



SUPREME COURT OF THE PHILIPPINE
INFORMATION OFFICE
MAY 11 2022
J.M.V.
A.11

Republic of the Philippines
Supreme Court
Baguio City

SECOND DIVISION

PROVINCE OF BATAAN,
Petitioner,

G.R. Nos. 197510-11

- versus -

HON. ORLANDO C. CASIMIRO,
in his capacity as Acting
Ombudsman, THE HONORABLE
SANDIGANBAYAN, THE
DEPARTMENT OF INTERIOR
AND LOCAL GOVERNMENT,
THE OMBUDSMAN FIELD
INVESTIGATION OFFICE,
NESTOR B. PALOMANIA, and
ALEXANDER M. CATURAO,
Respondents.

RODOLFO H. DE MESA,
IMELDA D. INIETO, ALICIA R.
MAGPANTAY, EMERLINDA S.
TALENTO, LUDIVINA G.
BANZON, GODOFREDO O. DE
GUZMAN, PEDRO D.
BALUYOT, ANGELINA M.
VILLANUEVA, FRANCISCO T.
CAPARAS, ENRICO T. YUZON,
and EVANGELINE A. DIAZ,
Petitioners,

G.R. No. 201347

Present:


PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

- versus -

THE HONORABLE OFFICE OF
THE OMBUDSMAN, THE
HONORABLE THIRD and

**FOURTH DIVISIONS OF THE
SANDIGANBAYAN, THE
OMBUDSMAN FIELD
INVESTIGATION OFFICE,
NESTOR B. PALOMANIA, and
ALEXANDER M. CATURAO,**
Respondents.

Promulgated:

APR 18 2022 

X ----- X

DECISION

HERNANDO, J.:

Before this Court are consolidated Petitions¹ challenging the following issuances of the Office of the Ombudsman (Ombudsman): (a) Resolution² dated May 16, 2011 in OMB-C-C-08-0622-L, which found probable cause to file criminal cases against the accused public officials and a private individual; (b) Decision³ dated May 12, 2011 in OMB-C-A-08-0659-L, which ordered the dismissal from service of the involved public officials; (c) Memorandum⁴ dated January 10, 2012, which denied the motion for reconsideration of the involved public officials in the May 16, 2011 Resolution (in OMB-C-C-08-0622-L); and (d) Memorandum⁵ dated August 13, 2012, which denied the motion for reconsideration of the concerned individuals of the May 12, 2011 Decision (in OMB-C-A-08-0659-L). These issuances relate to the alleged anomalies in the procurement of a patrol boat by the local public officials of the Province of Bataan.

The Facts:

To aid the efforts of the Bataan Provincial Anti-Illegal Fishing Task Force, Provincial Agriculturist Imelda D. Inieto (Inieto) requested for a patrol boat equipped with a 6-cylinder gas engine through Purchase Request No. 442,⁶ dated June 8, 2005 costing ₱150,000.00. Thereafter, the Bids and Awards

¹ *Rollo* (G.R. No. 197510-11), pp. 3-58, *rollo* (G.R. No. 201347), pp. 3-37.

² *Id.* at 62-88. Signed by Clarisa V. Tejada (Graft Investigation and Prosecution Officer I); recommending approval by Mary Antonette Yalao (PARB Director); and approved by Acting Ombudsman Orlando C. Casimiro on June 13, 2011.

³ *Id.* at 89-117. Signed by Clarisa V. Tejada (Graft Investigation and Prosecution Officer I); recommending approval by Mary Antonette Yalao (PARB Director); and approved by Acting Ombudsman Orlando C. Casimiro on June 13, 2011.

⁴ *Id.* at 707-735. Submitted by Gay Marie F. Lubigan-Rafael (Assistant Special Prosecutor III); recommending approval by Manuel T. Soriano, Jr. (Acting Director, Prosecution Bureau III) and Jesus A. Micael (Deputy Special Prosecutor); concurred in by Wendell E. Barreras-Sulit (The Special Prosecutor); and approved by Conchita Carpio Morales (Ombudsman).

⁵ Records (OMB-C-A-08-0659-L), Folder 1, pp. 333-341. Penned by Manuel T. Soriano, Jr., Acting Director, Prosecution Bureau III; approval recommended by Wendell E. Barreras-Sulit, Special Prosecutor; and approved by then Ombudsman Conchita Carpio Morales.

⁶ *Rollo* (G.R. Nos. 197510-11), p. 594.

Committee (BAC) of Bataan posted an Invitation⁷ to Apply for Eligibility, and to Bid for the Supply and Delivery of the Equipment. However, the sole bidder failed to pass the post-qualification process⁸ as indicated in BAC Resolution No. 006-A, S-2005 (Post-Disqualifying the Sole Prospective Bidder Thus Declaring Failure of Bidding and Rescheduling the Same).⁹

Re-bidding was conducted, but no supplier submitted a letter of intent. Thus, the BAC recommended a Limited Source or Selective Bidding,¹⁰ and invited three suppliers, namely: (1) Marcelino G. Rodriguez¹¹ (Rodriguez), (2) Agrifino M. Otor¹² (Otor), and (3) accused Ernesto R. Asistin, Jr. (Asistin).¹³ Asistin offered the lowest bid of ₱150,000.00 based on quotations¹⁴ and a canvass summary.¹⁵ Thereafter, the contract was awarded to Asistin¹⁶ as evidenced by a Notice of Award¹⁷ dated December 14, 2005 signed by Provincial Administrator Rodolfo H. De Mesa (De Mesa). The award pertained to the delivery of a 4-cylinder gas engine patrol boat for ₱150,000.00. Notably, there was a handwritten correction in terms of the capacity of the gas engine from 6-cylinder to 4-cylinder. After posting the performance bond,¹⁸ Asistin and De Mesa entered into a Contract Agreement¹⁹ dated January 4, 2006 for the delivery of a 4-cylinder gas engine patrol boat (with a handwritten correction from 6-cylinder to 4-cylinder) for ₱150,000.00, instead of a 6-cylinder boat as indicated in Purchase Request No. 442. This was followed by a Notice to Proceed²⁰ dated January 9, 2006 likewise with a handwritten correction from 6-cylinder to 4-cylinder.

Notably, Inieto prepared a Justification²¹ dated January 5, 2006 stating that the increase in price of the 6-cylinder gas engine can no longer be covered by Purchase Request No. 442, and that the replacement of the 6-cylinder gas engine to 4-cylinder gives the same performance with cheaper fuel consumption.

Hence, De Mesa issued Purchase Order No. 017-A²² dated January 17, 2006 for the delivery of a 6-cylinder gas engine (later substituted with a 4-cylinder) patrol boat for ₱150,000.00 in favor of Asistin.

⁷ Id. at 137.

⁸ Id. at 139-140.

⁹ Id. at 709.

¹⁰ Id. at 141; BAC Resolution No. 009, S-2005.

¹¹ Id. at 143-144; ₱160,000.00.

¹² Id. at 145; ₱155,000.00.

¹³ Id. at 142.

¹⁴ Id. at 742-743.

¹⁵ Id. at 147.

¹⁶ Id. at 709.

¹⁷ Id. at 148.

¹⁸ Id. at 151.

¹⁹ Id. at 152.

²⁰ Id. at 153.

²¹ Id. at 155.

²² Id. at 154.

On January 18, 2006, Iniето requested representatives from the offices of the Provincial Treasurer,²³ Provincial Accountant,²⁴ Provincial General Services,²⁵ and Provincial Auditor²⁶ to verify the delivery of the patrol boat equipped with a 4-cylinder gas engine. Iniето accepted the delivery of the patrol boat as reflected in the Acceptance and Inspection Report No. 06-01-022²⁷ dated January 17, 2006.²⁸ It provided for the acceptance of one unit of 4-cylinder gas engine patrol boat after inspection and verification of the quantity and specifications by Pedro Baluyot (Baluyot) (Supply Officer III), Angelina M. Villanueva (Villanueva) (Management and Audit Analyst IV), and Francisco T. Caparas (Caparas) (Local Treasury Operations Officer II).

The Memorandum Receipt for Equipment, Semi-Expendable and Non-Expendable Property²⁹ dated January 27, 2006, and signed by Iniето, indicated that Evangeline A. Diaz (Diaz), Provincial General Services Officer, received the patrol boat equipped with 4-cylinder gas engine valued at ₱150,000.00, and acquired on January 24, 2006 from Asistin.

Accused Provincial Treasurer Emerlinda S. Talento (Talento) issued Check No. 788858³⁰ dated February 16, 2006 in the amount of ₱142,500.00, with a notation that it was being issued for the payment of the 4-cylinder gas engine patrol boat. Asistin acknowledged receipt of the check as evidenced by Disbursement Voucher No. 110-06-0-951³¹ for ₱142,500.00, also indicating one unit of 4-cylinder gas engine patrol boat, which was signed by Alicia Magpantay, Provincial Accountant, and De Mesa, representing then Governor Enrique T. Garcia, Jr. (Governor Garcia). The Journal Entry Voucher,³² however, indicated the total amount of ₱150,000.00 for the patrol boat.³³

Eventually, the Field Investigation Office (FIO) of the Office of the Ombudsman filed a Supplemental Complaint³⁴ dated September 29, 2008 before the Ombudsman, recommending the filing of criminal and administrative cases against the involved public officials and individuals for violating Section 3(e) of Republic Act No. (RA) 3019, or the Anti-Graft and Corrupt Practices Act. The FIO essentially alleged that the purchase of the patrol boat equipped with a 4-cylinder gas engine is tainted with anomalies as the documents related to its procurement were altered, the process occurred without public bidding, and because it gave undue advantage to Asistin.

²³ Id. at 156.

²⁴ Id.

²⁵ Id. at 158.

²⁶ Id. at 157.

²⁷ Id. at 160.

²⁸ Received on January 18, 2006.

²⁹ *Rollo* (G.R. Nos. 197510-11), p. 161.

³⁰ Id. at 162.

³¹ Id. at 163.

³² Id. at 164.

³³ Supposedly, ₱7,500.00 was deducted for tax purposes.

³⁴ *Rollo* (G.R. Nos. 197510-11), pp. 118-134.

In an Order³⁵ dated February 9, 2009, the Ombudsman directed the involved individuals to file their counter-affidavits within a period of 10 days from receipt of the said directive. The concerned parties eventually complied.

**Ruling of the Office of the Ombudsman
(Administrative Case):**

In its Decision dated May 12, 2011³⁶ in OMB-C-A-08-0659-L, the Ombudsman found that the members of the BAC violated the law when they chose to negotiate with Asistin, Rodriguez, and Otor who are not *bona fide* suppliers since they did not have the legal and financial capacity to enter into a contract with the government.³⁷ Moreover, there were anomalies in the purchase of the patrol boat as can be gleaned from the documents. Instead of a 6-cylinder gas engine, a patrol boat with 4-cylinder gas engine was procured without the corresponding reduction in the purchase price and conduct of a new procurement process.³⁸ There was no market study conducted to determine the estimated costs, and a mere Justification was made by Inieto instead of preparing a new Purchase Request for the 4-cylinder gas engine patrol boat.³⁹ There were erasures on the Notice of Award, Notice to Proceed, and Contract Agreement, as well as irregularities in the Certificate of Acceptance.⁴⁰

Moreover, Provincial Administrator De Mesa approved the necessary documents for the payment of the 4-cylinder gas engine patrol boat, by authority of Governor Garcia, even if the latter was apprised only of the proceedings pertaining to the procurement of a 6-cylinder boat.⁴¹ Thus, the collective acts of the public officials in the procurement of the 4-cylinder patrol boat constituted as grave misconduct.⁴² Likewise, they committed dishonesty because they claimed that one unit of patrol boat equipped with 6-cylinder gas engine was acquired when such was not the case.⁴³

However, the Ombudsman found that Governor Garcia's re-election as governor of Bataan had rendered the administrative case against him moot. As for Angelina M. Villanueva, she cannot be administratively penalized as she is no longer in the government service.⁴⁴

The dispositive portion of the Ombudsman's assailed May 12, 2011 Decision (in the administrative case) reads:

³⁵ Id. at 213-216.

³⁶ Id. at 89-117.

³⁷ Id. at 108.

³⁸ Id. at 109-110.

³⁹ Id. at 111.

⁴⁰ Id. at 111-112.

⁴¹ Id. at 112.

⁴² Id.

⁴³ Id. at 114.

⁴⁴ Id. at 115.

WHEREFORE, premises considered, we find Rodolfo H. De Mesa, Imelda D. Inieto, Alicia R. Magpantay, Emerlinda S. Talento, Ludivina G. Banzon, Enrico T. Yuzon, Evangeline A. Diaz, Godofredo O. De Guzman, Pedro D. Baluyot, Francisco T. Caparas[,] and Danilo C. Abrera **GUILTY** of Grave Misconduct and Dishonesty and the penalty of dismissal from the service is hereby imposed upon them.

The case against Enrique T. Garcia, Jr., Angelina M. Villanueva, Antonio L. Raymundo Jr.[,] and Alfredo B. Hernandez Jr. is **DISMISSED**.

Let a copy of this Decision be endorsed to the Department of the (sic) Interior and Local Government for its immediate implementation.

SO ORDERED.⁴⁵

**Ruling of the Office of the Ombudsman
(Criminal Case: Section 3 [e] of RA 3019):**

In its May 16, 2011 Resolution,⁴⁶ the Ombudsman found that the BAC resorted to Limited Source Bidding or Selective Bidding after two public biddings allegedly failed. Such method of procurement involves direct invitation to bid by the procuring entity from a set of pre-selected suppliers with known expertise, and proven capability relative to the requirements of a particular contract. The pre-selected suppliers shall be those appearing in a list maintained by the relevant government authority that has expertise in the type of procurement concerned, which list shall be submitted and updated with the Government Procurement Policy Board.⁴⁷

The Ombudsman additionally found that the three suppliers invited by the BAC in the Selective Bidding are not *bona fide* suppliers because they have no legal and financial capacity to enter into a contract with the government.⁴⁸ The documents pertinent to the purchase of the patrol boat revealed several anomalies: “(1) on the item to be procured, (2) the change of specification, (3) erasures on the Notice of Award, Notice to Proceed and Contract Agreement, and (4) approval of the documents necessary for payment.”⁴⁹ While the Province of Bataan supposedly advertised and allotted funds for a patrol boat with a 6-cylinder gas engine, it awarded a contract and paid for a patrol boat with a 4-cylinder gas engine without the corresponding reduction of purchase price and conduct of a new process of procurement.⁵⁰ There was no showing that the approved budget for the contract is no longer sufficient for a 6-cylinder gas engine patrol boat. No study or market probe was done to determine the

⁴⁵ Id. at 116.

⁴⁶ Id. at 62-88.

⁴⁷ Id. at 78.

⁴⁸ Id. at 79.

⁴⁹ Id.

⁵⁰ Id. at 80.

estimated value of both 6-cylinder and 4-cylinder gas engine patrol boats.⁵¹ Moreover, no new Purchase Request was prepared. Instead, a Justification was submitted which did not equate to a new Purchase Request from which a new procurement process could proceed.⁵²

There were also erasures in the Notice of Award, Notice to Proceed, and Contract Agreement which rendered the transaction suspicious. The Certificate of Acceptance was not filled up except for the name of the alleged supplier of the patrol boat, Asistin, and did not indicate the date as to when the item was accepted.⁵³ Furthermore, the approval of the documents necessary for the payment of the 4-cylinder gas engine patrol boat was made by Provincial Administrator De Mesa, by authority of Governor Garcia, even if Governor Garcia knew that the proceedings held beforehand was for the delivery of a 6-cylinder engine patrol boat.⁵⁴ In addition, Asistin's *Sinumpaang Salaysay*⁵⁵ dated July 7, 2006 indicated that he signed several documents pertaining to the fabrication of the patrol boat, but he was not given any money to buy the materials. Likewise, he gave the check which he received from the Treasurer's Office of Bataan to Mayor Antonio L. Raymundo (Raymundo). Thereafter, he supposedly received ₱142,500.00 from Mayor Raymundo to build the patrol boat.⁵⁶

Hence, all the documents relevant to the supply and delivery of the patrol boat referred to one unit of patrol boat equipped with 6-cylinder gas engine, and not a 4-cylinder one.⁵⁷ For these reasons, the Ombudsman found basis to indict the public officials responsible for the procurement of the patrol boat with a violation of Section 3 (e) of RA 3019.⁵⁸

It also averred that Governor Garcia should be held liable. He should have ensured the proper procurement of the patrol boat because of his power to exercise general supervision, and control over the projects of the provincial government. Yet, he allowed Provincial Administrator De Mesa to sign the documents as the designated signatory.⁵⁹ Furthermore, Asistin should be charged since he acted in conspiracy with public officials in defrauding the government.⁶⁰

Thus, in the assailed May 16, 2011 Resolution, the Ombudsman recommended the filing of a criminal complaint, as follows:

⁵¹ Id. at 81.

⁵² Id.

⁵³ Id.

⁵⁴ Id. at 82.

⁵⁵ Id. at 169-170.

⁵⁶ Id. at 82-83.

⁵⁷ Id. at 83.

⁵⁸ Id. at 83-84.

⁵⁹ Id. at 84.

⁶⁰ Id.

WHEREFORE, premises considered, it is respectfully recommended that [an] INFORMATION for Violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act be FILED before the Sandiganbayan against Enrique T. Garcia Jr., Rodolfo H. De Mesa, Imelda D. Inieta, Alicia R. Magpantay, Emerlinda S. Talento, Ludivina G. Banzon, Enrico T. Yuzon, Evangeline A. Diaz, Godofredo O. De Guzman, Pedro D. Baluyot, Angelina M. Villanueva, Francisco T. Caparas, Danilo C. Abrera, and Ernesto R. Asistin Jr.

Let the charges against Antonio L. Raymundo Jr. and Alfredo B. Hernandez Jr. be DISMISSED for insufficiency of evidence.

SO RESOLVED.⁶¹

Thus, on June 23, 2011, an Information⁶² was filed against the involved public officials and Asistin before the Sandiganbayan, docketed as SB-11-CRM-0251 for violating Section 3 (e) of RA 3019.⁶³

Aggrieved, the accused public officials filed a Motion for Reconsideration⁶⁴ dated July 11, 2011 of the Ombudsman's May 16, 2011 Resolution (criminal case for violation of Section 3 [e] of RA 3019). Likewise, the accused public officials filed a Motion for Reconsideration⁶⁵ dated July 11, 2011 of the Ombudsman's May 12, 2011 Decision (administrative case).

Meanwhile, on September 23, 2011, Governor Garcia was conditionally arraigned.⁶⁶

The motion for reconsideration in the criminal case for violation of Section 3(e) of RA 3019 was resolved on January 10, 2012, and approved by the Ombudsman on February 8, 2012⁶⁷ through a Memorandum.⁶⁸

In the said Memorandum, the Ombudsman found that there was no delivery of the patrol boat at the time of the inspection, acceptance, and payment. Asistin admitted that he built the boat only after receipt of the money for the purpose.⁶⁹ The violation of Section 3(e) of RA 3019 was not founded on the "ghost delivery," but on the fact that the patrol boat was equipped with 4-cylinder gas engine, and procured without the benefit of a competitive public

⁶¹ Id. at 86.

⁶² *Rollo* (G.R. No. 201347), pp. 254-257; dated May 16, 2011.

⁶³ *Rollo* (G.R. Nos. 197510-11), pp. 613-614.

⁶⁴ Id. at 281-302.

⁶⁵ Id. at 385-401.

⁶⁶ Id. at 615.

⁶⁷ Id.

⁶⁸ Id. at 707-735. Submitted by Gay Marie F. Lubigan-Rafael (Assistant Special Prosecutor III); recommended approval by Manuel T. Soriano, Jr. (Acting Director, Prosecution Bureau III), and Jesus A. Micael (Deputy Special Prosecutor); concurred in by Wendell E. Barerras-Sulit (The Special Prosecutor); and approved by Conchita Carpio Morales (Ombudsman).

⁶⁹ *Rollo* (G.R. Nos. 197510-11), p. 713.

bidding.⁷⁰ The Ombudsman held that:

The existence of the Purchase Request, Invitation to Apply for Eligibility and to Bid, Obligation Slip, and Purchase Order which describe the item to be procured as a patrol boat equipped with 6-cylinder gas engine is proof enough that the accused knew that Asistin, Jr. could not legally collect from the province and that the only way that it could go around this was to make it appear that there was a modification from 6-cylinder gas engine to 4-cylinder gas engine patrol boat in the Canvass Summary, Notice of Award, Contract, Notice to Proceed, Certificate of Acceptance, Acceptance and Inspection Report, Disbursement Voucher, and Check. Indeed, accused Inieto issued a Justification for the replacement of the 6-cylinder gas engine patrol boat [with a 4-cylinder gas engine patrol boat]. However, the same cannot amount to a new Purchase Request from which a new procurement process could proceed.⁷¹

The Ombudsman held that while there was conspiracy, Governor Garcia and Danilo C. Abrera (Abrera) should be excluded from liability since the records showed that they had no participation in the transaction.⁷² Moreover, the public documents⁷³ were falsified which would make the signatories liable for Falsification as defined and penalized by Article 171 (4) of the Revised Penal Code (RPC).⁷⁴ Hence, the Ombudsman made the following recommendations:

WHEREFORE, premises considered, it is most respectfully recommended as follows:

1. The Motion for Reconsideration dated July 8, 2011 be GRANTED insofar as accused Enrique T. Garcia and Danilo Abrera are concerned and their names be DROPPED from the Information for Violation of Section 3(e), R.A. 3019 in SB-11-CRM-0251;

2. The Motion for Reconsideration dated July 8, 2011 be DENIED with respect to accused Rodolfo H. de Mesa, Imelda D. Inieto, Alicia R. Magpantay, Emerlinda S. Talento, Ludivina G. Banzon, Godofredo O. de Guzman, Pedro Baluyot, Angelina M. Villanueva, Francisco T. Caparas, Enrico T. Yuzon[,] and Evangeline A. Diaz;

3. The Amended Information in SB-11-CRM-0251 x x x modifying the accusatory portion of the Information to conform with the evidence and dropping Enrique T. Garcia and Danilo Abrera from the case, be APPROVED and FILED with the Sandiganbayan; and

4. Two (2) Informations for Falsification of Public Document as defined and penalized under Article 171 (4) of the Revised Penal Code be APPROVED and FILED with the Sandiganbayan, as follows:

⁷⁰ Id. at 714.

⁷¹ Id. at 716-717.

⁷² Id. at 718-719.

⁷³ Acceptance and Inspection Report No. 06-01-022, Memorandum Receipt for Equipment, Semi-Expandable and Non-Expandable Property dated January 27, 2006.

⁷⁴ *Rollo* (G.R. Nos. 197510-11), pp. 728-729.

- i. Two (2) counts of said violation against Imelda Inieto for signing the Acceptance and Inspection Report No. 06-01-011 and Memorandum Receipt;
- ii. One (1) count of said violation against Pedro Baluyot, Angelina M. Villanueva, and Francisco T. Caparas for signing the Acceptance and Inspection Report No. 06-01-022; and
- iii. One (1) count of said violation against Evangeline A. Diaz for signing the Memorandum Receipt.

x x x x

Respectfully submitted.⁷⁵

In view of these, an Amended Information⁷⁶ [SB-11-CRM-0251 (for violation of Section 3 (e) of RA 3019)] dated January 10, 2012⁷⁷ was filed before the Sandiganbayan, the accusatory portion of which reads:

That on or about 16 February 2006, or sometime prior or subsequent thereto, in the Province of Bataan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused public officers of the Provincial Government of Bataan namely: **Rodolfo H. De Mesa, Salary Grade 26**, Provincial Administrator, **Imelda D. Inieto, Salary Grade 22**, Provincial Agriculturist, **Alicia R. Magpantay, Salary Grade 24**, Provincial Accountant, **Emerlinda S. Talento, Salary Grade 26**, Provincial Treasurer, **Ludivina G. Banzon, Salary Grade 24**, Provincial Government Assistant Department Head, **Enrico T. Yuzon, Salary Grade 26**, Department Head, Provincial General Services Office & Vice Chairman of the Bids and Awards Committee, **Evangeline A. Diaz, Salary Grade 26**, then Department Head, Provincial General Services Office and Chairman of the Bids and Awards Committee, **Godofredo O. De Guzman, Salary Grade 22**, OIC-Department Head, Environment and Natural Resources and member of the Bids and Awards Committee, **Pedro D. Baluyot, Salary Grade 18**, Supply Officer III, **Angelina M. Villanueva**, then Management & Audit Analyst IV, **Salary Grade 22**, **Francisco T. Caparas, Salary Grade 11**, Local Treasury Operations Officer 1, committing the offense in the discharge of their official functions, conspiring and confederating with one another and with **Ernesto R. Asistin Jr.**, a private person and acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause undue injury to the Provincial Government of Bataan in the amount of **One Hundred Forty Two Thousand Five Hundred Pesos (P142,500.00), Philippine Currency**, and give unwarranted benefit, advantage or preference to **Ernesto R. Asistin, Jr.** by: (1) awarding to him the contract for the purchase of a patrol boat with a four (4) cylinder gas engine without conducting a competitive public bidding as required by law and despite knowing that he is not a qualified supplier; (2) paying said **Ernesto R. Asistin, Jr.** the net amount of **One Hundred Forty Two Thousand Five Hundred Pesos (Php 142,500.00)**, despite non-delivery of such patrol boat; and (3) by making it appear that there was delivery of the subject

⁷⁵ Id. at 732-733.

⁷⁶ *Rollo* (G.R. No. 201347), pp. 285-288.

⁷⁷ Approved by Ombudsman Conchita Carpio Morales on February 8, 2012.

patrol boat, when in truth and in fact, as the accused fully knew, there was no delivery of the said patrol boat at the time of the issuance of the Acceptance and Inspection Report No. 06-01-022 and at the time of the actual payment to Ernesto R. Asistin, Jr., to the damage and prejudice of the Provincial Government of Bataan in the aforesaid amount.

CONTRARY TO LAW.⁷⁸

Also, an Information⁷⁹ dated February 14, 2012 was filed before the Sandiganbayan, and docketed as Case No. SB-12-CRM-0029, against Inieto, Baluyot, Villanueva, and Caparas, for violation of Article 171 (4) of the RPC, the accusatory portion of which states:

That on or about January 18, 2006, or sometime prior or subsequent thereto, in the Province of Bataan, Philippines, and within the jurisdiction of this Honorable Court, accused **Imelda D. Inieto**, Provincial Agriculturist, **Angelina M. Villanueva**, Management & Audit Analyst IV, **Pedro D. Baluyot**, Supply Officer III, and **Francisco T. Caparas**, Local Treasury Operations Officer 1, all of the Provincial Government of Bataan, committing the offense in relation to their office and taking advantage of their official positions, conspiring and confederating with one another, did [then] and there willfully, feloniously and unlawfully falsify **Acceptance and Inspection Report dated January 18, 2006** for one (1) Patrol Boat with Four (4) Cylinder Engine covered by Purchase Order No. 017-A dated January 17, 2006, which is a public document, by making it appear therein that the said patrol boat was received on January 18, 2006 by accused Imelda Inieto, when in truth and in fact, as all accused knew fully well, and which they are legally bound to disclose, said patrol boat was not delivered on said date because it was built only after the payment in the amount of One Hundred Forty Two Thousand Five Hundred Pesos (Php 142,500.00) was received by **Ernesto R. Asistin Jr.** on February 16, 2006 as shown by Disbursement Voucher No. 110-06-0-951, thereby making a false statement in a narration of fact.

CONTRARY TO LAW.⁸⁰

Similarly, an Information⁸¹ dated February 14, 2012 was filed before the Sandiganbayan, and docketed as Case No. SB-12-CRM-0030, against Inieto and Diaz for violation of Article 171 (4) of the RPC, the accusatory portion of which is as follows:

That on or about **January 27, 2006**, or sometime prior or subsequent thereto, in the Province of Bataan, Philippines, and within the jurisdiction of this Honorable Court, accused **Evangelina A. Diaz**, being then the Department Head of the Provincial General Services Office and Chairman of the Bids and Awards Committee, and **Imelda D. Inieto**, being then the Provincial Agriculturist, both of the Provincial Government of Bataan, committing the offense in relation to

⁷⁸ *Rollo* (G.R. No. 201347), pp. 286-287.

⁷⁹ *Id.* at 289-291.

⁸⁰ *Id.* at 290.

⁸¹ *Id.* at 292-293.

their office and taking advantage of their official positions, conspiring and confederating with one another, did [then] and there willfully, feloniously and unlawfully falsify the **Memorandum Receipt for Equipment, Semi-Expandable and Non-Expendable Property dated January 27, 2006** for one (1) Patrol Boat with Four (4) Cylinder Engine, which is a public document, by making it appear therein that the subject patrol boat was acquired on January 24, 2006 by the provincial government of Bataan, when in truth and in fact, as both accused knew fully well, and which they are legally bound to disclose, said patrol boat was not delivered on said date because it was built only after the payment in the amount of One Hundred Forty Two Thousand Five Hundred Pesos (Php 142,500.00) was received by **Ernesto R. Asistin Jr.** on February 16, 2006 as shown by the Disbursement Voucher No. 110-06-0-951, thereby making a false statement in a narration of fact.

CONTRARY TO LAW.⁸²

Pertinent to the motion for reconsideration of the Decision dated May 12, 2011 in OMB-C-A-08-0659-L, (administrative case), the Ombudsman, in a Memorandum⁸³ dated August 13, 2012, denied the same. The Ombudsman sustained the Decision dated May 12, 2011 which held De Mesa, Inieta, Magpantay, Talento, Banzon, Yuzon, Diaz, De Guzman, Baluyot, and Caparas guilty of Grave Misconduct and Dishonesty, and thus, should be dismissed from the service. However, the administrative complaint against Governor Garcia and Abrera were dismissed for insufficiency of evidence. The Ombudsman found that personal gain on the part of the offender is not the only indication of corruption as an element of Grave Misconduct. De Mesa, Diaz, De Guzman, Banzon, Talento, and Yuzon wrongfully used their office in giving benefit to Asistin despite the fact that he was not a legally and financially qualified supplier, in violation of the requirements of Sections 53 (Negotiated Procurement) and 49 (Limited Source Bidding) of the Revised Implementing Rules and Regulations of RA 9184 (The Government Procurement Act). Even if the mode of procurement was Negotiated Procurement through canvass, the fact that Asistin was not a qualified supplier of patrol boats remains.

In addition, Inieta, Baluyot, Villanueva, Caparas, Talento, and Magpantay gave Asistin unwarranted benefit when they paid him ₱142,500.00 despite the non-delivery of the patrol boat on or before the time of payment. The Ombudsman noted that:

The check and the Disbursement Voucher pertaining to the payment of the patrol boat show that Asistin was paid on February 16, 2006. However, in his *Sinumpaang Salaysay* dated September 11, 2007, Asistin averred that he received the amount of [₱142,500.00] to purchase materials for the construction of the patrol boat two (2) to three (3) weeks after the check was encashed. Hence, it was

⁸² Id. at 292-293.

⁸³ Records (OMB-C-A-08-0659-L), Folder 1, pp. 533-541. Penned by Manuel T. Soriano, Jr., Acting Director, Prosecution Bureau III; approval recommended by Wendell E. Barreras-Sulit, Special Prosecutor; and approved by then Ombudsman Conchita Carpio Morales.

impossible for him to have delivered the subject patrol boat on or before the release of the payment on February 16, 2006. Accordingly, the undated Certificate of Acceptance, signed by respondent Inieto, as well as the Acceptance and Inspection Report dated January 18, 2006, signed by respondents Inieto, Baluyot, Villanueva and Caparas, and the Memorandum Receipt for Equipment, Semi-Expendable and Non-Expendable dated January 27, 2006, signed by respondents Inieto and Diaz, are all falsified documents.⁸⁴

Nevertheless, the Ombudsman found no evidence that Abrera and Governor Garcia participated in the irregularities. Even if De Mesa affixed his signature “for” Garcia, such is not enough as there should be proof that Governor Garcia knew about the transaction or had an active and overt participation.

Relevantly, the records revealed that Yuzon, De Guzman, Banzon, and Talento appealed their administrative charge to the Court of Appeals (CA), which was docketed as CA-G.R. SP No. 127451.⁸⁵ It is unclear, however, when they appealed their case to the CA.

In a Decision⁸⁶ dated February 14, 2014, the CA reversed the Ombudsman’s Decision dated May 12, 2011, and Memorandum dated August 13, 2012, in OMB-C-A-08-0659-L. The CA exonerated BAC members Yuzon, De Guzman, Banzon, as well as Talento, (who approved the check for the payment of the patrol boat with 4-cylinder gas engine), from the administrative charge against them for lack of substantial evidence.

The Ombudsman filed a Motion for Reconsideration⁸⁷ dated March 19, 2014. However, the records are lacking as regards the ruling on the said motion for reconsideration. Nevertheless, inquiry revealed that the Ombudsman elevated the administrative case of Inieto to this Court, which was docketed as G.R. No. 217015. However, the Ombudsman’s petition was denied by this Court on July 22, 2015.⁸⁸ Also, it appears that there are pending petitions before this Court concerning the administrative case, docketed as: G.R. No. 214156 (*Field Investigation Office, Office of the Ombudsman v. Alicia R. Magpantay*); G.R. No. 215985 [*Field Investigation Office, Office of the Ombudsman v. Enrico T. Yuzon, et. al. (which is likely the same as the aforementioned CA-G.R. SP No. 127451)*]; G.R. No. 216001 (*Field Investigation Office, Office of the Ombudsman v. Francisco T. Caparas*); and G.R. No. 216135 (*Field Investigation Office, Office of the Ombudsman v. Rodolfo H. De Mesa*).⁸⁹

⁸⁴ Records (OMB-C-A-08-0659-L), Folder 1, p. 339.

⁸⁵ Captioned as *Enrico T. Yuzon, Godofredo O. De Guzman, Ludivina G. Banzon, and Emerlinda S. Talento v. Nestor B. Palomania, Alexander M. Caturao, and Field Investigation Office of the Ombudsman*.

⁸⁶ No copy of the said Decision was attached but the dispositive portion was cited in the Motion for Reconsideration dated March 19, 2014 (assailing the Court of Appeals’ Decision dated February 14, 2014) of the Ombudsman (p. 1); records (Volume III, OMB-C-C-08-0622-L/SB-11-CRM-0251), unpaginated.

⁸⁷ Records (SB-11-CRM-0251 / OMB-C-C-08-0622-L), Vol. III, unpaginated.

⁸⁸ Per Case Administration System.

⁸⁹ Per Case Administration System.

Hence, it would appear that the other accused, apart from Yuzon, De Guzman, Banzon, and Talento, also appealed the administrative charge against them before the CA.

Petitions Before This Court:

Eventually, the Province of Bataan filed a Petition for *Certiorari*, Prohibition, and Mandamus with Urgent Prayer for Temporary Restraining Order and Writ of Preliminary Injunction⁹⁰ dated July 20, 2011 (docketed as G.R. Nos. 197510-11) before this Court. It questioned the basis for the filing of the criminal and administrative cases by raising the following issues:

I.

WHETHER OR NOT THE ACTIONS TAKEN BY RESPONDENT CASIMIRO, CHARGING PETITIONER'S OFFICIALS AND EMPLOYEES BEFORE THE SANDIGANBAYAN AND DISMISSING THEM FROM SERVICE, ARE VALID;

II.

WHETHER OR NOT THE REVERSAL OF THE RULING IN THE CASE OF OFFICE OF THE OMBUDSMAN VS. JOEL SAMANIEGO IS IN ORDER AND WOULD BETTER SERVE THE ENDS OF JUSTICE.⁹¹

However, in a Resolution⁹² dated September 5, 2011, this Court dismissed the petition in G.R. Nos. 197510-11 for prematurity and violation of the hierarchy of courts. The Province of Bataan moved for reconsideration⁹³ and the Ombudsman submitted its Comment.⁹⁴

Thereafter, the involved public officials⁹⁵ in the criminal case for violation of Section 3(e) of RA 3019 filed a Petition for *Certiorari* and Prohibition with Urgent Prayer for Temporary Restraining Order and Writ of Preliminary Injunction⁹⁶ dated April 20, 2012 (docketed as G.R. No. 201347), and raised the following issues:

1. Whether or not the Respondent Office of the Ombudsman acted without jurisdiction and/or with grave abuse of discretion amounting to lack or excess of jurisdiction when it found probable cause to criminally charge the Petitioners;

⁹⁰ *Rollo* (G.R. Nos. 197510-11), pp. 3-56.

⁹¹ *Id.* at 20.

⁹² *Id.* at 403-404.

⁹³ *Id.* at 405-418.

⁹⁴ *Id.* at 444-464.

⁹⁵ Rodolfo H. De Mesa, Imelda D. Inieto, Alicia R. Magpantay, Emerlinda S. Talento, Ludivina G. Banzon, Godofredo O. De Guzman, Pedro D. Baluyot, Angelina M. Villanueva, Francisco T. Caparas, Enrico T. Yuzon, and Evangeline A. Diaz.

⁹⁶ *Rollo* (G.R. No. 201347), pp. 3-35.

2. Whether or not the Respondent Office of the Ombudsman acted without jurisdiction and/or with grave abuse of discretion amounting to lack or excess of jurisdiction when it charged Petitioners Inieto, Villanueva, Baluyot and Caparas, with offenses which it had already dismissed.⁹⁷

Meanwhile, in a Resolution⁹⁸ dated April 10, 2013 in the criminal case for violation of Section 3(e) of RA 3019, the Sandiganbayan (Third Division) found no evidence that Governor Garcia and Abrera actively participated in the commission of the crime. Hence, their inclusion in the said case is not warranted. Consequently, the Information before the Sandiganbayan was amended to exclude Governor Garcia and Abrera. Moreover, the Sandiganbayan denied the prayer of the other accused to hold in abeyance the proceedings before the Sandiganbayan pending resolution of the instant petition before this Court.⁹⁹

Also, the Sandiganbayan (Third Division), in a Minute Resolution¹⁰⁰ dated May 6, 2013, found probable cause for the issuance of warrants of arrest against all the accused in SB-11-CRM-0251 for a violation of Section 3(e) of RA 3019. Moreover, in an Order¹⁰¹ dated September 5, 2013, the Sandiganbayan (Third Division) stated that the accused in SB-11-CRM-0251, including Asistin, entered pleas of “not guilty” to the charge. Thereafter, the Sandiganbayan (Third Division) issued a Pre-Trial Order¹⁰² dated January 30, 2014 in SB-11-CRM-0251.

Meanwhile, this Court, in a Resolution¹⁰³ dated November 20, 2013, granted the Province of Bataan’s motion for reconsideration and reinstated the petition in G.R. Nos. 197510-11.

The Petitions:

G.R. Nos. 197510-11

The Province of Bataan contends that the Ombudsman invalidly dismissed and charged its public officials before the Sandiganbayan.¹⁰⁴

Since this petition was filed when Governor Garcia was still impleaded as party the Province of Bataan argues that there was no evidence of any wrongdoing against him. He did not sign any of the documents related to the purchase of the patrol boat, including requisition, bidding, and disbursement of

⁹⁷ Id. at 16.

⁹⁸ *Rollo* (G.R. Nos. 197510-11), pp. 612-620. Penned by Presiding Justice Francisco H. Villaruz, Jr. (Chairperson), and concurred in by Associate Justices Samuel R. Martires (a retired member of the Court) and Amparo M. Cabotaje-Tang.

⁹⁹ *Rollo* (G.R. Nos. 197510-11), p. 619.

¹⁰⁰ Id. at 631; records (SB-11-CRM-0251 / OMB-C-C-08-0622-L), Vol. II, unpaginated.

¹⁰¹ Records (SB-11-CRM-0251 / OMB-C-C-08-0622-L), Vol. II, unpaginated.

¹⁰² Records (SB-11-CRM-0251 / OMB-C-C-08-0622-L), Vol. III, unpaginated.

¹⁰³ *Rollo* (G.R. Nos. 197510-11), pp. 656-657.

¹⁰⁴ Id. at 21-23.

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funds to pay for the same. Governor Garcia's liability pertained only to his alleged failure to perform his duty as governor under Section 465 (b) (1) of the Local Government Code (LGC), *i.e.*, to exercise general supervision and control over all programs, projects, services, and activities of the provincial government.¹⁰⁵ Governor Garcia granted a general authority to Provincial Administrator De Mesa to perform acts and sign documents which are routinely done in the course of the operations of the provincial government. Simply put, it is a delegation of power granted by the local chief executive.¹⁰⁶ Notably, the said authority was given before the purchase of the patrol boat in 2005, so it was impossible for such authority to have any specific reference to the patrol boat transaction.¹⁰⁷

The Province of Bataan points out that the Ombudsman ignored Governor Garcia's invocation of the ruling in the case of *Arias v. Sandiganbayan*,¹⁰⁸ which ruled that the head of office who affixed his signature because he relied on the good faith of his subordinates could not be held liable. Since Governor Garcia did not sign any document, and did not participate in the whole procurement process, he should not be held accountable as well.¹⁰⁹

It maintains that there is conclusive evidence of the patrol boat's physical existence, so there could be no basis for the claim of "ghost delivery."¹¹⁰ Contrary to the FIO's finding, the entire procurement process was done regularly. During the procurement, it was decided that a boat with a 4-cylinder engine would be purchased in lieu of a 6-cylinder boat. Such was disclosed and documented in a written Justification issued by the procuring entity through Inieto.¹¹¹ To reflect the changes, certain documents, which still described the boat to be equipped with a 6-cylinder engine, were corrected by simply writing the number "4" over the number "6." The procuring members thought that doing so would be more convenient and expeditious instead of preparing new documents to reflect the change.¹¹² The BAC deemed it unnecessary to resort to a new procurement procedure because the modification consisted only in the engine fitting from a 6- to 4-cylinder, but the other material specifications remained the same.¹¹³ The purchase was conducted through a negotiated procurement, an alternative method allowed under Section 53 of RA 9184, as two failed biddings had occurred.¹¹⁴ No injury was caused to the Province of Bataan when the patrol boat was purchased.¹¹⁵

¹⁰⁵ Id. at 23-25.

¹⁰⁶ Id. at 25-26.

¹⁰⁷ Id.

¹⁰⁸ 259 Phil. 794, 801 (1989).

¹⁰⁹ *Rollo* (G.R. Nos. 197519-11), pp. 26-27.

¹¹⁰ Id. at 34-36.

¹¹¹ Id. at 38-39.

¹¹² Id. at 40.

¹¹³ Id. at 42.

¹¹⁴ Id. at 42-44.

¹¹⁵ Id. at 44.

The Province of Bataan insists that the ruling in *Office of the Ombudsman v. Samaniego (Samaniego)*,¹¹⁶ which held that the decision of the Ombudsman in an administrative case is immediately executory pending appeal, and may not be stayed by the filing of the appeal, or the issuance of an injunctive writ, should be reversed to better serve the ends of justice.¹¹⁷ The removal of the CA's discretionary authority to issue an injunctive writ in administrative cases before the Ombudsman, may be viewed as an abdication of the appellate court's duty to protect a clear right in order to prevent serious damage.¹¹⁸ Additionally, *Samaniego* runs counter to the constitutional provision on equal protection of laws.¹¹⁹ Apparently, in *Civil Service Commission v. Court of Appeals*,¹²⁰ the Court (*En Banc*) held that the writ of preliminary injunction issued by the CA, enjoining the implementation of the dismissal of the respondents in that case by the Civil Service Commission (CSC), is expressly authorized by Section 2, Rule 58 of the Rules of Court. Considering that the CSC, like the Office of the Ombudsman, is a constitutional body with the primary authority to discipline employees and officials in the civil service, *Samaniego* puts the dismissed respondents in administrative cases heard by the Ombudsman at a disadvantage, compared to dismissed respondents in administrative cases heard by the CSC.¹²¹

G.R. No. 201347

The petitioners¹²² herein assert that the Ombudsman's finding that there was no delivery of the patrol boat at the time of inspection and payment is invalid under Section 27 of the Ombudsman Law.¹²³ The entries relating to the patrol boat bore specific details, such as the engine number and measurements, which could not be done without the boat's existence.¹²⁴ The Province of Bataan has taken official action by filing the Rule 65 Petition docketed as G.R. Nos. 197510-11 to deny that it suffered any undue injury from the procurement of the patrol boat.¹²⁵ The Ombudsman acted without, or in excess, of its jurisdiction when it supposedly resurrected charges for violation of Section 3 (g) of RA 3019, and Falsification of Public Document, which were dismissed in its previous Resolution. The Ombudsman reversed its own findings beyond the period imposed by its own Rules of Procedure.¹²⁶ Moreover, even assuming

¹¹⁶ See *Office of the Ombudsman v. Samaniego*, 646 Phil. 445, 449 (2010).

¹¹⁷ *Rollo* (G.R. Nos. 197510-11), pp. 45-47.

¹¹⁸ *Id.* at 48-49.

¹¹⁹ *Id.* at 49-50.

¹²⁰ See *Civil Service Commission v. Court of Appeals*, 511 Phil. 708, 715-716 (2005).

¹²¹ *Rollo* (G.R. Nos. 197510-11), pp. 50-52.

¹²² Rodolfo H. De Mesa, Imelda D. Inieto, Alicia R. Magpantay, Emerlinda S. Talento, Ludivina G. Banzon, Godofredo O. De Guzman, Pedro D. Baluyot, Angelina M. Villanueva, Francisco T. Caparas, Enrico T. Yuzon, and Evangeline A. Diaz.

¹²³ *Rollo* (G.R. No. 201347), pp. 16-19.

¹²⁴ *Id.* at 20-21.

¹²⁵ *Id.* at 22-26.

¹²⁶ *Id.* at 26-27.

that they committed a crime, the act of falsification was deemed to be a necessary means for the commission of the other crime (under RA 3019), within the contemplation of Article 48 of the RPC. Thus, the filing of the two Informations for Falsification of Public Document should be proscribed.¹²⁷

Comments on the Petitions:

Conversely, the Ombudsman, through the Office of the Special Prosecutor, argues that it did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it found probable cause to criminally charge the involved public officials under RA 3019, and when it similarly found probable cause to charge Inieto, Villanueva, Baluyot, and Caparas with falsification of public documents.¹²⁸ Section 27 of RA 6770 applies only in administrative cases and holds no bearing as far as criminal cases are concerned.¹²⁹ The “undue injury” by the Provincial Government of Bataan cannot be denied by the mere contrary attestation of the latter.¹³⁰ The procurement of the 4-cylinder gas engine patrol boat was not done through a competitive bidding, but *via* a mere Justification, which cannot amount to a new Purchase Request from which a new procurement process can proceed. Without the benefit of public bidding, Asistin was given unwarranted benefit.¹³¹

Moreover, the Ombudsman avers that the motion for reconsideration filed by the involved public officials threw the whole case open for review, and the assailed Memorandum, which resolved the said motion in the criminal cases, was rendered while jurisdiction remained with the Office of the Ombudsman.¹³² There can be no complex crime if one of the component offenses is punished by a special law. Thus, the felony of Falsification of Public Document (under the RPC) cannot be complexed with a violation of Section 3 (e) of RA 3019 (special law). It adds that Asistin admitted that he only started to buy materials for the patrol boat after he received payment, which was after those charged with Falsification had already supposedly inspected and accepted the patrol boat when in fact, the said boat was yet to be built.¹³³

Additional Arguments:

In reply, the Province of Bataan argues that the Ombudsman did not bother to test the truthfulness of Asistin’s statements as regards the timeline of the construction of the patrol boat and the date of payment.¹³⁴ It insists that the entire procurement process was regular and above-board. The change was justified, in good faith, due to the increase in the price of the 6-cylinder gas

¹²⁷ Id. at 28-19.

¹²⁸ *Rollo* (G.R. Nos. 197510-11), pp. 580-582.

¹²⁹ Id. at 582.

¹³⁰ Id. at 582-583.

¹³¹ Id. at 583-587.

¹³² Id. at 587-588.

¹³³ Id. at 588-589.

¹³⁴ Id. at 636-638.

engine, and considering the cheaper fuel consumption of the 4-cylinder gas engine.¹³⁵ It denies that it incurred undue injury since the Province of Bataan actually received and used the patrol boat.¹³⁶

In its Comment, the Office of the Solicitor General (OSG), representing the Ombudsman, the FIO, and DILG, underscores that the issue as regards Governor Garcia and Abrera has already become moot as they were dropped from the criminal case.¹³⁷ Nonetheless, the OSG avers that the Province of Bataan is not the “person aggrieved” under Rule 65 of the Rules of Court. Thus, it is not a proper entity to institute the petition (docketed as G.R. Nos. 197510-11) since it was not a party in the proceedings before the Ombudsman in the criminal and administrative cases.¹³⁸ There is no evidence that the Ombudsman acted with grave abuse of discretion amounting to lack or in excess of jurisdiction, as the petitioner simply disagreed with the Ombudsman’s findings.¹³⁹

It contends that there was no delivery of the subject patrol boat at the time of inspection, acceptance, and payment,¹⁴⁰ and that the procurement was irregular for lack of public bidding.¹⁴¹ The petitioner’s prayer to reverse the ruling in *Samaniego* has no application in this case.¹⁴² Also, there is no cause of action against the DILG as it is merely tasked to execute the final orders and decisions of the Ombudsman.¹⁴³

Subsequent Incidents:

In a letter¹⁴⁴ dated May 5, 2021, the Ombudsman (in response to the OSG’s March 29, 2021 letter requesting for information regarding the developments in this case) stated that it has the power to dismiss public officials or employees even if, in the meantime, they have resigned or their term of office has expired, so long as they were in government service at the time of the institution of the administrative case. Such is relevant in terms of the implementation of the remaining accessory penalties (e.g., bar from re-entry to government service) and the status of the position held by the person concerned, whether inside or outside the Province of Bataan. Notably, it averred that the administrative aspect of the petition (in G.R. Nos. 197510-11) faces the hurdles of improper remedy and lack of jurisdiction.

¹³⁵ Id. at 639-640.

¹³⁶ Id. at 641.

¹³⁷ Id. at 687-688.

¹³⁸ Id. at 689-690.

¹³⁹ Id. at 690-691.

¹⁴⁰ Id. at 692-693.

¹⁴¹ Id. at 693-695.

¹⁴² Id. at 695-699.

¹⁴³ Id. at 700-702.

¹⁴⁴ Temporary *rollo*; Letter of the Office of the Ombudsman dated May 5, 2021 and signed by Assistant Ombudsman Asryman T. Rafanan.

Regarding the criminal aspect of the petitions (in G.R. Nos. 197510-11 and 201347), the Ombudsman stated that the proceedings under the Informations docketed as SB-11-CRM-0251 (*People v. De Mesa, et. al. / RA 3019 case*) and SB-12-CRM-0029 to 0030 (*People v. Inieto, et. al. / Falsification of Public Document case*) ensued in due course before the Sandiganbayan. Specifically, in SB-12-CRM-0029 to 0030 (*People v. Inieto, et. al. / Falsification of Public Document case*), the Sandiganbayan's Resolution¹⁴⁵ dated February 2, 2021 denied the Motion for Leave to File Demurrer to Evidence filed by the accused.¹⁴⁶ The Sandiganbayan found that the evidence submitted by the prosecution, if unrebutted, would be sufficient to support a verdict of guilt against Inieto, Baluyot, Villanueva, Caparas, and Diaz. However, its ruling is without prejudice to the filing of demurrer to evidence without prior leave of court, but subject to the legal consequence under Section 23, Rule 119 of the Revised Rules of Criminal Procedure.¹⁴⁷

Meanwhile, in SB-11-CRM-0251 (*People v. De Mesa, et. al. / RA 3019 case*), the Sandiganbayan, in a Resolution¹⁴⁸ dated April 22, 2019, denied De Mesa's Motion to Hold in Abeyance the Rendition of Decision. It found that consolidation with SB-12-CRM-0029 to 0030 (*People v. Inieto, et. al. / Falsification of Public Document case*) would be improper as these cases involved Falsification by Public Officer under Art. 171 (4) of the RPC. The accused therein are not completely the same with SB-11-CRM-0251 (*People v. De Mesa, et. al. / RA 3019 case*), which involves a violation of Section 3 (e) of RA 3019. Moreover, SB-11-CRM-0251 (*People v. De Mesa, et. al. / RA 3019 case*) has already been submitted for decision upon the parties' filing of their respective Memoranda. Hence, holding in abeyance the rendition of the decision would unnecessarily delay the resolution of SB-11-CRM-0251 (*People v. De Mesa, et. al. / RA 3019 case*). Additionally, it found no merit in De Mesa's argument that there should be a single judgment in SB-11-CRM-0251 and SB-12-CRM-0029 to 0030 since the two sets of cases were not consolidated.

Thus, the Ombudsman argues that since the two criminal proceedings before the Sandiganbayan are now in their advanced stages (*i.e.*, past arraignment and in the trial stage or nearing rendition of judgment), the Petitions as to such criminal aspect before this Court have become moot. Hence, it opines that this Court should allow the Sandiganbayan to complete the criminal proceedings before it.

¹⁴⁵ Temporary *rollo*; Sandiganbayan (6th Division) Resolution dated February 2, 2021, penned by Associate Justice Kevin Narce B. Vivero and concurred in by Associate Justices Sarah Jane T. Fernandez and Karl B. Miranda.

¹⁴⁶ Filed by Imelda D. Inieto, Pedro D. Baluyot, Angeline M. Villanueva, Francisco T. Caparas, and Evangeline A. Diaz.

¹⁴⁷ Accused shall waive their right to present their evidence and are submitting the case for judgment on the basis of the evidence adduced by the prosecution.

¹⁴⁸ Temporary *rollo*; Sandiganbayan (6th Division) Resolution dated April 22, 2019. Penned by Associate Justice Sarah Jane T. Fernandez concurred in by Associate Justices Karl B. Miranda and Kevin Narce B. Vivero; records (SB-11-CRM-0251 / OMB-C-C-08-0622-L), Vol. III, unpaginated.

Our Ruling

As pointed out by the Ombudsman, the issues concerning the criminal aspect in the petitions (G.R. Nos. 197510-11 and 201347) have been rendered moot, and thus, should be dismissed. With respect to the administrative aspect (in G.R. Nos. 197510-11), the petition should be dismissed due to the petitioners' Province of Bataan's lack of legal standing, and for being the wrong remedy.

Criminal Aspect of the Petitions

Jurisprudence states that “[a] petition for *certiorari*, pertaining to the regularity of a preliminary investigation, becomes moot after an information is filed and a trial court issues an arrest warrant upon finding probable cause against the accused.”¹⁴⁹ By analogy, the same rationale should be applied in this case. This is because the Sandiganbayan acts as a “trial court” in resolving criminal cases against government officials or employees.¹⁵⁰ “The Sandiganbayan is a special court tasked to hear and decide cases against public officers and employees[,] and entrusted with the difficult task of policing and ridding the government ranks of the dishonest and corrupt.”¹⁵¹

To stress, the petitions herein assail the finding of probable cause to indict the involved public officers for the criminal charges. However, the attendant circumstances revealed that: (1) Informations have already been filed against the concerned individuals; (2) warrants of arrest have been issued against them; (3) they have been arraigned; and (4) the trials before the Sandiganbayan have begun. These incidents presuppose that the Sandiganbayan already found the existence of probable cause to criminally charge the accused, and put them to trial. Case No. SB-11-CRM-0251 (*People v. De Mesa, et. al. / RA 3019 case*) has already been submitted for decision while Case Nos. SB-12-CRM-0029 to 0030 (*People v. Inieto, et. al. / Falsification of Public Document case*) are undergoing trial. Even the motion for leave to file demurrer to evidence has been denied by the Sandiganbayan, holding that the evidence of the prosecution, if unrebutted, would be sufficient to support a conviction for the accused. Thence, with respect to the criminal aspect of the cases, and because of these supervening events, “this Court is left with no justiciable controversy to resolve, and a declaration on it would be of no practical use or value.”¹⁵²

In view of these, “[n]ow that Informations were already filed in the Sandiganbayan, petitioners have all the opportunity there during the trial proper

¹⁴⁹ *Marantan v. Department of Justice*, G.R. No. 206354, March 13, 2019, citing *Secretary De Lima v. Reyes*, 776 Phil. 623, 628 (2016).

¹⁵⁰ 1987 CONSTITUTION, Art. 11, Section 4.

¹⁵¹ *Pichay, Jr. v. Sandiganbayan (Fourth Division)*, G.R. Nos. 241742 & 241753-59, May 12, 2021, citing *Garcia v. Sandiganbayan*, 842 Phil. 240, 261 (2018).

¹⁵² *Marantan v. Department of Justice*, supra note 149, citing *Timbol v. Commission on Elections*, 754 Phil. 578, 584 (2015).

to dispute the findings of probable cause, and, possibly, to eventually clear their names from the alleged crimes.”¹⁵³ It is assumed that the involved personalities have employed efforts to explain their positions, and maximize the legal remedies available to them pending trial. Hence, the decision to dismiss the criminal cases, or to acquit/convict the accused is for the Sandiganbayan to determine at this point.

To reiterate,

A case is rendered moot when, because of supervening events, this Court is left with no justiciable controversy to resolve, and a declaration on it would be of no practical use or value.

In *Secretary De Lima v. Reyes*, this Court reiterated its ruling in *Crespo v. Mogul* that once an information is filed before a court, that court acquires jurisdiction over the case. Notably, a petition questioning the preliminary investigation of an accused becomes moot once an information based on the preliminary investigation is filed before a trial court, which, in turn, would complete its own determination of probable cause. After this judicial determination, the question of an accused’s guilt or innocence would rest with the trial court’s own sound discretion.¹⁵⁴

Simply put, a moot and academic case ceases to present a justiciable controversy by virtue of supervening events,¹⁵⁵ and thus, this Court should refrain from rendering a ruling on the criminal aspect of the petitions.

Administrative Aspect of the Petition (G.R. Nos. 197510-11)

As pointed out by the OSG, there is a defect in the Province of Bataan’s petition (G.R. Nos. 197510-11) as the petitioner does not have the personality to file the same. To be precise, the Province of Bataan is not considered as an aggrieved party, be it in the criminal or administrative aspect of its petitions, which can file a pleading under Rule 65 of the Rules of Court. Consider this:

Section 1, Rule 65 essentially provides that a person aggrieved by any act of a tribunal, board or officer exercising judicial or quasi-judicial functions rendered without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction may file a petition for certiorari.

An aggrieved party under Section 1, Rule 65 is one who was a party to the original proceedings that gave rise to the original action for *certiorari* under Rule 65. We had occasion to clarify and explain the ‘aggrieved party’ requirement in *Tang v. Court of Appeals* where we said:

¹⁵³ *Patdu, Jr. v. Carpio-Morales*, G.R. No. 230171, September 27, 2021.

¹⁵⁴ *Marantan v. Department of Justice*, supra note 149. Citations omitted.

¹⁵⁵ See *Majestic Plus Holding International, Inc. v. Bullion Investment and Development Corp.*, 801 Phil. 883, 908 (2016).

Although Section 1 of Rule 65 provides that the special civil action of *certiorari* may be availed of by a ‘person aggrieved’ by the orders or decisions of a tribunal, the term ‘person aggrieved’ is not to be construed to mean that any person who feels injured by the lower court’s order or decision can question the said court’s disposition via *certiorari*. To sanction a contrary interpretation would open the floodgates to numerous and endless litigations which would undeniably lead to the clogging of court dockets and, more importantly, the harassment of the party who prevailed in the lower court.

In a situation wherein the order or decision being questioned underwent adversarial proceedings before a trial court, the ‘**person aggrieved**’ referred to under Section 1 of Rule 65 who can avail of the special civil action of *certiorari* pertains to one who was a party in the proceedings before the lower court. The correctness of this interpretation can be gleaned from the fact that a special civil action for *certiorari* may be dismissed *motu proprio* if the party elevating the case failed to file a motion for reconsideration of the questioned order or decision before the lower court. Obviously, only one who was a party in the case before the lower court can file a motion for reconsideration since a stranger to the litigation would not have the legal standing to interfere in the orders or decisions of the said court. In relation to this, if a non-party in the proceedings before the lower court has no standing to file a motion for reconsideration, logic would lead us to the conclusion that he would likewise have no standing to question the said order or decision before the appellate court via *certiorari*.¹⁵⁶ (Emphasis Supplied)

The Province of Bataan is not a “person aggrieved” within the contemplation of the Rules which can properly avail of the special civil action of *certiorari*, prohibition, and mandamus, as it was not a party in the proceedings before the Ombudsman. Consequently, the petition docketed as G.R. Nos. 197510-11 should be dismissed.

Even if the Province of Bataan had the standing to file the petitions, it is settled that “as a quasi-judicial agency, decisions of the Office of the Ombudsman in administrative disciplinary cases may only be appealed to the Court of Appeals through a Rule 43 petition”¹⁵⁷ in order to respect the hierarchy of courts.¹⁵⁸

¹⁵⁶ *Concepcion, Jr. v. Commission on Elections*, 609 Phil. 201, 214-215 (2009), citing *Tang v. Court of Appeals*, 382 Phil. 277, 287 (2000).

¹⁵⁷ *Ornales v. Office of the Deputy Ombudsman for Luzon*, 839 Phil. 882, 884 (2018), citing *Fabian v. Hon. Desierto*, 356 Phil. 787, 804 (1998); *Namuhe v. The Ombudsman*, 358 Phil. 781, 788-789 (1998); *Nava v. National Bureau of Investigation*, 495 Phil. 354, 365-366 (2005); *Dr. Pia v. Hon. Gervacio, Jr.*, 710 Phil. 196, 203 (2013).

¹⁵⁸ See *Gatchalian v. Office of the Ombudsman*, 838 Phil. 140, 150 (2018), citing *Information Technology Foundation of the Philippines, v. Commission on Elections*, 810 Phil. 400, 410 (2017).

Withal, it is only proper that the administrative aspect of the cases be resolved by the CA, in proper observance of the hierarchy of courts, and in accordance with prevailing rules and jurisprudence. Similarly, “an administrative agency performs quasi-judicial functions if it renders awards, determines the rights of opposing parties, or if their decisions have the same effect as the judgment of a court.”¹⁵⁹ When the Ombudsman, in an administrative case, renders a decision and imposes a penalty, it is performing a quasi-judicial function. Its decision has the same effect as a court judgment. Thus, as a “decision,” the Ombudsman’s ruling (in the performance of its quasi-judicial functions) is appealable to the CA under Rule 43 of the Rules of Court. Simply put, the procedurally correct way to elevate the administrative aspect of the case is to file a petition before the CA.

To emphasize,

[I]n cases where the respondent is not exonerated and the penalty imposed is not merely public censure or reprimand, or suspension of not more than one (1) month’s salary, the Ombudsman’s decision is appealable, and the proper remedy is to file an **appeal under Rule 43 of the Rules of Court before the Court of Appeals**. As stated in Section 7, Rule III of the Ombudsman Rules:

Section 7. *Finality and execution of decision*. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. **In all other cases, the decision may be appealed to the Court of Appeals** on a verified petition for review under the requirements and conditions set forth in **Rule 43 of the Rules of Court**, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

x x x x¹⁶⁰ (Emphases and underscoring supplied)

In any case, most of those involved actually appealed their administrative cases to the CA. In fact, some of these cases which were already passed upon by the CA are now the subject of pending cases before this Court. If there is anyone from those involved who did not file a Rule 43 petition before the CA, “as regards the administrative aspect, the Court held that the Ombudsman’s finding ‘has already attained finality [due to the failure] to file a petition for *certiorari* before the [CA].”¹⁶¹

Based on the foregoing discussion, the herein consolidated petitions should be dismissed.

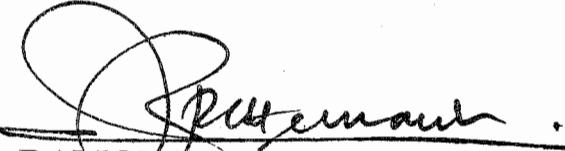
WHEREFORE, the Petitions are DISMISSED.

¹⁵⁹ *Secretary De Lima v. Reyes*, supra note 149, at 636, citing *Santos v. Go*, 510 Phil. 137, 148 (2005).


¹⁶⁰ *Yatco v. Office of the Deputy Ombudsman for Luzon*, G.R. No. 244775, July 6, 2020, citing Amendment of Rule III, Administrative Order No. 07, Ombudsman Administrative Order No. 17-03, September 15, 2003.

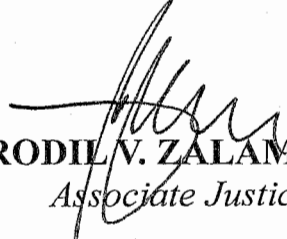
¹⁶¹ *Id.*, citing *Joson v. Ombudsman*, 784 Phil. 172, 189 (2016).

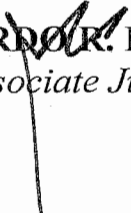
SO ORDERED.

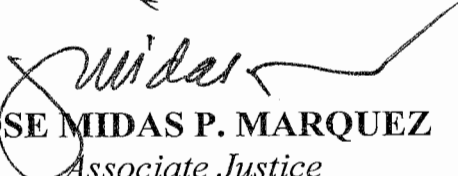

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

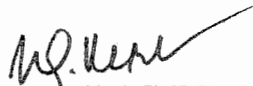

RODIL V. ZALAMEDA
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

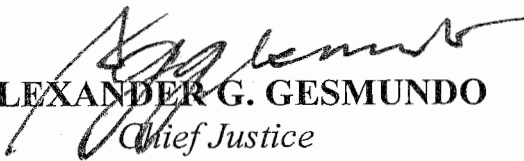
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I hereby certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice