

## THIRD DIVISION

**[ G.R. No. 165125, November 18, 2005 ]**

**CESAR T. VILLANUEVA, PEDRO S. SANTOS, AND ROY C. SORIANO, PETITIONERS, VS. MAYOR FELIX V. OPLE AND VICE-MAYOR JOSEFINA R. CONTRERAS, RESPONDENTS.**

### DECISION

#### **PANGANIBAN, J.:**

This Court's review powers over resolutions and orders of the Office of the Ombudsman is restricted only to determining whether grave abuse of discretion, that is, capricious or whimsical exercise of judgment, has been committed. The Court is not authorized to correct every error or mistake allegedly committed by that constitutionally independent government agency. Thus, absent any showing of grave abuse of discretion, we have consistently sustained its determination of the existence or the nonexistence of probable cause.

#### **The Case**

Before us is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court, assailing the April 21, 2004 Resolution<sup>[2]</sup> and the August 27, 2004 Order<sup>[3]</sup> of the deputy ombudsman for Luzon in OMB-L-C-03-1550-L. The challenged Resolution disposed as follows:

**"WHEREFORE,** in view of the foregoing, it is respectfully recommended that the present case lodged against respondents Felix V. Ople and Josefina R. Contreras, Mayor and Vice Mayor, respectively of the Municipality of Hagonoy, Bulacan, be DISMISSED for lack of probable cause."<sup>[4]</sup>

The assailed Resolution denied petitioners' Motion for Reconsideration.

#### **The Facts**

On December 8, 2003, Petitioners Cesar T. Villanueva, Pedro S. Santos, and Roy C. Soriano filed a Joint Affidavit-Complaint<sup>[5]</sup> before the Office of the Ombudsman. They charged incumbent Mayor Felix V. Ople and Vice-Mayor Josefina R. Contreras of Hagonoy, Bulacan, of violation of Section 3(e)<sup>[6]</sup> of RA No. 3019 or the "Anti-Graft and Corrupt Practices Act,"<sup>[7]</sup> in relation to Sections 305-(a),<sup>[8]</sup> 318<sup>[9]</sup> and 351<sup>[10]</sup> of the Local Government Code (LGC).

Petitioners alleged that the annual budget for Fiscal Year (FY) 2003 of the Municipality of Hagonoy had been submitted by Mayor Ople -- through Vice-Mayor Contreras -- to the Sangguniang Bayan of Hagonoy, only on June 11, 2003, instead

of on October 16 of the preceding year, as mandated by Section 318, paragraph 2 of Book II, Title V, Chapter III of the LGC. They added that Vice-Mayor Contreras had failed to refer the budget to the chief legal counsel of the municipality; and that, together with the other incumbent members of the Sangguniang Bayan, she had instead sought the approval of the alleged "Illegal Annual Budget for 2003."<sup>[11]</sup>

On the theory that no enabling resolution had been enacted authorizing expenditures of the municipality to be based on the annual budget for the preceding year, petitioners claimed that the disbursement of public funds during the period January 1, 2003 to July 11, 2003<sup>[12]</sup> and/or August 27, 2003<sup>[13]</sup> had been illegal. They therefore prayed that respondents be held liable for the illegal disbursements done in the discharge of official functions, through evident bad faith and/or gross negligence that had caused undue injury to the Municipality of Hagonoy, Bulacan.<sup>[14]</sup>

Respondents filed their respective Counter-Affidavits, both dated February 27, 2004, and practically identical in form and substance.<sup>[15]</sup> They stated that the proposed budget had actually been submitted on June 26, 2003, and not June 11, 2003. It was submitted only on that date, because Commission on Audit (COA) Circular No. 2002-2003, otherwise known as the "New Government Accounting System," had mandated the revision of accounting procedures.<sup>[16]</sup> In compliance with that Circular, the municipality had to review and modify almost all of its financial transactions beginning January 1, 2002. In order to prepare a feasible budget, they allegedly had to know the locality's financial position for the prior year, data on which had to come from the accounting department.<sup>[17]</sup>

