

## FIRST DIVISION

[ G.R. No. 135496, July 30, 2002 ]

**LONGOS RURAL WATERWORKS AND SANITATION ASSOCIATION, INC. (LRWSAI) REPRESENTED BY MIGUEL ORTEGA AND ANDRES D. MANUEL, SR., PETITIONERS, VS. HON. ANIANO A. DISIERTO, IN HIS CAPACITY AS OMBUDSMAN; VIRGILIO ORTEGA, AMANDO BORLONGAN, JR., ARMANDO SILOT, SERVANDO SANTOS, EVELYN AQUINO AND VIRGILIO AQUINO, RESPONDENTS. [\*]**

### D E C I S I O N

#### **AUSTRIA-MARTINEZ, J.:**

Before us is a "petition for review on certiorari" which we will treat as a petition for certiorari under Rule 65 of the Rules of Court. It seeks to annul the Resolution of the Ombudsman (OMB) dated May 29, 1998 ordering the dismissal of the criminal complaint filed against the private respondents and the Resolution dated August 14, 1998 denying the Motion for Reconsideration thereof.

#### Facts:

Acting on the recommendation of Ombudsman-Luzon, an Information was filed with the Regional Trial Court of Malolos, Bulacan (Branch 22) charging herein private respondents Barangay Captain Virgilio Ortega and other barangay officials, namely: Amando Borlongan, Jr., Armando Silot, Servando Santos, Evelyn Aquino and Virgilio Aquino, with Violation of Section 3 (e) of R.A. 3019 otherwise known as Anti-Graft and Corrupt Practices Act<sup>[1]</sup> as follows:

"That on or about September 14, 1995 or sometime prior or subsequent thereto, in the Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, public officers, committing the crime herein charged in relation to their official functions and through manifest partiality, evident bad faith did then and there willfully, unlawfully take-over the operation and management of the Longos Rural Waterworks and Sanitation Association, Inc. (LRWSA) from the de facto Board of Directors of LRWSA, thereby causing undue injury to the said de facto Board of Directors and to the public as well and at the same time giving themselves unwarranted benefits to the damage and prejudice of the de facto Board of Directors."

Private respondents moved for a reinvestigation of the case claiming that they are going to present additional documentary evidence and other witnesses which are in the nature of newly discovered evidence. The RTC granted the motion, thus, the case was referred back to OMB-Luzon for reinvestigation. Further hearing of the case was held in abeyance. In an Order dated November 24, 1997, OMB-Luzon reversed its prior recommendation calling for the indictment of private respondents and ordered the dismissal of the case. Upon Motion for Reconsideration filed by

herein petitioners Miguel Ortega and Andres Manuel, Sr., OMB-Luzon denied the same and the Order of dismissal is affirmed. Consequently, petitioners filed an appeal-request with the Office of the Ombudsman, Central Office which denied the same, ratiocinating thus:

“It is submitted that with the indorsement (to the Office of the Provincial prosecutor of Bulacan, for appropriate action) by this Office of its resolution (as far back as January of this year) recommending the withdrawal of the information against the accused, this Office is therefore constrained not to act on the request of herein complainants for, as earlier stated, there is no indication on whether: (a) the court has (already) acted on the (OMB-Luzon) recommendation to withdraw the information or if (b) complainants sought **leave of court** before filing instant motion for reconsideration – cum-letter-appeal, in view of the ruling in *Crespo v. Mogul*.

“The preliminary investigation conducted by the fiscal for the purpose of determining whether a *prima facie* case exists warranting the prosecution of the accused is terminated upon the filing of the information. In turn, as above stated, the filing of the said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action.”<sup>[2]</sup>

The Motion for Reconsideration thereof was likewise denied by the Ombudsman.

Ascribing grave abuse of discretion amounting to excess of jurisdiction to public respondent Ombudsman, petitioners filed the present petition arguing:

1. that leave of court is not necessary before they could file a Motion for Reconsideration from the November 24, 1997 Order of the OMB-Luzon inasmuch as the said Order was not yet final; and
2. that respondents “were not duly clothed with authority at the time they forcibly took the operation of the LWRSA from the petitioners.”

In support of their first argument, petitioners insist that there is nothing in *Crespo v. Mogul*<sup>[3]</sup> which required that the court should first act on the recommendation of the Ombudsman to dismiss the case or that prior leave of court should be made before petitioner can move for a reconsideration of the decision of the OMB-Luzon.

Meanwhile, respondents filed a Motion to Dismiss the case pursuant to the aforestated OMB Resolution. But the RTC was informed of the present petition, thus, it issued an Order holding in abeyance the resolution of the Motion to Dismiss pending the outcome of herein petition.

As we stated in the *Crespo* case: The preliminary investigation conducted by the fiscal for the purpose of determining whether a *prima facie* case exists warranting the prosecution of the accused is terminated upon the filing of the Information in the proper court. In turn, the filing of said Information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation, the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the