



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

GOVERNOR ENRIQUE T. G.R. No. 197567
GARCIA, JR.,

Petitioner,

Present:

- versus -

OFFICE OF THE
OMBUDSMAN, LEONARDO B.
ROMAN, ROMEO L.
MENDIOLA, PASTOR P.
VICHUACO, AURORA J.
TIAMBENG, and NUMERIANO
G. MEDINA,

Respondents.

SERENO, C.J., Chairperson,
VELASCO, JR.,
LEONARDO-DE CASTRO,
PEREZ, and
PERLAS-BERNABE, JJ.

Promulgated:

NOV 19 2014

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for *certiorari*¹ are the Resolution² dated May 30, 2006 and the Order³ dated October 9, 2009 of the Office of the Ombudsman (Ombudsman) in OMB-L-C-05-0084-A, which dismissed the criminal complaint against herein respondents for lack of probable cause.

The Facts

The present case stemmed from a Complaint-Affidavit⁴ filed by herein petitioner Enrique T. Garcia, Jr. (Garcia), incumbent Provincial Governor of the Province of Bataan (Province), before the Ombudsman, docketed as

* Designated Acting Member per Special Order No. 1870 dated November 4, 2014.

¹ *Rollo*, pp. 3-34.

² *Id.* at 38-51. Penned by Graft Investigation & Prosecution Officer II Alex P. Ramos with Director Emilio A. Gonzalez III, CESO III, concurring, and approved by Deputy Ombudsman for Luzon Victor C. Fernandez.

³ *Id.* at 76-78. Penned by Graft Investigation & Prosecution Officer II Judy Anne Doctor-Escalona with Director Mary Antonette Yalao, concurring, and approved by Overall Deputy Ombudsman Orlando C. Casimiro and Ombudsman Ma. Merceditas N. Gutierrez.

⁴ *Id.* at 79-86.

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OMB-L-C-05-0084-A, against respondents former Provincial Governor Leonardo B. Roman (Roman), former Executive Assistant Romeo L. Mendiola (Mendiola), former Provincial Treasurer Pastor P. Vichuaco (Vichuaco), former Budget Officer Aurora J. Tiambeng (Tiambeng), and incumbent⁵ Provincial Accountant Numeriano G. Medina (Medina), all of the Provincial Capitol of Bataan, charging them with Malversation of Public Funds through Falsification of Public Documents under Article 217 in relation to Article 171 of the Revised Penal Code (RPC) and violation of Section 3, paragraphs (a) and (e) of Republic Act No. (RA) 3019, or the “Anti-Graft and Corrupt Practices Act,” *inter alia*.

Also charged were incumbent⁶ Provincial Engineer Amelia R. De Pano (De Pano), Assistant Provincial Engineer Angelito A. Rodriguez (Rodriguez), Engineer Noel G. Jimenez (Jimenez), and Architect Bernardo T. Capistrano (Capistrano), as well as Noel Valdecañas⁷ (Valdecañas), the owner and manager of V.F. Construction of Balanga City.

The essential allegations in the Complaint-Affidavit are as follows:

On November 3, 2003, Roman, being the Provincial Governor at that time, entered into a contract⁸ with V.F. Construction, as represented by Valdecañas, for the construction of a mini-theater at the Bataan State College - Abucay Campus, Abucay, Bataan (project) for the contract price of ₱3,660,000.00.⁹

Thereafter, or on February 23, 2004, Roman signed and issued a Certificate of Acceptance,¹⁰ stating that the project was “100% completed in accordance with plans and specification[s]” per the Accomplishment Report¹¹ and Certification,¹² both dated February 20, 2004, prepared and signed by Capistrano, Jimenez, Rodriguez, and De Pano. Valdecañas also affixed his signature on the said Accomplishment Report and later executed an Affidavit¹³ dated May 26, 2004 stating that the project was 100% completed.

In view of the project’s purported completion, two (2) Land Bank of the Philippines checks¹⁴ (Land Bank checks) – each in the amount of ₱1,655,318.18 (or ₱3,310,636.36 in total) – were respectively issued by Roman and Vichuaco on April 30 and June 2, 2004 in favor of V.F.

⁵ As of the time of the filing of the Complaint-Affidavit.

⁶ Incumbent provincial officials of Bataan as of the time of the filing of the Complaint-Affidavit.

⁷ “Valdecanas” in some parts of the record.

⁸ *Rollo*, pp. 87-88.

⁹ See *id.* at 100.

¹⁰ *Id.* at 90.

¹¹ *Id.* at 95.

¹² *Id.* at 96.

¹³ *Id.* at 99.

¹⁴ *Id.* at 93.

Construction. The issuances were made pursuant to two (2) separate Disbursement Vouchers¹⁵ prepared and issued by De Pano, Medina, and Vichuaco, and approved for payment by Roman. In addition, an Allotment and Obligation Slip¹⁶ (ALOBS) was issued, prepared, and signed by De Pano, Tiambeng, and Medina to reimburse V.F. Construction for the cost of the labor and materials utilized for the construction of the project. Tiambeng also certified in the ALOBS the “existence of [an] appropriation” for the said project.¹⁷ Meanwhile, Mendiola prepared all the supporting documents for the approval and release of the funds therefor, and submitted the same to Roman for his signature.¹⁸

The receipts issued by V.F. Construction dated May 5, 2004¹⁹ and June 3, 2004²⁰ show that it received the payments for the project.

Notwithstanding the various documents attesting to the project’s supposed completion, as well as the disbursement of funds in payment therefor, Garcia – Roman’s successor as Provincial Governor – authorized the inspection of the project sometime in August 2004 and discovered that while its construction was indeed commenced, it remained unfinished as reflected in a Memorandum Report²¹ dated August 24, 2004.

Hence, Garcia filed the above-mentioned Complaint-Affidavit against, among others, respondents, who, in response, proffered their individual defenses.²²

For his part, Roman cited political enmity between him and Garcia as the reason for the filing of the complaint.²³ He defended the genuineness of the project, averring that it was not a “ghost project” as, in fact, substantial work had been done thereon.²⁴ He ascribed the falsehood in this case to the Accomplishment Report and Certification dated February 20, 2004, as well as Valdecañas’s Affidavit, which all stated that the project was 100% completed, claiming that he had no participation in their preparation and execution²⁵ and that he only signed the Disbursement Vouchers after finding no irregularities on the said documents.²⁶

¹⁵ Id. at 91-92.

¹⁶ Id. at 94.

¹⁷ Id.

¹⁸ Id. at 82.

¹⁹ Id. at 97.

²⁰ Id. at 98.

²¹ Id. at 100-101. Prepared by Engineer Fernando E. Tanciongco and Assistant Provincial Engineer Arleen R. Santos, and noted by OIC Provincial Engineer Enrico T. Yuzon.

²² See respondents individual Counter-Affidavit; id. at 109-115 (for Roman), id. at 116-121 (for Mendiola), id. at 188-191 (for Vichuaco), id. at 198-200 (for Medina), and id. at 192-193 (for Tiambeng).

²³ Id. at 112.

²⁴ Id. at 112-113.

²⁵ Id. at 113.

²⁶ Id. at 114.

Similarly, Mendiola denied any participation in the preparation and execution of any of the documents involved in the project.²⁷

On the other hand, Vichuaco admitted having signed the Disbursement Vouchers and Land Bank checks, from which the project was funded, but denied having any knowledge that the construction thereof was not yet completed.²⁸ He claimed to have signed the Disbursement Vouchers only after having ascertained that De Pano and Medina, in their official capacities, had already signed the same, and ventured that he would not have done so had he known that the project was not yet complete.²⁹

Medina also admitted having signed the Disbursement Vouchers and ALOBS, but claimed that he did so after a thorough examination of the supporting documents, *i.e.*, the Accomplishment Report and Certification. He stated that he was not informed that the project was not yet completed when he signed the Disbursement Vouchers and the ALOBS, adding that the project was already substantially completed when Garcia prevented further work on the same.³⁰ He further insisted that the project was covered by a corresponding appropriation.³¹

Meanwhile, Tiambeng claimed that, as the Budget Officer of Bataan at the time, she verified that there was a corresponding appropriation for the project. Thus, she signed the ALOBS, which she claimed was a ministerial duty on her part.³² In this regard, she posited that she would not have signed the same had she known that there was no appropriation for the project.³³

As for the other officials charged, namely, De Pano, Rodriguez, Jimenez, and Capistrano, they collectively admitted having signed the Accomplishment Report and Certification, but maintained that they did so only after the same had been reviewed by the other provincial engineers.³⁴

Valdecañas, for his part, denied³⁵ the allegations against him and claimed that Medina borrowed his contractor's accreditation in order to participate in the bidding for the project. He pointed out that it was Medina who actually participated in the bidding process and that his signature appearing on the documents pertaining to the project was falsified.³⁶ He

²⁷ Id. at 117-118.

²⁸ Id. at 188.

²⁹ Id. at 189.

³⁰ Id. at 198-199.

³¹ Id. at 199.

³² Id. at 192.

³³ Id.

³⁴ See id. at 44-45.

³⁵ By way of a Counter-Affidavit dated March 7, 2005. (Id. at 201-206.)

³⁶ Id. at 201-202.

added that he was out of the country when payments for the project were made.³⁷

The Ombudsman Ruling

In a Resolution³⁸ dated May 30, 2006, the Ombudsman found probable cause to indict De Pano, Rodriguez, Jimenez, and Capistrano for the crime of Falsification of Public Documents by making it appear through the aforesaid Certification and Accomplishment Report that the project had already been completed when the same was only partially constructed. The Ombudsman held that their report was necessary for the issuance of a certification for the disbursement of funds therefor.³⁹

On the other hand, the Ombudsman cleared respondents from liability on the ground of insufficiency of evidence, reasoning that “mere signature on a voucher or certification is not enough” to establish any conspiracy among them which would warrant their conviction.⁴⁰ Relying on the doctrine enunciated in the case of *Arias v. Sandiganbayan*⁴¹ (*Arias*) which states that “[a]ll heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations,”⁴² the Ombudsman held that there was “no direct and strong evidence that [Roman] participated in the fraudulent act/transaction”⁴³ and that his act, together with that of the other respondents, was protected by the “legal presumption of good faith and regularity,”⁴⁴ which Garcia failed to overcome.

Oddly, no pronouncement was made with regard to the criminal charges against Valdecañas.⁴⁵

Dissatisfied, Garcia moved for reconsideration,⁴⁶ citing the Commission on Audit’s (CoA) Audit Observation Memorandum (AOM) No. 2005-004-100 (2004)⁴⁷ dated April 21, 2005 (CoA Memo), which stated that the project had no source of funds, thus rendering the contract therefor void and the payments made therefor illegal.⁴⁸ Moreover, by approving and effecting the payment of the project despite its non-completion and the absence of an allotment therefor, Garcia claimed that respondents, who acted

³⁷ Id. at 202.

³⁸ Id. at 38-51.

³⁹ Id. at 47-48.

⁴⁰ Id. at 48.

⁴¹ 259 Phil. 796 (1989).

⁴² Id. at 801.

⁴³ *Rollo*, p. 49.

⁴⁴ Id.

⁴⁵ Not impleaded in the present petition.

⁴⁶ See Motion for Reconsideration dated August 29, 2008; *rollo*, pp. 52-67. See also Supplemental Motion for Reconsideration; id. at 68-73. (The said motions are herein treated as one.)

⁴⁷ Id. at 230-231. Issued by State Auditor IV Alma D. Padilla.

⁴⁸ Id. at 230.

in conspiracy with each other, should be held liable this time for the crime of Technical Malversation under Article 220⁴⁹ of the RPC.⁵⁰

In an Order⁵¹ dated October 9, 2009, the Ombudsman denied Garcia's motion for reconsideration, hence, this *certiorari* petition.

The Issue Before the Court

The central issue for the Court's resolution is whether or not the Ombudsman gravely abused its discretion in dismissing all the criminal charges against respondents for lack of probable cause.

In his *certiorari* petition, Garcia maintains that the findings in the CoA Memo are sufficient to establish probable cause and to hold respondents for trial for the crimes of Technical Malversation, Malversation of Public Funds through Falsification of Public Documents, and for Violation of Section 3 (e) of RA 3019.⁵² As it appears, the other criminal and administrative charges contained in his complaint-affidavit⁵³ were not anymore discussed in the said petition. Thus, the Court is constrained to confine its analysis only to what has been alleged therein.

The Court's Ruling

The petition is partly meritorious.

I.

The present Constitution and RA 6770,⁵⁴ otherwise known as the "Ombudsman Act of 1989," have endowed the Office of the Ombudsman with wide latitude, in the exercise of its investigatory and prosecutorial powers, to pass upon criminal complaints involving public officials and employees.⁵⁵ Hence, as a general rule, the Court does not interfere with the Ombudsman's findings and respects the initiative and independence inherent

⁴⁹ Article 220. *Illegal use of public funds or property*. – Any public officer who shall apply any public fund or property under his administration to any public use other than that for which such fund or property were appropriated by law or ordinance shall suffer the penalty of *prision correccional* in its minimum period or a fine ranging from one-half to the total of the sum misapplied, if by reason of such misappropriation, any damage or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification.

⁵⁰ *Rollo*, pp. 56 and 59.

⁵¹ *Id.* at 76-78.

⁵² *Id.* at 21 and 32.

⁵³ Violation of Section 3 (a) of RA 3019, RA 6713, RA 7160, and the pertinent CoA Rules and Regulations; see *id.* at 84.

⁵⁴ Entitled "AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES" (November 17, 1989).

⁵⁵ *Casing v. Ombudsman*, G.R. No. 192334, June 13, 2012, 672 SCRA 500, 507.

in its office, which “beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service.”⁵⁶

The foregoing principle does not, however, apply when the Ombudsman’s ruling is tainted with grave abuse of discretion, subjecting the same to *certiorari* correction. Among other instances, the Ombudsman may be deemed to have gravely abused its discretion when it unjustifiably fails to take essential facts and evidence into consideration in the determination of probable cause.⁵⁷ It may also be committed when the Ombudsman patently violates the Constitution, the law or existing jurisprudence. Indeed, any decision, order or resolution of a tribunal tantamount to overruling a judicial pronouncement of the highest Court is unmistakably grave abuse of discretion.⁵⁸

Legally classified, such misdeeds fall squarely within the concept of grave abuse of discretion which is defined as the capricious and whimsical exercise of judgment on the part of the public officer concerned, which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.⁵⁹

Applying these principles to this case, the Court finds that the Ombudsman gravely abused its discretion when it disregarded the CoA Memo and patently misapplied existing jurisprudence – particularly, the *Arias* case – in ruling that there was no probable cause **for the crime of Violation of Section 3 (e),⁶⁰ RA 3019**. Accordingly, respondents should be indicted for such. However, the same does not hold true for the other crimes of Technical Malversation and Malversation of Public Funds through Falsification of Public Documents for reasons that will be hereinafter discussed.

⁵⁶ Id., citing *Presidential Ad Hoc Fact Finding Committee on Behest Loans v. Ombudsman Desierto*, 415 Phil. 145, 151 (2001).

⁵⁷ See *Belongilot v. Cua*, G.R. No. 160933, November 24, 2010, 636 SCRA 34, 47-49.

⁵⁸ See *Choa v. Choa*, 441 Phil. 175, 192 (2002) .

⁵⁹ Supra note 57, at 43.

⁶⁰ Sec. 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:

x x x x

(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.

II.

Probable cause, for the purpose of filing a criminal information, exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. To engender a well-founded belief that a crime has been committed, and to determine if the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense.⁶¹

The elements of the crime of Violation of Section 3 (e),⁶² RA 3019 are as follows: **(a)** the offender must be a **public officer discharging administrative, judicial, or official functions**; **(b)** he must have acted with **manifest partiality, evident bad faith or gross inexcusable negligence**; and **(c)** his action caused **any undue injury to any party**, including the government, or **gave any private party unwarranted benefits**, advantage or preference in the discharge of his functions.⁶³

Considering the findings contained in the CoA Memo, which the Ombudsman, however, disregarded, it is quite clear that all the foregoing elements are, in all reasonable likelihood, present with respect to respondents' participation in this case.

Respondents, who were all public officers at the time of the alleged commission of the crime – particularly, as provincial officials of Bataan discharging administrative functions (**first element**) – apparently acted with manifest partiality, evident bad faith – or, at the very least, gross inexcusable negligence – when they issued the pertinent documents and certifications that led to the diversion of public funds to a project that had no proper allotment, *i.e.*, the mini-theater project (**second element**). The absence of such allotment not only renders invalid the release of funds therefor but also taints the legality of the project's appropriation⁶⁴ as well as the Province's contract with V.F. Construction. As the CoA Memo pertinently explains:

Four contracted infrastructure projects and a financial assistance extended to [the] barangay by your administration amounting to ₱5,404,000 and ₱100,000, respectively, were found devoid of valid

⁶¹ *Alberto v. Court of Appeals*, G.R. Nos. 182130 and 182132, June 19, 2013, 699 SCRA 104, 131.

⁶² See Section 3 (e) of RA 3019.

⁶³ *Lihaylihay v. People*, G.R. No. 191219, July 31, 2013, 702 SCRA 755, 762; emphases and underscoring supplied.

⁶⁴ Section 306 of RA 7160, otherwise known as the "Local Government Code," reads:

Sed. 306. Definition of Terms. – When used in this Title, the term:

x x x x

(b) "Appropriation" refers to an authorization made by ordinance, directing the payment of goods and services from local government funds under specified conditions or for specific purposes;

x x x x

appropriations. Of the amounts, ₱4,992,750 was already paid while the remaining balance of ₱511,250 was lodged to Accounts Payable. **The non-existence of valid appropriations rendered the contracts void and the payments illegal.**

The said projects were among the 19 provided with appropriations totalling ₱14,005,000 in the [P]rovince's 2003 Closing Budgets embodied under Ordinance No. A-6 and approved by the Sangguniang Panlalawigan in its Resolution No. 54 on February 23, 2004.

The validity of the appropriations and the subsequent transactions were not considered in audit due to lack of legal basis, to wit:

a. **No sources of funds for the ₱14.005M appropriation rendering it invalid**

The ₱43,487,527.16 computed source/available balance for the ₱14,005,000 appropriation was already used as the beginning available balance in the computation of the Estimated Revenues and Receipts considered in the earlier approved CY 2004 Annual General Fund Budget contained in Appropriation Ordinance No. 2 and passed under S.P. Resolution No. 6 on January 12, 2004 (Please see Annex A [with the heading "**Supplemental Appropriations of ₱14,005,000. CY 2003 Closing Budget**]). **Sec. 321 of RA 7160 provides, among others, that:**

"No ordinance providing for a supplemental budget shall be enacted, except when supported by funds actually available as certified by the local treasurer or by new revenue sources."

b. **Non-release of allotments for the ₱14.005 M appropriation**

Allotment is the **authorization** issued by the Local Chief Executive (LCE) to a department/office of the LGU, which **allows it to incur obligations**, for specified amounts, within the appropriation ordinance. (**Sec. 08, Manual on the NGAS for LGUs, Volume I**).

As verified from the Accounting and Budget offices, **no allotments were released for the projects, hence the incurrence of the obligations were not authorized.** In spite of this, the amount of ₱14,005,000 was taken up among the continuing appropriations/allotments in CY 2004. Also, Allotment and Obligation Slips (ALOBs) which serve as the LGU commitments to pay were certified for eight of the projects in the amount of ₱7,816,000.⁶⁵ (Emphases and underscoring supplied)

To be clear, the nineteen (19) projects mentioned in the CoA Memo were listed under "Annex B"⁶⁶ thereof entitled "Schedule of Contracted Projects and Financial Assistance Out of Invalid Appropriations, CY 2004," all of which had **no allotments issued. First and foremost on the list is the construction of the mini-theater project.** A similar CoA memorandum,

⁶⁵ Rollo, pp. 230-231. Prepared by Audit Team Leader Alma D. Padilla.

⁶⁶ Id. at 233.

AOM No. 2004-26⁶⁷ dated September 6, 2004, which was also ignored by the Ombudsman, contains the same audit results with regard to the **lack of a valid allotment** for the project. Thus, absent compliance with this basic requirement, the authorizations made by respondents in relation to the project were therefore *prima facie* tainted with illegality, amounting to either manifest partiality, evident bad faith, or, at the very least, to gross inexcusable negligence. Indeed, it is reasonable to expect that respondents – being the Province’s accountable officers at that time – had knowledge of the procedure on allotments and appropriations. Knowledge of basic procedure is part and parcel of respondents’ shared fiscal responsibility under Section 305 (1) of RA 7160, *viz.*:

Section 305. *Fundamental Principles.* - The financial affairs, transactions, and operations of local government units shall be governed by the following fundamental principles:

x x x x

(1) Fiscal responsibility shall be shared by all those exercising authority over the financial affairs, transactions, and operations of the local government units; x x x.

Hence, unless the CoA’s findings are substantially rebutted, the allotment’s absence should have roused respondents’ suspicions, as regards the project’s legality, and, in consequence, prevented them from approving the disbursements therefor. This is especially true for Roman, who, as the Local Chief Executive of the Province at that time, was primarily charged with the issuance of allotments.⁶⁸ As such, he was in the position to know if the allotment requirement had, in the first place, been complied with, given that it was a pre-requisite before the project could have been contracted.

In addition, the Court observes the same degree of negligence on the part of respondents in seemingly attesting to the project’s 100% completion when such was not the case. The erroneous certification rendered the disbursements made by the Province suspect as V.F. Construction had still to fulfill its contractual obligations to the Province and yet were able to receive full payment.

Considering that the illegal diversion of public funds for the mini-theater project would undermine the execution of other projects legitimately supported by proper allotments, it is quite obvious that undue injury on the part of the Province and its residents would be caused. Likewise, considering that V.F. Construction had already received full payment for a project that had yet to be completed, it also appears that a private party was given

⁶⁷ Id. at 234-235.

⁶⁸ See Section 8, Chapter 3, Manual on the NGAS for LGUs, Volume I cited in the CoA Memo; id. at 231.

unwarranted benefits by respondents in the discharge of their functions **(third element)**.

Thus, with the elements of the crime of Violation of Section 3 (e), RA 3019 herein ostensibly present, the Court hereby holds that the Ombudsman committed grave abuse of discretion when it dismissed said charge against respondents.

That the Ombudsman had not, in any manner, mentioned the two (2) CoA AOMs, *i.e.*, AOM Nos. 2005-004-100 (2004) (*i.e.*, the CoA Memo) and 2004-26, in its ruling leads the Court to believe that it deliberately failed to consider the same. As the Court sees it, these are significant pieces of evidence which should not have been casually ignored. This stems from a becoming respect which all government agencies should accord to the CoA's findings. Verily, being the constitutionally-mandated audit arm of the government, the CoA is vested with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property.⁶⁹ As held in the case of *Belgica v. Ochoa, Jr.*:⁷⁰

[I]t is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings.⁷¹

With the weight accorded to the CoA's findings, the Ombudsman should have, at the very least, explained its reasons as to why the two (2) CoA AOMs had no bearing in this case. However, no such explanation was herein made. As such, the Court holds that the Ombudsman committed grave abuse of discretion in this respect.

Palpable too is the Ombudsman's grave abuse of discretion by its misplaced reliance on the *Arias* doctrine.

The factual circumstances which led to the Court's ruling in *Arias* were such that there was nothing else in the documents presented before the head of office therein that would have required the detailed examination of each paper or document, *viz.*:

⁶⁹ *Veloso v. CoA*, G.R. No. 193677, September 6, 2011, 656 SCRA 767, 776.

⁷⁰ G.R. Nos. 208493, 208566, and 209251, November 19, 2013, 710 SCRA 1.

⁷¹ *Id.* at 94-95, citing *Delos Santos v. CoA*, G.R. No. 198457, August 13, 2013, 703 SCRA 501, 513.

We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly-sized office could personally do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise personally look into the reimbursement voucher's accuracy, propriety, and sufficiency. **There has to be some added reason why he should examine each voucher in such detail.** Any executive head of even small government agencies or commissions can attest to the volume of papers that must be signed. x x x.⁷² (Emphasis supplied)

Simply put, when a matter is irregular on the document's face, so much so that a detailed examination becomes warranted, the *Arias* doctrine is unavailing.

Here, it cannot be denied that the absence of an allotment for the project already rendered all related documents/transactions irregular on their face. By this fact alone, respondents ought to have known that something was amiss. To echo the CoA Memo, Section 321 of RA 7160 provides, among others, that "[n]o ordinance providing for a **supplemental budget** shall be enacted, except when supported by **funds actually available** as certified by the local treasurer or by new revenue sources." Section 8, Chapter 3 of the Manual on the NGAS for LGUs, Volume I further defines an "[a]llotment [as] the **authorization** issued by the Local Chief Executive (LCE) to a department/office of the LGU, which **allows it to incur obligations**, for specified amounts, within the appropriation ordinance." Since the mini-theater project was an appropriation made in a supplemental budget, then there should have been funds certified to be actually available for such appropriation to even be made. However, as the CoA found, no such funds were certified as available. Likewise, the project had no supporting allotment, which means that there was basically no authority for the provincial officials, *i.e.*, respondents, to even incur the obligations under the V.F. Construction contract, much more for them to disburse the funds in connection therewith. Section 344 of RA 7160 provides:

Section 344. *Certification on, and Approval of, Vouchers.* - No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. x x x.

x x x x

⁷² *Arias v. Sandiganbayan*, supra note 41, at 801-802.

With these apparent irregularities, it is quite perplexing how the Ombudsman could have applied the *Arias* doctrine in support of its ruling, especially with respect to the charge of Violation of Section 3 (e), RA 3019. Thus, by patently misapplying existing jurisprudence, the Court finds that the Ombudsman also committed a grave abuse of discretion on this score and its ruling, in these aspects, must be reversed and set aside. In fine, the Ombudsman is ordered to file in the proper court the necessary Information against respondents for violating Section 3 (e), RA 3019.

That being said, the Court proceeds to discuss the other charges contained in Garcia's petition.

III.

As earlier stated, Garcia, in his petition, also seeks that respondents be indicted for the crimes of **Technical Malversation**, and **Malversation of Public Funds through Falsification of Public Documents**. However, unlike the charge for the crime of Violation of Section 3 (e), RA 3019, the Court is unable to render the same disposition.

First, while Garcia insists upon the sufficiency of his evidence to indict respondents for Technical Malversation, the Court cannot pass upon this issue, considering that the Complaint-Affidavit filed before the Ombudsman originally charged respondents not with Technical Malversation under Article 220⁷³ of the RPC, but with Malversation of Public Funds through Falsification of Public Documents, defined and penalized under Article 217,⁷⁴ in relation to Article 171⁷⁵ of the RPC, a complex crime.⁷⁶ It bears stressing that the elements of Malversation of Public Funds are distinctly different from those of Technical Malversation. In the crime of **Malversation of Public Funds**, the offender misappropriates public funds for his own personal use or allows any other person to take

⁷³ Art. 220. *Illegal use of public funds or property*. – Any public officer who shall apply any public fund or property under his administration to any public use other than that for which such fund or property were appropriated by law or ordinance shall suffer the penalty of *prision correccional* in its minimum period or a fine ranging from one-half to the total of the sum misapplied, if by reason of such misappropriation, any damage or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification.

If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 percent of the sum misapplied.

⁷⁴ Art. 217. *Malversation of public funds or property – Presumption of malversation*. – Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall, otherwise, be guilty of the misappropriation or malversation of such funds or property, shall suffer:

x x x x

⁷⁵ Art. 171. *Falsification by public officer, employee, or notary or ecclesiastical minister*. – The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x

⁷⁶ See *People v. Pantaleon, Jr.*, 600 Phil. 186 (2009).

such public funds for the latter's **personal use**. On the other hand, in **Technical Malversation**, the public officer applies public funds under his administration **not for his or another's personal use, but to a public use other than that for which the fund was appropriated by law or ordinance**.⁷⁷ Technical Malversation does not include, or is not necessarily included in the crime of Malversation of Public Funds.⁷⁸

Since the acts supposedly committed by respondents constituting the crime of Technical Malversation were not alleged in the Complaint-Affidavit and the crime for which respondents raised their respective defenses was not Technical Malversation, the petition must perforce be denied on this score. Otherwise, the Court would be sanctioning a violation of respondents' constitutionally-guaranteed right to be informed of the nature and cause of the accusation against them, so as to deny them a reasonable opportunity to suitably prepare their defense.⁷⁹

Finally, with respect to the charge of Malversation of Public Funds through Falsification of Public Documents, the Court observes that there lies no evidence which would give a *prima facie* indication that the funds disbursed for the project were misappropriated for any personal use. The CoA Memo shows that the Province's funds were used for a public purpose, *i.e.*, the mini-theater project, albeit without any allotment issued therefor. Garcia also fails to convince the Court that the Province's funds were diverted to some personal purpose. Failing in which, the Court cannot pronounce that the Ombudsman committed a grave abuse of discretion in dismissing such charge.

As it stands, Garcia's petition is granted only in part as respondents should be indicted for the lone crime of Violation of Section 3 (e), RA 3019 for the reasons above-discussed. It must, however, be clarified that the dismissal of the charge of Technical Malversation is without prejudice to its proper re-filing unless barred by prescription, considering that such dismissal was based merely on procedural grounds and is not, in any way, tantamount to an acquittal.

WHEREFORE, the petition is **PARTLY GRANTED**. The Resolution dated May 30, 2006 and the Order dated October 9, 2009 of the Office of the Ombudsman in OMB-L-C-05-0084-A, insofar as they dismissed the criminal charge against respondents Leonardo B. Roman, Romeo L. Mendiola, Pastor P. Vichuaco, Aurora J. Tiambeng, and Numeriano G. Medina (respondents), for Malversation of Public Funds through Falsification of Public Documents, are **AFFIRMED**. However, the said Resolution and Order, insofar as they dismissed the criminal charge against respondents for violation of Section 3 (e), Republic Act No. (RA)

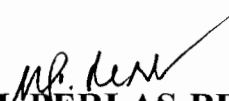
⁷⁷ *Parungao v. Sandiganbayan*, 274 Phil. 451, 460 (1991).

⁷⁸ *Id.* at 461.


⁷⁹ *Cf. Miranda v. Sandiganbayan*, 502 Phil. 423, 445 (2005).


3019 or the "Anti-Graft and Corrupt Practices Act" are **REVERSED** and **SET ASIDE**. The Ombudsman is **ORDERED** to file in the proper court the necessary Information for violation of Section 3 (e), RA 3019 against respondents. