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 Third Division

OCT 29 2018

Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

GERALDINE C. ORNALES, G.R. No. 214312
 ROSENDO R. EGUIA, VINCENT
 U. VERGARA, RODOLFO A. DE
 CASTRO, JR., AND RAMIRO V.
 MAGNAYE,

Petitioners,

Present:

PERALTA, *J.*, Chairperson,
 LEONEN,
 REYES, JR.,
 GESMUNDO, and
 REYES, JR., *JJ.*

-versus-

OFFICE OF THE DEPUTY
 OMBUDSMAN FOR LUZON,
 ROBERTO RICALDE, MODESTO
 DE LEON, ALICIA MANGUBAT,
 AND LENELITA BALBOA,

Respondents.

Promulgated:

September 5, 2018

Wilfredo V. Lapidan

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DECISION

LEONEN, *J.*:

Orders and decisions of the Office of the Ombudsman in criminal cases may be elevated to this Court via a Rule 65 petition, while its orders and decisions in administrative disciplinary cases may be appealed to the Court of Appeals via a Rule 43 petition.

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This resolves the Petition for Review¹ filed by Geraldine C. Ornales (Ornales), Rosendo R. Eguia (Eguia),² Vincent U. Vergara (Vergara), Rodolfo A. De Castro, Jr. (De Castro), and Ramiro V. Magnaye (Magnaye) assailing the Court of Appeals April 15, 2014³ and September 8, 2014⁴ Resolutions in CA-G.R. SP No. 133085, which dismissed their petition for certiorari for lack of jurisdiction.

On September 9, 2002, Manuel S. Tabunda, Chief Executive Officer of Amellar Solutions, wrote to then Mayor Raul Bendaña (Bendaña) of Lemery, Batangas with an offer to automate various municipal operations.⁵

On August 15, 2003, the Sangguniang Bayan of Lemery, Batangas (Sangguniang Bayan) issued Resolution No. 03-1001,⁶ authorizing Bendaña to enter into an ₱8,250,000.00 loan agreement with Land Bank of the Philippines (Landbank) for the computerization of the municipality's revenue collection system. Bendaña issued Administrative Order No. 2003-11,⁷ forming a Technical Evaluation Committee on Computerization (Committee) to evaluate the unsolicited computerization proposals received by the municipality.

On October 20, 2003, Landbank approved Bendaña's loan application of ₱8,193,060.00 for the purchase of computer units and programs for tax collection.⁸

On October 22, 2003, the Committee recommended⁹ that a proprietary computerization package be procured through direct contracting. It also recommended adopting Amellar Solutions' proposal since its "proposal does not have any suitable equivalent capable of delivering the same benefits and advantage already enjoyed by at least fifteen (15) local government units nationwide."¹⁰

¹ *Rollo*, pp. 3–36.

² Also referred to as "Roger Eguia" in the Complaint-Affidavit. *See rollo*, p. 121.

³ *Rollo*, pp. 38–40. The Resolution was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao and Danton Q. Bueser of the Special Thirteenth Division, Court of Appeals, Manila.

⁴ *Id.* at 42–43. The Resolution was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao and Danton Q. Bueser of the Former Special Thirteenth Division, Court of Appeals, Manila.

⁵ *Id.* at 55.

⁶ *Id.* at 68–69.

⁷ *Id.* at 59–60.

⁸ *Id.* at 75–76.

⁹ *Id.* at 72–74. The Technical Evaluation Committee on Computerization was composed of Rodel P. Morales (Executive Assistant II), Corazon Ellao (Municipal Treasurer), Engr. Sonia Masongsong (Municipal Assessor), Benjie Mendoza (OIC, Business Permits and Licensing Officer), Ligaya Gatoc (Municipal Budget Officer), Engr. Lorninda Magsino (Municipal Planning Development Officer), and Florante M. Barredo (Market Administrator).

¹⁰ *Id.* at 73.

On October 29, 2003, Bendaña wrote then Vice Mayor Ornales, requesting that he be authorized to enter into a contract of loan with Landbank, and into a procurement contract with Amellar Solutions.¹¹

On November 14, 2003, Bendaña once again wrote to Ornales, this time requesting that ₱8,193,060.00 be appropriated for the municipality's computerization program.¹²

On August 5, 2004, the Sangguniang Bayan issued Resolution No. 04-1048,¹³ authorizing Bendaña to "acquire a proprietary information technology project [for] Lemery, Batangas; source the appropriate funds; contract a loan or enter into a financing scheme; and enter into a contract with [Amellar Solutions] through direct contracting (single source procurement) procedure."¹⁴

On August 31, 2004, Bendaña and Amellar Solutions executed an agreement¹⁵ for the computerization of Lemery's revenue generation system.

On September 28, 2004, Lemery's Municipal Treasurer certified¹⁶ that the loan proceeds of ₱8,193,060.00 from Landbank were intended for the procurement of the municipality's computerization program.

On October 4, 2004, Amellar Solutions delivered computer equipment and software to the municipality.¹⁷

On October 6, 2004, the Sangguniang Bayan issued Resolution No. 04-1075,¹⁸ enacting Ordinance No. 04-77, which appropriated the Landbank loan proceeds for the municipality's computerization program.

On October 29, 2004, the Commission on Audit disallowed the municipality's direct procurement of computer equipment and software from Amellar Solutions.¹⁹

On November 14, 2005, Roberto Ricalde (Ricalde), Modesto De Leon (De Leon), Alicia Mangubat (Mangubat), and Lenelita Balboa (Balboa) filed

¹¹ Id. at 77.

¹² Id. at 78.

¹³ Id. at 79–81.

¹⁴ Id. at 79.

¹⁵ Id. at 82–102.

¹⁶ Id. at 103.

¹⁷ Id. at 107–120.

¹⁸ Id. at 104–106.

¹⁹ Id. at 137.

a complaint affidavit²⁰ before the Office of the Ombudsman. They accused members of the Sangguniang Bayan of violating Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, and Republic Act No. 9184, or the Government Procurement Reform Act, when they authorized Bendaña to enter into a direct contract with Amellar Solutions. The accused members were Niego Suayan, Melecio Vidal, Christopher Jones Bello, Ivan Ornales, Shirley Atienza, Eguia, Magnaye, Vergara, De Castro, and Ornales.

In their joint Counter-Affidavit,²¹ the Sangguniang Bayan members denied violating Republic Act No. 3019, and alleged good faith and lack of malice in issuing the assailed resolutions. They claimed that they merely relied on the Committee's recommendations and that whatever lapses there may have been were procedural in nature, which did not cause undue injury to the municipality.²²

They likewise denied violating Republic Act No. 9184, since the purchased computer programs were proprietary in nature, therefore, falling under the exception to the general rule of public bidding.²³

On February 7, 2013, the Office of the Deputy Ombudsman for Luzon issued a Joint Resolution,²⁴ indicting the Sangguniang Bayan members for violating Article 177 of the Revised Penal Code and Section 3, paragraphs (e) and (g) of Republic Act No. 3019. It also recommended that they be found guilty of grave misconduct.²⁵

It pointed out that in authorizing Bendaña to enter into a direct contract with Amellar Solutions, the Sangguniang Bayan members usurped the functions of the Bids and Awards Committee, thereby violating Article 177 of the Revised Penal Code, or usurpation of authority or official functions.²⁶

It likewise found that the Sangguniang Bayan members dispensed with the required public bidding under the law when they authorized Bendaña to enter into a direct contract with Amellar Solutions, violating both Republic Act Nos. 3019 and 9184.²⁷

²⁰ Id. at 121–122.

²¹ Id. at 123–128. Ivan Ornales was also referred to as “Romeo Evan C. Ornales.”

²² Id. at 126.

²³ Id. at 126–127.

²⁴ Id. at 129–142. The Joint Resolution, docketed as OMB-L-C-05-1192-K and OMB-L-A-05-0913-K, was penned by Graft Investigation & Prosecution Officer I Johanna A. Young, recommended for approval by Graft Investigation & Prosecution Officer II Paul Elmer M. Clemente, and approved by Deputy Ombudsman for Luzon Gerard A. Mosquera.

²⁵ Id. at 141–142.

²⁶ Id. at 135.

²⁷ Id. at 136.

The *fallo* of the Joint Resolution read:

WHEREFORE, premises considered, it is respectfully recommended that Geraldine C. Ornales, as Municipal Vice-Mayor of Lemery, Batangas, and Rosendo “Roger” R. Eguia, Vincent U. Vergara, Shirley R. Atienza, Niego B. Suayan, Melecio A. Vidal, Christopher Jones Bello, Ramiro V. Magnaye and Rodolfo A. De Castro, as Municipal Councilors, all of Lemery, Batangas, be indicted for violation of Article 177 of the Revised Penal Code and for violation of Section 3 (e) in relation to 3(g) of R.A. No. 3019.

Further, there being no probable cause to indict respondent Sangguniang Kabataan (SK) Federation President Romeo Evan “Ivan” C. Ornales for violation of R.A. No. 3019 and Article 177 of the Revised Penal Code, the criminal complaint against him is hereby recommended to be dismissed for lack of merit. Not being privy to the acts complained of nor a signatory to the unlawful local legislative resolution, the charge of Grave Misconduct is likewise recommended to be dismissed against Romeo Evan “Ivan” C. Ornales.

As to respondents Geraldine C. Ornales, Rosendo R. Eguia, Shirley R. Atienza, Christopher Jones Bello, Vincent U. Vergara, Niego B. Suayan and Ramiro V. Magnaye, they are recommended to be adjudged guilty of Grave Misconduct and meted the penalties of: (i) Fine equivalent to six (6) months of their salaries in lieu of dismissal or removal from government service, to be withheld, deducted or forfeited in favor of the government from whatever salaries, monies, emoluments and benefits that may have accrued in their favor; (ii) Cancellation of Eligibility; (iii) Perpetual Disqualification to Hold Public Office; and, (iv) Forfeiture of Retirement Benefits.

In accordance with Sec. 58(f), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, the penalty of fine shall be paid to this Office, computed on the basis of the respective salaries of herein respondents['] salary at the time this Joint Resolution becomes final.

Accordingly, the Secretary of the Department of Interior and Local Government (DILG) is hereby directed to implement this Order and to submit a compliance report thereon.

SO RESOLVED.²⁸

Ornales, Eguia, De Castro, Vergara, and Magnaye moved for the reconsideration²⁹ of the Office of the Deputy Ombudsman for Luzon’s February 7, 2013 Joint Resolution, and their motion was partially granted in the latter’s October 7, 2013 Order.³⁰

²⁸ Id. at 141–142.

²⁹ Id. at 143–161.

³⁰ Id. at 162–169. The Order was penned by Graft Investigation & Prosecution Officer I Johanna A. Young, recommended for approval by Graft Investigation & Prosecution Officer II Paul Elmer M. Clemente, and approved by Deputy Ombudsman for Luzon Gerard A. Mosquera.

Due to the re-election of some Sangguniang Bayan members to the same positions, the Office of the Deputy Ombudsman for Luzon applied the condonation doctrine to the administrative charges against them. However, it affirmed its previous finding of probable cause against the Sangguniang Bayan members in the criminal case.³¹

The *fallo* of the Office of the Deputy Ombudsman for Luzon's Order read:

WHEREFORE, premises considered, the motion for reconsideration of the respondents is hereby partially granted, and the Joint Resolution dated February 7, 2013 modified accordingly. The administrative case filed against respondents Geraldine C. Ornales, Rosendo R. Eguia, Vincent U. Vergara, and Rodolfo De Castro, Jr. is, thus, dismissed and the administrative penalties imposed against them are hereby lifted and/or set-aside for the reasons above-discussed.

This Office's previous finding of probable cause against Geraldine C. Ornales, as Municipal Vice-Mayor of Lemery, Batangas, and Rosendo "Roger" R. Eguia, Vincent U. Vergara, Shirley R. Atienza, Niego B. Suayan, Melecio A. Vidal, Christopher Jones Bello, Ramiro V. Magnaye and Rodolfo A. De Castro Jr., as Municipal Councilors, all of Lemery Batangas, for violation of Article 177 of the Revised Penal Code, as amended, and for violation of Section 3 (e) and (g) of R.A. No. 3019, is hereby affirmed. Further, this Office's decision finding respondents liable for Grave Misconduct and imposing upon them the corresponding penalties, as mentioned in our Joint Resolution dated February 7, 2013, insofar as respondents Shirley R. Atienza, Christopher Jones Bello, Niego B. Suayan and Ramiro V. Magnaye are concerned, is likewise affirmed.

SO ORDERED.³²

Ornales, Eguia, Vergara, De Castro, and Magnaye assailed the Office of the Deputy Ombudsman for Luzon's February 7, 2013 Joint Resolution and October 7, 2013 Order with a Petition for Certiorari³³ filed before the Court of Appeals. They also impleaded the Office of the Deputy Ombudsman for Luzon in their petition.

On April 15, 2014, the Court of Appeals³⁴ dismissed the petition for lack of jurisdiction.

Clemente, and approved by Deputy Ombudsman for Luzon Gerard A. Mosquera.

³¹ Id. at 164–165.

³² Id. at 167–168.

³³ Id. at 170–199.

³⁴ Id. at 38–40.

The Court of Appeals averred that it only had jurisdiction over issuances of the Office of the Ombudsman in administrative disciplinary cases and that jurisdiction over the Office of the Ombudsman's issuances in criminal cases lay with the Supreme Court.³⁵

Ornales, Eguia, Vergara, De Castro, and Magnaye moved for the reconsideration³⁶ of the Court of Appeals April 15, 2014 Resolution, but their motion was denied in the Court of Appeals September 8, 2014 Resolution.³⁷

On October 8, 2014, Ornales, Eguia, Vergara, De Castro, and Magnaye filed a Petition for Review³⁸ before this Court where they emphasized that the Office of the Deputy Ombudsman for Luzon took an inordinate amount of time to resolve the complaint affidavit filed by private respondents Ricalde, De Leon, Mangubat, and Balboa. Petitioners maintain that this delay constitutes a violation of their right to the speedy disposition of their case.³⁹

Petitioners also point out that the Court of Appeals erred in dismissing their case outright for lack of jurisdiction when it actually had jurisdiction to determine the other issue of whether there was substantial evidence to hold petitioner Magnaye guilty of grave misconduct, which is administrative in nature.⁴⁰ Nonetheless, they insist that the Court of Appeals should not have let form prevail over substance because of public respondent's grave abuse of discretion in finding probable cause against them.⁴¹

They maintain that the agreement with Amellar Solutions was a form of alternative procurement, which did not need to undergo competitive public bidding.⁴² Thus, there was no probable cause to indict them for usurping authority or official functions;⁴³ for causing undue injury to the government; or for giving any unwarranted benefits, advantage, or preference.⁴⁴

Petitioners then insist that there was likewise no probable cause to indict them for grave misconduct or for entering into a contract grossly disadvantageous to the government.⁴⁵

³⁵ Id. at 39–40.

³⁶ Id. at 200–220.

³⁷ Id. at 42–43.

³⁸ Id. at 3–33.

³⁹ Id. at 12–14.

⁴⁰ Id. at 14–15.

⁴¹ Id. at 15–18.

⁴² Id. at 20–23.

⁴³ Id. at 23–25.

⁴⁴ Id. at 26–29.

⁴⁵ Id. at 29–30.



On November 26, 2014,⁴⁶ this Court required respondents to file a comment to the Petition for Review.

On March 9, 2015, public respondent filed its Comment.⁴⁷

On June 15, 2015,⁴⁸ this Court noted public respondent's Comment. Private respondents failed to file a comment.

In its Comment,⁴⁹ public respondent declares that the Court of Appeals correctly dismissed the petition for being outside the ambit of its jurisdiction.⁵⁰ It points out that petitioners not only filed the wrong remedy with the Court of Appeals, but their petition was also filed out of time.⁵¹

Public respondent denies that petitioners' right to the speedy disposition of their case was violated since they failed to prove that the proceeding was "attended by vexatious, capricious and oppressive delays."⁵² Furthermore, petitioners only raised the issue of the violation of their constitutional right to due process and speedy disposition of their case for the first time before this Court.⁵³

Public respondent also denies that it committed grave abuse of discretion when it found probable cause against petitioners for violating Article 177 of the Revised Penal Code, and Section 3, paragraphs (e) and (g) of Republic Act No. 3019. It likewise repudiates the allegation that it committed grave abuse of discretion when it found petitioner Magnaye guilty of grave misconduct.⁵⁴

On July 4, 2016,⁵⁵ this Court directed petitioners to reply to public respondent's Comment.

On October 3, 2016, petitioners filed a Manifestation with Reply,⁵⁶ where they manifested that two (2) separate Informations had been filed against them.

⁴⁶ Id. at 221.

⁴⁷ Id. at 227-252.

⁴⁸ Id. at 253.

⁴⁹ Id. at 227-252.

⁵⁰ Id. at 234.

⁵¹ Id. at 234-235.

⁵² Id. at 237.

⁵³ Id. at 237-238.

⁵⁴ Id. at 239-246.

⁵⁵ Id. at 254.

⁵⁶ Id. at 255-266.

The first Information was filed before Branch 5, Regional Trial Court, Lemery, Batangas for violation of Section 3(e) of Republic Act No. 3019, while the second Information was filed before the Municipal Circuit Trial Court of Lemery, Batangas for violation of Article 177 of the Revised Penal Code.⁵⁷

Petitioners state that after undergoing trial on the merits and after the prosecution rested its case, the two (2) cases against them were dismissed by both the Regional Trial Court⁵⁸ and Municipal Circuit Trial Court⁵⁹ due to insufficiency of evidence, thereby rendering moot and academic the criminal charges subject of the Petition.⁶⁰

Finally, petitioners emphasize that the affidavit complaint against them was filed on November 16, 2005, while the Office of the Deputy Ombudsman for Luzon's Joint Resolution finding probable cause against them was only issued on February 7, 2013. They claim that this subjects them to an unreasonable delay of more than seven (7) years, leading to a violation of their right to due process and the speedy disposition of their case.⁶¹

The sole issue for this Court's resolution is whether or not the Court of Appeals erred in dismissing the petition for lack of jurisdiction.

The Petition lacks merit.

I

Section 27 of Republic Act No. 6770, or the Ombudsman Act of 1989, granted this Court appellate jurisdiction over orders, directives, or decisions of the Office of the Ombudsman in administrative disciplinary cases:

Section 27. Effectivity and Finality of Decisions. — (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after

⁵⁷ Id. at 256.

⁵⁸ Id. at 267–271. The Order dated July 27, 2016, docketed as Crim. Case No. 96-2014, was penned by Presiding Judge Eleuterio Larisma Bathan.

⁵⁹ Id. at 272–277. The Order dated May 10, 2016, docketed as Crim. Case No. 2014-23, was penned by Presiding Judge Priscilla U. Acedera.

⁶⁰ Id. at 256.

⁶¹ Id. at 258–264.



receipt of written notice and shall be entertained only on any of the following grounds:

(1) New evidence has been discovered which materially affects the order, directive or decision;

(2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: Provided, that only one motion for reconsideration shall be entertained.

Findings of fact by the [office] of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require. (Emphasis supplied)

However, *Fabian v. Desierto*⁶² struck down Section 27 of Republic Act No. 6770 for being unconstitutional as it increased this Court's appellate jurisdiction without this Court's advice and consent, contrary to the prohibition imposed in Article VI, Section 30⁶³ of the Constitution.⁶⁴

*Namuhe v. Ombudsman*⁶⁵ elaborated on the import of the *Fabian* ruling as follows:

In *Fabian*, the Court held that appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure.

In so holding, the Court *en banc*, through Mr. Justice Florenz D. Regalado, declared unconstitutional Section 27 of Republic Act 6770 or the Ombudsman Act of 1989, which provided that decisions of the Office of the Ombudsman may be appealed to the Supreme Court by way of a petition for review on *certiorari* under Rule 45 of the Rules of Court. Such provision was held violative of Section 30, Article VI of the

⁶² 356 Phil. 787 (1998) [Per J. Regalado, En Banc].

⁶³ CONST., art. VI, sec. 30 provides:
Article VI. The Legislative Department.

....
Section 30. No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

⁶⁴ *Fabian v. Hon. Desierto*, 356 Phil. 787, 806 (1998) [Per J. Regalado, En Banc].

⁶⁵ 358 Phil. 781 (1998) [Per J. Panganiban, First Division].

Constitution, as it expanded the jurisdiction of the Supreme Court without its advice and consent.

The Court also took note of the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure. Thus, it held that “[u]nder the present Rule 45, appeals may be brought through a petition for review on *certiorari*, but only from judgments and final orders of the *courts* enumerated in Section 1 thereof. Appeals from judgments and final orders of *quasi judicial agencies* are now required to be brought to the Court of Appeals on a verified petition for review, under the requirements and conditions in Rule 43 which was precisely formulated and adopted to provide for a uniform rule of appellate procedure for quasi-judicial agencies.” The Office of the Ombudsman is a *quasi-judicial agency* falling under Rule 43. As the Court succinctly stated:

“It is suggested, however, that the provisions of Rule 43 should apply only to ‘ordinary quasi-judicial agencies,’ but not to the Office of the Ombudsman which is a ‘high constitutional body.’ *We see no reason for this distinction for, if hierarchical rank should be a criterion, that proposition thereby disregards the fact that Rule 43 even includes the Office of the President and the Civil Service Commission, although the latter is even an independent constitutional commission, unlike the Office of the Ombudsman, which is a constitutionally-mandated but statutorily-created body.*”⁶⁶ (Emphasis supplied)

Thus, 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.⁶⁷

While Republic Act No. 6770 may have been silent on the remedy available to a party aggrieved with the Office of the Ombudsman’s finding of probable cause in a criminal case, *Tirol, Jr. v. Del Rosario*⁶⁸ clarified that the remedy in this instance is not an appeal, but a petition for *certiorari* under Rule 65 of the Rules of Court before this Court:

True, the law is silent on the remedy of an aggrieved party in case the Ombudsman found sufficient cause to indict him in criminal or non-administrative cases. We cannot supply such deficiency if none has been provided in the law. We have held that the right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. Hence, there must be a law expressly granting such privilege. The Ombudsman Act specifically deals

⁶⁶ *Namuhe v. The Ombudsman*, 358 Phil. 781, 788–789 (1998) [Per J. Panganiban, First Division], citing *Fabian v. Hon. Desierto*, 356 Phil. 787 (1998) [Per J. Regalado, En Banc].

⁶⁷ *Fabian v. Hon. Desierto*, 356 Phil. 787, 804 (1998) [Per J. Regalado, En Banc]; *Namuhe v. The Ombudsman*, 358 Phil. 781, 788–789 (1998) [Per J. Panganiban, First Division]; *Nava v. National Bureau of Investigation*, 495 Phil. 354, 365–366 (2005) [Per J. Tinga, Second Division]; *Dr. Pia v. Hon. Gervacio, Jr., et al.*, 710 Phil. 196, 203 (2013) [Per J. Reyes, First Division].

⁶⁸ 376 Phil 115 (1999) [Per J. Pardo, Jr., First Division].

with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases. As we ruled in *Fabian*, the aggrieved party is given the right to appeal to the Court of Appeals. Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons.

However, an aggrieved party is not without recourse where the finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. An aggrieved party may file a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure.⁶⁹ (Citation omitted)

This Court has repeatedly pronounced⁷⁰ that the Office of the Ombudsman's orders and decisions in criminal cases may be elevated to this Court in a Rule 65 petition, while its orders and decisions in administrative disciplinary cases may be raised on appeal to the Court of Appeals. Hence, the Court of Appeals did not err in denying the petition questioning public respondent's finding of probable cause for lack of jurisdiction. Thus, petitioners' failure to avail of the correct procedure with respect to the criminal case renders public respondent's decision final. Furthermore, the present case fails even on its merits.

II

*Dichaves v. Office of the Ombudsman*⁷¹ explained that this Court generally does not interfere with the Office of the Ombudsman's finding of probable cause out of respect for its investigatory and prosecutory powers granted by the Constitution. *Dichaves* pointed out that the Office of the Ombudsman's power to determine probable cause is executive in nature, and with its power to investigate, it is in a better position than this Court to assess the evidence on hand to substantiate a finding of probable cause or lack of it. Thus, for their petition to prosper, petitioners would have to prove that public respondent "conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty under the law."⁷²

Probable cause is:

⁶⁹ Id. at 122.

⁷⁰ *Tirol, Jr. v. Del Rosario*, 376 Phil. 115, 122 (1999) [Per J. Pardo, Jr., First Division]; *Kuizon v. Desierto*, 406 Phil. 611, 625-626 (2001) [Per J. Puno, First Division]; *Baviera v. Zoleta*, 535 Phil 292, 312-314 (2006) [Per J. Callejo, Sr., First Division].

⁷¹ G.R. Nos. 206310-11, December 7, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/206310-11.pdf>> [Per J. Leonen, Second Division].

⁷² *Reyes v. Office of the Ombudsman*, G.R. No. 208243, June 5, 2017 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/208243.pdf>> 7 [Per J. Leonen, Second Division].

[T]he existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.⁷³ (Citations omitted)

Public respondent found probable cause against petitioners for violating Section 3, paragraphs (e) and (g) of Republic Act No. 3019, and Article 177 of the Revised Penal Code. Section 3, paragraphs (e) and (g) of Republic Act No. 3019 provide:

Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

....

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

....

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

Based on opinion, reasonable belief, and the evidence submitted by the parties, public respondent found that all the elements of the crime punishable under Section 3, paragraphs (e) and (g) of Republic Act No. 3019 existed. Petitioners did not deny being public officers when the acts complained of were committed. Furthermore, clear preference was given to Amellar Solutions with the direct contracting mode of procurement, bypassing the usual mode of public bidding and leading to a gross disadvantage to the government:⁷⁴

The law on public bidding is not an empty formality. The purpose of subjecting all government procurements to competitive bidding is to

⁷³ *Chan v. Formaran III, et. al.* 572 Phil. 118, 132 (2008) [Per J. Nachura, Third Division].

⁷⁴ *Rollo*, pp. 136–138.

encourage transparency and ensure that the government acquires the most advantageous contract at the least price. There is no question that the respondent's failure to submit the computerization project to competitive bidding resulted in injury to the government. Considering the amount involved and considering further that no funds were appropriated for said purpose, the Municipality of Lemery was induced to obtain a loan to acquire the contract from Amellar Solutions. Moreover, the Municipality of Lemery had to increase its loan from PhP7.5 Million to PhP8.193 Million, which not only caused injury to the Municipality as it was forced to incur a substantial financial obligation, but also gave Amellar Solutions unwarranted benefits as the contract was awarded to it without compliance with the requirements of the Procurement Law. Needless to state, the contract was manifestly and grossly disadvantageous to the Municipal Government of Lemery, Batangas.⁷⁵ (Citation omitted)

In the same manner, public respondent properly performed its duty when it found probable cause to charge petitioners with violation of Article 177⁷⁶ of the Revised Penal Code, or usurpation of authority or official functions.

Again based on opinion, reasonable belief, and the evidence submitted by the parties, public respondent found that by authorizing Bendaña to enter into a direct contracting procedure with Amellar Solutions, petitioners usurped the authority of the Bids and Awards Committee, which had the sole authority to recommend the method of procurement.⁷⁷ Public respondent established that:

By passing the afore-said Resolution, the respondents, in effect, conferred upon themselves functions which, under R.A. No. 9184, only the [Bids and Awards Committee] can perform. And by passing the same, respondent local legislative officials revised and rendered ineffective the power and authority granted by the Procurement Law to the [Bids and Awards Committee].⁷⁸

Clearly, public respondent's findings of probable cause were not arrived at capriciously or with grave abuse of discretion. There is no reason to reverse its Joint Resolution and Order.

⁷⁵ Id. at 137.

⁷⁶ REV. PEN. CODE, art. 177 provides:

Article 177. Usurpation of authority or official functions. — Any person who shall knowingly and falsely represent himself to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government, or who, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of *prision correccional* in its minimum and medium periods.

⁷⁷ *Rollo*, pp. 134–135.

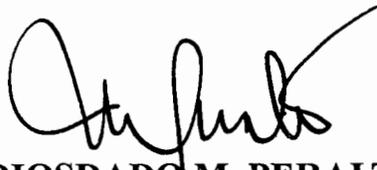
⁷⁸ Id. at 135.

WHEREFORE, the Petition for Review is **DENIED**. The Court of Appeals April 15, 2014 and September 8, 2014 Resolutions in CA-G.R. SP No. 133085 are **AFFIRMED**.

SO ORDERED.

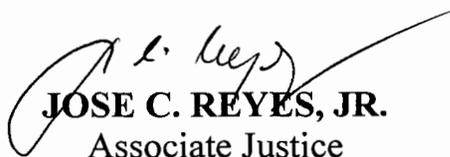

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Associate Justice
Chairperson

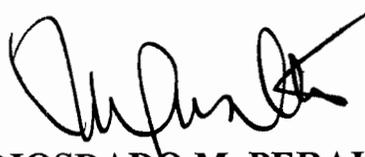

ANDRES B. REYES, JR.
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


JOSE C. REYES, JR.
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.


DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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's Division.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Chief Justice

Teresita Leonardo de Castro
CHIEF JUSTICE
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