered by HDOs to travel abroad, for a specific purpose and for a specific period of time. She further averred that:

- 11. I allowed Mr. Raman to leave the Philippines on September 29, 2003 in my capacity as Acting Secretary, not as Undersecretary as alleged in the Complaint-Affidavit. An Acting Secretary has the power and authority to perform all official acts that a Department Secretary, if personally present, could lawfully do and to exercise sound discretion under certain circumstances. In the case of an Acting Secretary of Justice, the authority extends to allowing the travel of a person subject of an HDO, like Mr. Raman, whose attendance in an official business abroad was urgent and necessary. Although I could have lifted the HDO on the ground that there was no ground for its continued enforcement, I did not do so in deference to the Secretary who issued it but, instead, allowed Mr. Raman to travel for a specific purpose and period. Secretary Datumanong eventually lifted the HDO and, therefore, ratified my act.
- 12. An individual subject of an HDO issued by the Department may be allowed to travel abroad. Even the court that issued an HDO may authorize the subject person to travel for a specific purpose and for a certain period. If the person already charged in court may be authorized to travel, there is more reason to allow the person, like

Mr. Raman, who was still subject of a preliminary investigation by a prosecutor, to travel abroad. He continues to enjoy the constitutional presumption of innocence. Thus, his rights under the law should not be unreasonably curtailed.

13. I allowed Mr. Raman to travel to Singapore because he, as Chief Finance Officer of Standard Chartered Bank (an international bank with good reputation), was invited and required to attend the Wholesale Bank International Accounting Standards Conference from September 29 to October 2, 2003. The travel was not meant to have him transferred to another branch of the bank abroad and frustrate the results of the investigations, which were the cited reasons for the HDO application. Indeed, he returned to the Philippines on October 2, 2003.
14. Allowing Mr. Raman to travel abroad under the circumstances would send a positive message to foreigners engaged in banking and business activities in the Philippines that the Government consistently upholds the rule of law and respects human rights, thereby boosting investors' confidence in the Philippines.
15. In allowing Mr. Raman to travel abroad, I relied on my oath as a lawyer and as a government official to support and defend the Constitution. I also relied on the first Whereas Clause of the above-mentioned Department Circular No. 17 dated March 19, 1998, which cites Section 6, Article III of the present Constitution that, in part, reads: "xxx Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law." Relevantly, in *Kant Kwong v. Presidential Commission on Good Government*, the Supreme Court *En Banc* held:

xxx. The right to travel and to freedom of movement is a fundamental right guaranteed by the 1987 Constitution and the Universal Declaration of Human Rights to which the Philippines is a signatory. **The right extends to all residents regardless of nationality.** And "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law."
(Emphasis ours)^[10]

Respondent Gutierrez requested the Office of the Ombudsman to dismiss the complaint against her, thus:

- (a) There is no basis for the complaint for violation of Section 3(a) of RA No. 3019, as amended, because I never persuaded, induced nor influence any public officer to violate the rules and regulations duly promulgated by competent authority. When I allowed Mr. Raman to travel, I relied on Department Circular No. 17 (1998), particularly the first Whereas Clause thereof, recognizing every