According to respondents, the Sangguniang Bayan of Hagonoy and the Sangguniang Panlalawigan of Bulacan eventually passed and approved the proposed budget, whose effectivity date was January 1, 2003.<sup>[18]</sup> They averred that the Local Government Code had not required the vice-mayor to submit the budget to the legal officer of the municipality for review.<sup>[19]</sup>

Finally, respondents claimed that the disbursements of public funds during the absence of an approved budget were legal under Section 323<sup>[20]</sup> of RA 7160 or the LGC.<sup>[21]</sup>

In their Reply and Supplemental Reply, petitioners reiterated their allegations in their Joint Affidavit-Complaint, in which they stressed that Section 323 of the LGC had required the mayor to submit the budget for the coming fiscal year not later than October 16 of the current FY.<sup>[22]</sup>

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

The Office of the Deputy Ombudsman for Luzon (OMB-Luzon) found no probable cause against respondents.<sup>[23]</sup> It noted that the charge was premised on allegedly illegal disbursements that had caused undue injury to the government. Yet, petitioners failed to specify which disbursements had been made illegally. Besides, there was no proof that the expenditures unduly benefited certain individuals or were made pursuant to the regular operations of the municipality.<sup>[24]</sup>

The OMB-Luzon also held that Section 323 of the LGC had authorized the reenactment of the budget for the preceding year to allow the municipal government to function and carry out its mandate.<sup>[25]</sup> Hence, the disbursements made during the questioned period when the new budget had not yet been approved could not have been illegal.<sup>[26]</sup>

In denying petitioners' Motion for Reconsideration, the OMB-Luzon pointed out that the alleged undue injury should have been specified, quantified, and proven to the point of moral certainty.<sup>[27]</sup> It found no reason to set the case for clarificatory hearings or to issue subpoenas.<sup>[28]</sup>

Hence, this Petition.<sup>[29]</sup>

### **The Issues**

Petitioners state the issues in this wise:

- "(A) Whether or not the admitted flagrant violation of Respondent Mayor Felix V. Ople of Section 318, LGC, aided and abetted by co-respondent Vice Mayor Josefina R. Contreras, has been and can be validated by Section 323 of the LGC.
- "(B) Whether or not there is any specific LGC [provision] which could be claimed as the legal remedy in validating Respondent Mayor Felix V. Ople's admitted flagrant violation of Section 318, LGC.
- "(C) Whether or not at the National Government level there are comparable constitutional mandatory provisions (a) that no money shall be paid out of the treasury except in pursuance of an appropriation made by law; (b) when the preceding year's budget is deemed reenacted; and (c) deadline of President's constitutional duty to submit proposed budget.
- "(D) Whether or not disbursements of municipal money out of the municipal treasury even in the absence of legally adopted annual budget cannot be characterized as 'undue injury' because:  
  
"It is illogical, if not absurd, to assume that a municipal government no longer has the capacity to function and carry out its mandate only because its annual budget has not been approved."
- "(E) Whether or not when [petitioners], in seeking preliminary investigation in OMB-L-C-03-1550-L, are precluded at the same time from seeking OMB's broad fact-finding investigatory power, function and duty to find the truth of the exact amount of illegal disbursements of municipal

funds during the fiscal year 2003 when there was no legally enacted 2003 annual budget pursuant to:

'(E.1) Sections 12 and 13, Article XI of the 1987 Constitution;

'(E.2) Section 13, 15, 23, 26 and 31 of the OMB Act of 1989; and

'(E.3) Rule II, Sections 1, 2, 3, 4-(f) and Rule III, ADO-7, Rules of Procedure of the OMB, April 10, 1990.

"(F) Whether or not clear and serious legal error is committed by the OMB in denying clarificatory hearing to ascertain material facts to find the true and exact amount of illegal disbursements of municipal money during the fiscal year 2003 when there was no legally enacted 2003 annual budget pursuant to OMB's broad investigative power, function and duty.

"(G) Whether or not it is clear and serious legal error for OMB-Luzon in denying issuance of subpoena to the 2 municipal officials, listed by the [petitioners] in their 'Joint Complaint-Affidavit' as witnesses to be subpoenaed in the investigation, to certify or affirm the exact amount of disbursements during the fiscal year 2003 when there was no legally enacted annual budget, on the ground that issuance of the subpoena would make OMB-Luzon engage in 'fishing expedition.'"<sup>[30]</sup>

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

The Petition is bereft of merit.

### **Preliminary Matter: Wrong Remedy Instituted**

The proper remedies in questioning decisions and resolutions of the Office of the Ombudsman (OMB) have already been settled in a catena of cases.

*Fabian v. Desierto*<sup>[31]</sup> held that appeals from the orders, directives, or decisions of the OMB in administrative disciplinary cases were cognizable by the Court of Appeals. *Tirol v. Del Rosario*<sup>[32]</sup> clarified that, in non-administrative cases in which the OMB had acted with grave abuse of discretion amounting to lack or excess of jurisdiction, a petition for certiorari under Rule 65 may be filed directly with this Court. Accordingly, *Kuizon v. Desierto*<sup>[33]</sup> held that this Court had jurisdiction over petitions for certiorari questioning the resolutions or orders of the ombudsman in criminal cases.

Thus, petitioners committed a procedural error in resorting to a Petition for Review under Rule 45 of the Rules of Court. To challenge the dismissal of their Complaint and to require the OMB to file an information, petitioners should have resorted to a petition for certiorari under Rule 65 of the Rules of Court. The only ground upon

which this Court may entertain a review of the OMB's resolution is grave abuse of discretion,<sup>[34]</sup> not reversible errors.

**Main Issue:**  
**No Grave Abuse of Discretion**

A special civil action for certiorari is the proper remedy when a government officer has acted with grave abuse of discretion amounting to lack or excess of jurisdiction; and there is no plain, speedy, and adequate remedy in the ordinary course of law.<sup>[35]</sup> But even assuming that the present Petition may be treated as one for certiorari, the case must nevertheless be dismissed.

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction.<sup>[36]</sup> The exercise of power must have been done in an arbitrary or a despotic manner by reason of passion or personal hostility. It must have been 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>[37]</sup>

In the present case, petitioners do not even allege that the OMB gravely abused its discretion in issuing its questioned Resolution. A perusal of the issues they submitted reveals that the crux of the controversy revolves around the finding of the deputy ombudsman that there was no probable cause against respondents. They allege that he committed *legal errors* in arriving at his findings and conclusions and had in fact no basis for dismissing their Complaint. The OMB's judgment may or may not have been erroneous, but it has not been shown to be tainted with arbitrariness, despotism or capriciousness amounting to lack or excess of jurisdiction.

**Sufficient Basis**

In any event, the Court finds no grave abuse in the manner in which the deputy ombudsman exercised his discretion. Evidently, he had sufficient bases for his finding that there was no probable cause.

*First*, the mere failure of the local government to enact a budget did not make all its disbursements illegal. Section 323 of the LGC provides for the automatic reenactment of the budget of the preceding year, in case the Sanggunian fails to enact one within the first 90 days of the fiscal year. Hence, the contention in the present case that money was paid out of the local treasury without any valid appropriation must necessarily fail.

*Second*, Section 323 states that only the annual appropriations for salaries and wages, statutory and contractual obligations, and essential operating expenses are deemed reenacted. Petitioner failed to identify disbursements that had gone beyond this coverage.

*Third*, petitioners failed to substantiate their allegations that the government had suffered undue injury. They concluded that there had been undue injury simply on the basis of their unsubstantiated claims of illegal disbursements. Having failed to prove any unlawful expenditure, the claim of undue injury must necessarily fail.