



Republic of the Philippines
Supreme Court
 Manila

EN BANC

DENNIS M. VILLA-IGNACIO,
 Petitioner,

G.R. No. 193092

Present:

- versus -

SERENO, *CJ*,
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 MENDOZA,
 REYES, *
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA, and
 CAGUIOA, *JJ*.

OMBUDSMAN MERCEDITAS N. GUTIERREZ, THE INTERNAL AFFAIRS BOARD OF THE OFFICE OF THE OMBUDSMAN, represented by its Chairman, ORLANDO C. CASIMIRO, ELVIRA C. CHUA, and the SANDIGANBAYAN,

Promulgated:

Respondents.

February 21, 2017

x ----- *[Signature]* ----- x

DECISION

SERENO, *CJ*:

At bench is a special civil action for certiorari¹ filed by Dennis M. Villa-Ignacio, the former head of the Office of the Special Prosecutor (OSP) of the Office of the Ombudsman. He assails the Resolution² and Joint Order³ of the Office of the Ombudsman's Internal Affairs Board (IAB). These

* On official leave.

¹ *Rollo*, pp. 3-54; Petition for Certiorari with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction filed on 17 August 2010.

² *Id.* at 56-81; the IAB Resolution in OMB-C-C-08-0132-D dated 4 February 2010 was signed by Chairman Orlando C. Casimiro, Vice-Chairman Emilio A. Gonzalez III, and IAB members Robert E. Kallos, Evelyn A. Baliton, Rodolfo M. Elman, and Virginia P. Santiago; approved by Ombudsman Ma. Mercedes Navarro-Gutierrez on 23 April 2010.

³ *Id.* at 83-91; the IAB Joint Order in OMB-C-C-08-0132-D and OMB-C-A-08-0147-D dated 4 June 2010 was signed by Chairman Orlando C. Casimiro, Vice-Chairman Emilio A. Gonzalez III, and IAB members Robert E. Kallos, Evelyn A. Baliton, Rodolfo M. Elman, and Virginia P. Santiago; approved by Ombudsman Ma. Mercedes Navarro-Gutierrez on 16 June 2010.

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issuances were approved by the Ombudsman,⁴ resulting in the filing of an Information for *estafa* against petitioner before the Sandiganbayan.

FACTUAL ANTECEDENTS

In January 2005, during a flag ceremony, petitioner asked the employees of the OSP what to do with the monetary contributions solicited in their December 2004 Christmas party charity drive. Earlier, they had given their donations in kind to the Kapuso Foundation of GMA 7 Network.

The employees agreed that the monetary proceeds of their project would be donated to the typhoon victims in Quezon province, specifically for the construction of manual deep wells. Immediately after the flag ceremony, private respondent Assistant Special Prosecutor Elvira C. Chua donated ₱26,660 to the charity drive. Erlina C. Bernabe, who pooled the funds, issued a receipt⁵ in the name of Chua, stating that the donation was for the purchase of water pumps.

According to petitioner, he told the OSP employees in the succeeding flag assemblies that the contractor of the deep wells had declined the project. After soliciting suggestions on the use of the funds they had raised, he proposed that these be donated to the Gawad Kalinga Community Development Foundation, Inc. (Gawad Kalinga). He claimed that the employees participated in the discussion and eventually agreed to donate the funds to Gawad Kalinga.

On 1 September 2006, petitioner instructed Bernabe to apply for a manager's check amounting to ₱52,000, payable to Gawad Kalinga.⁶ The beneficiary issued an Official Receipt,⁷ which was posted on the bulletin board of the OSP for the information of all of its employees.

Two years after the charity drive, Chua contested the donation to Gawad Kalinga. In a letter dated 18 March 2008,⁸ she wrote Bernabe asking about the ₱26,660 donation. Bernabe replied that, as instructed by petitioner, the funds donated by private respondent had already been included in the OSP employees' donation to Gawad Kalinga.⁹

PROCEEDINGS BEFORE THE IAB

Claiming that petitioner and Bernabe had committed *estafa* when they gave her ₱26,660 to an entirely different beneficiary, Chua lodged a

⁴ Id. at 79, 91; the Resolution and Joint Order of the IAB were respectively approved on 23 April 2010 and 16 June 2010.

⁵ Id. at 148.

⁶ Id. at 151.

⁷ Id. at 152.

⁸ Id. at 147.

⁹ Id. at 149; letter signed by Bernabe dated 18 March 2008.

Complaint¹⁰ against them before the IAB on 27 March 2008. The IAB, then chaired by Overall Deputy Ombudsman Orlando C. Casimiro, is the body that investigates the officials and personnel of the Office of the Ombudsman.

In her defense, Bernabe claimed that she never exercised any kind of authority or discretion over the funds, and that her actions were done only in compliance with the directives of petitioner, who was her superior. Furthermore, she averred that Chua had made a donation to the OSP, and not to Bernabe or petitioner. Bernabe highlighted the fact that the donation had not been received in trust or under any obligation to deliver it. She further asserted that even if the donor had violated the condition of the donation, the remedy was to institute a civil case for the revocation of the donation, and not to institute a criminal case for *estafa*.

For his part, petitioner consistently questioned the proceedings of the IAB before Casimiro. He claimed that under the IAB's own rules, Casimiro should be disqualified from the proceedings because both the latter and Chua belonged to the same unit – the Office of the Ombudsman's Central Office. Petitioner maintained that the Complaint of private respondent was motivated by a vendetta against him. He insisted that he had not converted Chua's contribution to an unintended purpose. He also pointed out that during the flag assemblies, the employees had agreed with his suggestion to donate to Gawad Kalinga.

On the basis of a Manifestation dated 4 September 2008 and signed by 28 officials of the OSP, Chua claimed that the majority of them had not agreed to donate the funds to Gawad Kalinga.¹¹ She also disclaimed any involvement in the discussions related to the donation of her monetary contribution.

In its Resolution dated 4 February 2010, which was affirmed in its Joint Order dated 4 June 2010, the IAB believed Bernabe and resolved to dismiss the Complaint against her. It held that she had merely acted at the behest of petitioner.

With respect to petitioner, the IAB recommended the filing before the Sandiganbayan of an Information for *estafa* with abuse of confidence under Article 315 (1) (b) of the Revised Penal Code. The IAB ruled that petitioner had misappropriated the funds of the charity drive by giving the money to Gawad Kalinga, instead of using it to construct deep wells for the typhoon victims.

Without explanation, Ombudsman Merceditas N. Gutierrez approved the recommendation of the IAB. As a result, an Information for *estafa*, docketed as Criminal Case Number SB-10-CRM-0110, was filed against petitioner before the Sandiganbayan.¹²

¹⁰ Id. at 134-145.

¹¹ Id. at 268-270.

¹² Id. at 389-391.

PROCEEDINGS BEFORE THIS COURT

Petitioner filed the instant Petition for Certiorari under Rule 65 of the Rules of Court against the IAB's recommendation, which was affirmed by the Ombudsman.

In our Resolution dated 11 January 2011, we noted and granted the Manifestation and Manifestation in Lieu of Comment dated 21 December 2010 filed by the Office of the Solicitor General (OSG). The OSG manifested that the IAB and Ombudsman Ma. Mercedes N. Gutierrez had gravely abused their discretion in allowing Casimiro to actively participate in the proceedings *a quo*. Thus, the Office of the Ombudsman through its own counsel filed its comment on the present action.¹³ Respondents stood by the validity of the indictment against petitioner.¹⁴

On 23 October 2012, this Court required the parties to move in the premises.¹⁵ On 18 March 2013, petitioner manifested that the Court of Appeals (CA) Decision dated 8 October 2012 had already absolved him in a related administrative case finding him liable for simple misconduct.¹⁶ However, neither of the parties indicated whether that CA Decision has already attained finality. Private respondent Chua manifested that the Special Second Division of the Sandiganbayan had deferred the proceedings against petitioner for *estafa* in SB-10-CRM-0110 until the resolution of the instant case by this Court.¹⁷ For its part, the Office of the Ombudsman manifested that there was no relevant supervening development that might cause the present case to become moot and academic.

In this special civil action for certiorari, petitioner claims that respondents gravely abused their discretion by violating their own rules of procedure when they charged him with *estafa*.

RULING OF THE COURT

We grant the petition. Respondents committed grave abuse of discretion when they failed to observe their own rules in the conduct of their proceedings against petitioner.

¹³ Id. at 451-469; 475-476. In the Resolution of this Court dated 11 January 2011, we noted and granted the Manifestation and Manifestation in Lieu of Comment dated 21 December 2010 filed by the Office of the Solicitor General (OSG). The OSG manifests that the IAB and Ombudsman Ma. Mercedes N. Gutierrez had gravely abused their discretion in the proceedings *a quo*. For this reason, public respondents filed their own comment in the present action.

¹⁴ Id. at 399-423, 550-590; Comment of Elvira C. Chua filed on 21 October 2010 and Comment of the Office of the Ombudsman filed on 10 March 2011;

¹⁵ Id. at 697.

¹⁶ Id. at 836-956; the CA Decision dated 8 October 2012 in CA-G.R. SP No. 114702 was penned by Associate Justice Noel G. Tijam, with Associate Justices Romeo F. Barza and Ramon A. Cruz, concurring.

¹⁷ Sandiganbayan records, p. 217.



***Violation of Administrative Order
No. 16***

Administrative Order No. (A.O.) 16, Series of 2003, entitled “Creation of an Internal Affairs Board,” outlines the procedure for handling complaints against officials and employees of the Office of the Ombudsman. In arguing for the disqualification of Casimiro, petitioner invokes Section III(N) of A.O. 16, which reads:

N. Disqualifications

The Chairman, Vice Chairman or any member of the IAB, as well as any member of the IAB Investigating Staff, shall be automatically disqualified from acting on a complaint or participating in a proceeding under the following circumstances:

1. He is a party to the complaint, either as a respondent or complainant;
- 2. He belongs to the same component unit as any of the parties to the case;**
- 3. He belongs or belonged to the same component unit as any of the parties to the case during the period when the act complained of transpired;**
4. He is pecuniarily interested in the case or is related to any of the parties within the sixth degree of affinity or consanguinity, or to counsel within the fourth degree, computed according to the provisions of civil law; or
5. He has, at one time or another, acted upon the matter subject of the complaint or proceeding. x x x (Emphases supplied)

In this case, there is no dispute that Chua reports to the Central Office, which is the same as the unit of Casimiro.¹⁸ Straightforwardly, the latter should have been disqualified from acting on her complaint against petitioner.

Despite the protest of petitioner at the very onset of the case,¹⁹ Casimiro continued to handle the proceedings against the former. Casimiro signed several Orders requiring the submission of counter-affidavits, supporting evidence,²⁰ position papers,²¹ and rejoinders;²² and eventually issued the assailed resolutions. The IAB did not rule on the objection of petitioner until it had already concluded the proceedings against him.

¹⁸ CA *rollo*, pp. 171-172; Detail of Personnel to OMB-Central Office dated 10 August 2006 and Office Order No. 0138 dated 28 December 2006.

¹⁹ Id. at 82-148; Counter-Affidavit *Ex Abudanti Ad Cautelam* with Reply of petitioner dated 26 August 2008.

²⁰ *Rollo*, pp. 159-161; Orders dated 26 June 2008 and 7 August 2008.

²¹ Id. at 316; Order dated 5 November 2008.

²² Id. at 318; Order dated 5 November 2008.



The IAB ventured to justify the inclusion of Casimiro only when it issued its assailed Resolution dated 4 February 2010. It ruled that A.O. 16 did not apply, since the questioned charity drive transpired prior to the assignment of Chua to the Central Office in 2006.²³

The appreciation of the IAB is utterly incorrect. As can be read in paragraphs 2 and 3, Section III(N) of A.O. 16 patently disqualifies a person who belongs to the same component unit as any of the parties to the case, regardless of the timeframe that the acts complained of transpired. Clearly, the operative ground for disqualification arises when a member of the investigating and adjudicatory body is connected to the same unit as that of any of the parties to the case.

Now, before this Court, the Office of the Ombudsman points out that during the pendency of the proceedings before the IAB, A.O. 21 entitled “Revised Rules of the Internal Affairs Board” amended A.O. 16.²⁴ A.O. 21 deleted paragraphs 2 and 3 of Section III(N), thereby removing the disqualification of IAB members belonging to the same component unit as any of the parties to the cases before them.

This amendment acquired a questionable character, as it was sought to be implemented *subsequent* to the breach by the IAB of its own rules.²⁵ In our view, the supervening revision of A.O. 16 contravenes the avowed policy of the Office of the Ombudsman to “adopt and promulgate stringent rules that shall ensure fairness, impartiality, propriety and integrity in all its actions.”²⁶

Changing regulations in the middle of the proceedings without reason, after the violation has accrued, does not comply with fundamental fairness, or in other words, due process of law.²⁷ In *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*,²⁸ this Court characterized due process of law in this manner:

It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided. To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reasons and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly has it been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play.

²³ Id. at 70.

²⁴ Id. at 574-575.

²⁵ *Pacia v. Kapisanan ng mga Manggagawa sa Manila Railroad Co.*, 99 Phil. 45 (1956).

²⁶ Administrative Order No. 16, Statement of Policy, paragraph c (2003); see *People v. Lacson*, 459 Phil. 330 (2003).

²⁷ See *Buyco v. Philippine National Bank*, 112 Phil. 588 (1961) and *Tan, Jr. v. Court of Appeals*, 424 Phil. 556 (2002); see also Hector S. De Leon and Hector M. De Leon, Jr. *Administrative Law: Text and Cases* (2013), p. 142, citing 73 CJS at 431-432.

²⁸ 127 Phil. 306-326 (1967).



***Violation of Administrative Order
No. 7***

According to Section 4, Rule II of A.O. 7 entitled “Rules of Procedure of the Office of the Ombudsman,” supporting witnesses must execute affidavits to substantiate a complaint against a person under preliminary investigation.²⁹ Affidavits are voluntary declarations of fact written down and sworn to by the declarant before an officer authorized to administer oaths.³⁰

Here, the IAB concluded that a “majority of the OSP officers and employees disclaimed that they had knowledge of and consented to the turning-over of their donations to Gawad Kalinga Foundation.”³¹ As its basis, public respondent relied upon the Manifestation dated 4 September 2008 signed by 28 officials and employees of the OSP.³²

That Manifestation, which purports to be the voice of the majority belying the donation to Gawad Kalinga, does not qualify as an affidavit as it was not sworn to by the declarants before an officer authorized to administer oaths. Therefore, based on A.O. 7, public respondents should not have considered an unverified and unidentified private document as evidence in its proceeding against petitioner.

CONCLUSION

There is no dispute that public respondents blatantly violated their own regulations by continuously disregarding the disqualification of Casimiro and utilizing a disallowed document as basis for the assailed ruling. Worse, the board did not remedy its breaches or give any reason to justify its transgressions.

In *Agbayani v. COMELEC*,³³ wherein the tribunal violated its own procedure, this Court held:

The petitioner has correctly pointed out that the Order of the First Division of the COMELEC dismissing the pre-proclamation controversy and the Resolution of the COMELEC *en banc* denying the motion for reconsideration were both penned by Commissioner Abueg, in violation of its rule that —

... No member shall be the 'ponente' of an *en banc* decision, resolution or a motion to reconsider a decision/resolution written by him in a Division.

This is still another, reason why the challenged acts must be reversed. The Commission on Elections **should be the first to respect**

²⁹ Administrative Order No. 07 (1990)

³⁰ BLACK'S LAW DICTIONARY 126 (9th ed. 2009).

³¹ *Rollo*, p. 72.

³² *Id.* at 268-270.

³³ 264 Phil. 861 (1990).

and obey its own rules, if only to provide the proper example to those appearing before it and to avoid all suspicion of bias or arbitrariness in its proceedings. (Emphasis supplied)

Therefore, by doing the exact opposite of what the rules command, public respondents have demonstrated their patent and persistent disregard of the law. Certiorari, therefore, lies.³⁴ In no uncertain terms, we pronounced in *Jardin v. National Labor Relations Commission*³⁵ as follows:

The phrase “grave abuse of discretion amounting to lack or excess of jurisdiction” has settled meaning in the jurisprudence of procedure. It means such capricious and whimsical exercise of judgment by the tribunal exercising judicial or quasi-judicial power as to amount to lack of power. In labor cases, this Court has declared in several instances that **disregarding rules it is bound to observe constitutes grave abuse of discretion** on the part of labor tribunal. (Emphasis supplied)

In *Fabella v. Court of Appeals*,³⁶ the dismissed public school teachers were tried by an improperly constituted tribunal. The Court ruled therein that the “committees were deemed to have no competent jurisdiction. Thus, all proceedings undertaken by them were necessarily void.” Given that petitioner herein faced a similar predicament, we likewise rule that the proceedings against him before the IAB, as approved by the Ombudsman, are null and void.³⁷

WHEREFORE, the Petition for Certiorari filed by petitioner Dennis M. Villa-Ignacio is **GRANTED**. The Resolution dated 4 February 2010 and Joint Order dated 4 June 2010 of the Office of the Ombudsman’s Internal Affairs Board approved by the Ombudsman in OMB-C-C-08-0132-D, are **REVERSED** and **SET ASIDE**. The Information for *estafa* under Article 315 (1) (b) of the Revised Penal Code, filed before the Sandiganbayan in Criminal Case Number SB-10-CRM-0110, is **DISMISSED**.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice

³⁴ *Luna v. Allado Construction Co., Inc.*, 664 Phil. 509 (2011); *Information Technology Foundation of the Philippines v. Commission on Elections*, 464 Phil. 173 (2004); and *Silva v. National Labor Relations Commission*, 340 PHIL 286 (1997).

³⁵ *Jardin v. National Labor Relations Commission*, 383 Phil. 187 (2000).

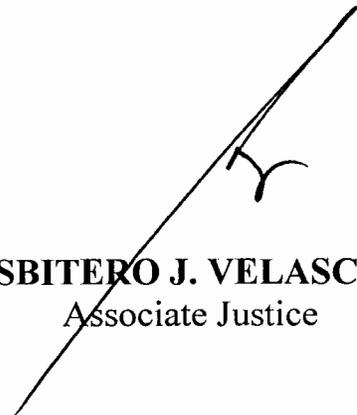
³⁶ 346 Phil. 940 (1997).

³⁷ See *Beja, Sr. v. Court of Appeals*, G.R. No. 97149, 31 March 1992.

WE CONCUR:



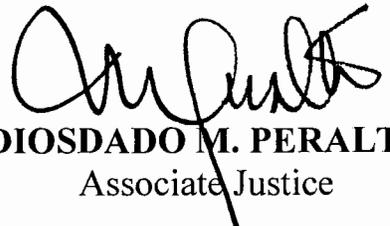
ANTONIO T. CARPIO
Associate Justice



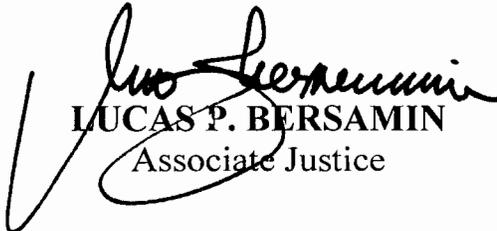
PRESBITERO J. VELASCO, JR.
Associate Justice



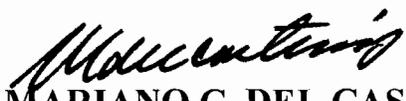
TERESITA J. LEONARDO-DE CASTRO
Associate Justice



DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice

(On official leave)
BIENVENIDO L. REYES
Associate Justice



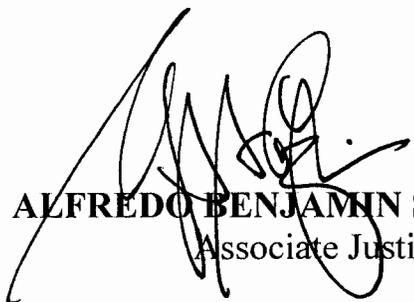
ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

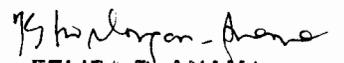
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I 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.



MARIA LOURDES P.A. SERENO
Chief Justice

CERTIFIED XEROX COPY:



FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT