

SECOND DIVISION

[G.R. No. 164865, November 11, 2005]

**ROBERTO P. FUENTES, JR. PETITIONER, VS. OFFICE OF THE
OMBUDSMAN, SANDIGANBAYAN AND FE N. VALENZUELA,
RESPONDENTS.**

DECISION

CALLEJO, SR., J.:

Before the Court is a petition for *certiorari* under Rule 65 of the Rules of Court for the nullification of the Order^[1] of the Ombudsman in OMB-V-C-02-0287-F denying the petition for review of Roberto P. Fuentes, Jr., Municipal Mayor of Isabel, Leyte, assailing the decision of the Deputy Ombudsman, as well as the Order^[2] denying the motion for reconsideration thereof.

Private respondent Fe N. Valenzuela was engaged in business under the business name Triple "A" Ship Chandling and General Maritime Services (Triple A) since 1993 up to 2001, as shown by the various permits issued by the Office of the Mayor of Isabel and by the Philippine Ports Authority (PPA) Tacloban Port Management Office.^[3] She supplied commodities and general maritime services to foreign and domestic vessels docked in the PHILPHOS and PASAR wharves or at anchorage in Isabel, Leyte (Isabel). She was the only authorized ship chandler of Smith Bell Shipping Company.

On January 8, 2002, Valenzuela filed an Application for Permit to Engage/Operate a Business/Trade^[4] with the Office of Mayor Roberto P. Fuentes, Jr. of Isabel, Leyte. The application was processed and the recommending authorities^[5] affixed their signatures thereon. Mayor's Permit No. 51, Series of 2002 was, thereafter, forwarded to the Mayor's office on January 31, 2002^[6] for approval and signature, which Mayor Fuentes refused to sign. When Valenzuela asked why, he reportedly replied, "I will not issue a mayor's permit to you. Just file any case in any court you wish."

In the meantime, the M/V Ace Dragon owned by Smith Bell Shipping Company docked at the Isabel wharf. Valenzuela applied for a special permit to provide ship chandling services on the vessel. Romulo T. Diu, Terminal Supervisor of the port in Palompon, Leyte, issued a temporary permit^[7] to Valenzuela on March 5, 2002. Fernando B. Claveria, PPA Port of Tacloban Manager, likewise issued a Hold-Over Authority^[8] to Valenzuela effective March 15, 2002 until June 15, 2002, allowing her to continue ship chandling services at the Isabel port. Forthwith, Valenzuela purchased provisions and supplies worth thousands of pesos for the M/V Ace Dragon as ordered by the representative of the said vessel.

Unknown to Valenzuela, Mayor Fuentes issued an unnumbered Memorandum^[9] on

March 14, 2002, instructing the port manager of Isabel, Leyte not to allow her to board any cargo vessel or conduct transactions related to ship chandling. Mayor Fuentes stated therein that he had received reports that Valenzuela had been allowed to render chandling services on board foreign vessels without the necessary mayor's permit. He also informed the port manager that a permit had not been issued to Valenzuela because of reports that she had harassed and threatened other business competitors, and was reportedly involved in smuggling activities and delivery of prohibited drugs, such as *shabu*, to the crew of the vessels.^[10]

In light of said Memorandum, Acting Port Collector of the Customs of Isabel, Atty. Vicente V. Yutangco, Jr., immediately issued a Memorandum directing the Chief of the Port Operations Division to cease and desist from issuing a boarding permit to Triple A.^[11] Terminal Supervisor Romulo Diu also issued a Memorandum on March 15, 2002 advising Valenzuela to desist from providing ship chandling services until she had submitted a mayor's permit.^[12] Consequently, the commodities and supplies she had purchased became rotten and unusable.

Valenzuela, thereafter, wrote Mayor Fuentes pleading for a reconsideration of the unnumbered Memorandum in the interest of the town's economy. She averred that the reports against her were fabricated by her competitors and were designed to malign her. She furnished copies of the letter to the Bureau of Customs and the PPA.^[13] Valenzuela further claimed that she was denied her right to confront those who reported against her and to air her side.

For his part, Mayor Fuentes furnished Valenzuela unsigned handwritten reports, purportedly from his "unnamed confidential agents" accusing her of being a financier and dealer of *shabu*.^[14]

On May 31, 2002, Valenzuela filed consolidated criminal and administrative Complaints against Fuentes before the Office of the Ombudsman (Visayas) charging him with violation of Republic Act (R.A.) No. 3019 and Department of Interior and Local Government Memorandum Circular No. 2001-120 (Anti-Red Tape Program for Local Governments), as well as oppression, grave misconduct, and grave abuse in the performance of duty.^[15] The criminal and administrative cases were docketed as OMB-V-C-02-0287-F and OMB-V-A-02-0255-F, respectively.

To prove that she was not involved in smuggling and dealings with prohibited drugs, Valenzuela submitted in evidence the Certification dated April 26, 2002 issued by Chief of Police Martin F. Tamse of Isabel, which reads:

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that Mrs. Fe "Neneng" N. Valenzuela, a resident of Purok 5, Brgy. Libertad, Isabel, Leyte/Brgy. San Roque, Isabel, Leyte, a Ship Chandler of this Municipality, is not involved in any illegal business activities/operations particular with drugs after three (3) weeks of our discreet surveillance conducted by intel operatives of this station.

This certification is issued upon the request of Mrs. Fe "Neneng" N.

Valenzuela for whatever legal purposes it may serve.

Issued this 26th day of April 2002, at Isabel, Leyte, Philippines.

(Sgd.)

MARTIN F. TAMSE

P/INSP PNP

CHIEF OF POLICE^[16]

Valenzuela also claimed that she submitted a police clearance in her application for business permit.^[17] She alleged that the Mayor refused to issue the permit to her because of his partiality in favor of her competitor, Maria Jesusa Larriba, the proprietor/manager of S.E. De Guzman Ship Chandler and General Maritime Services. Valenzuela alleged that Larriba was "a stranger, a new applicant and new to the business of [s]hip chandling" who also harassed her (Valenzuela). She further claimed that Mayor Fuentes gave the capital investment of another competitor, Ronilo Sentones, the proprietor/manager of Golden Sea Kers Marine Service, to whom a permit was later issued.^[18]

In his Counter-Affidavit^[19] filed on July 23, 2002, Mayor Fuentes averred that in denying Valenzuela's application for a mayor's permit, he merely considered the paramount interest of his constituency, as he wanted to curb smuggling activities and the proliferation of drugs. He appended thereto a Certification dated July 2, 2002 issued by Tamse, stating that based on the police blotter, Larriba reported that on March 6, 2002, Valenzuela threatened to kill her *via* text message saying, "*Hoy Susan binabalaan kita sinungaling ka.*"^[20] Additionally, Mayor Fuentes submitted two unsigned handwritten confidential reports to Tamse linking Valenzuela to illegal drugs and smuggling activities.^[21]

Valenzuela denied the Mayor's allegations. In her Reply,^[22] she claimed that the alleged reports of unidentified agents were mere fabrications to justify his refusal to issue a mayor's permit. She pointed out that the said reports were received two months after she applied for a permit in January 2002. Moreover, she could not find the logic behind his refusal to issue the permit for her ship chandling business since she was given a business permit in 2002 for one of her other businesses, Gemini Security and Investigation Agency, which provided security guards in foreign vessels.^[23] She surmised that there was no other reason behind the refusal to issue a permit in her favor other than that the Mayor favored her competitors over her.

During the preliminary conference held on August 28, 2002, the petitioner and the private respondent agreed to submit the case for decision on the basis of the evidence on record, including the testimonies given in evidence on the October 4, 2002 clarificatory conference.^[24]

After due proceedings, the Visayas Deputy Ombudsman approved a Resolution prepared by Graft Investigation Officer I Gaudioso J. Melendez, dated October 23,

2002, in OMB-V-C-02-0287-F, finding probable cause for violation of Section 3(e) of R.A. No. 3019.^[25] An Information was then filed, charging Mayor Fuentes of the crime.

In a related case, the Deputy Ombudsman rendered a decision in OMB-V-A-02-0255-F finding the Mayor guilty of simple misconduct and suspending him from office for three months.^[26]

On April 28, 2003, Mayor Fuentes filed, without leave of court, a Motion for Reinvestigation or Reconsideration of the resolution in OMB-V-C-02-0287-F on the ground of newly discovered evidence and errors of law or irregularities.^[27] He averred that since he could no longer rely on Tamse to conduct the investigation on Valenzuela's involvement in illegal activities, he sought the assistance of the Philippine National Police (PNP) Provincial Director. He claimed that the Leyte Provincial Command had valuable information that would materially affect the resolution of the case, which information, however, could only be revealed in an executive session upon the subpoena of the proper authorities. He further claimed that he withheld the business permit as a preventive measure dictated by the exigency of the menace sought to be avoided. He posited that as a public official, he enjoys the presumption of regularity in the performance of duty; thus, the finding of probable cause against him was biased and based on mere conjectures. Moreover, there was no concrete evidence to show that Valenzuela's application actually reached him for appropriate action in January 2002.

In an Order dated May 28, 2003, the Deputy Ombudsman denied the motion on the following grounds: (a) the motion was filed without prior leave of court; (b) the allegations and grounds in the motion were merely reiterations of those already passed upon; and (c) Mayor Fuentes's letter to the PNP Director only proved his negligence.^[28]

On July 4, 2003, the petitioner filed a petition for review of the Resolution of the Deputy Ombudsman, restating in substance his arguments in his pleadings. The Ombudsman denied the petition in an Order dated September 12, 2003.^[29] Mayor Fuentes filed a motion for reconsideration of the said Order^[30] which the Ombudsman denied on November 17, 2003.^[31]

Mayor Fuentes, now the petitioner, filed the instant petition for *certiorari*, alleging that –

RESPONDENT OFFICE OF THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT FOUND PROBABLE CAUSE AGAINST PETITIONER FOR VIOLATION OF SEC. 3(E) OF R.A. NO. 3019.

The petitioner maintains that the issuance of a business permit is a discretionary power that is vested on him as a municipal mayor by virtue of Section 444(b)(3)(iv) of the Local Government Code of 1991 (R.A. No. 7160).^[32] He claims that there is no factual basis for the finding of manifest partiality, bad faith or gross inexcusable negligence. Moreover, the finding of the Deputy Ombudsman that the private respondent lost thousands of pesos because he (petitioner) refused to issue the permit to her was without basis. While he concedes that manifest partiality and

evident bad faith may co-exist, both terms could not be lumped up together with gross inexcusable neglect because malice is an element of the first two but not in the third. The petitioner posits that his refusal to issue a mayor's permit does not equate to manifest partiality, evident bad faith, or gross and inexcusable negligence. He argues that the assailed resolution and decision of the Deputy Ombudsman were based on pure conjectures and speculations; so was the assailed Order of the Ombudsman. He insists that in finding probable cause against him, the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction.

In his comment on the petition, the Special Prosecutor alleged that the petitioner failed to establish that the Ombudsman and the Deputy Ombudsman committed grave abuse of discretion amounting to excess or lack of jurisdiction in finding probable cause for violation of Section 3(e) of Rep. Act No. 3019. Citing the ruling of this Court in *Llorente, Jr. v. Sandiganbayan*^[33] and *Mendoza-Arce v. Office of the Ombudsman*,^[34] the Special Prosecutor asserts that proof of the existence of the injury sustained by the private respondent is not required.

The petition has no merit.

Case law has it that this Court does not ordinarily interfere with the discretion of the Office of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts if necessary.^[35] Certainly, it has been the policy of this Court to vest upon the Office of the Ombudsman wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints.^[36] As held in the leading case of *Alba vs. Nitorreda*:^[37]

... [T]his Court has consistently refrained from interfering with the exercise by the Ombudsman of his constitutionally mandated investigatory and prosecutory powers. Otherwise stated, it is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.

The rationale of this rule is based not only upon respect for the investigatory and prosecutory powers that the Office of the Ombudsman is granted under the present Constitution, but upon practicality as well; otherwise, the functions of the courts would be perilously bound by numerous petitions assailing the result of the investigatory proceedings conducted by the Office, in much the same way that the courts would be saturated if compelled to review the prosecutors' exercise of discretion each time they decide to file an information or dismiss a complaint.^[38]

It is settled that the findings of facts of quasi-judicial bodies, like the Deputy Ombudsman and the Ombudsman, may be nullified on the ground of grave abuse of discretion amounting to excess or lack of jurisdiction. There is grave abuse of discretion when the power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility so patent and gross as to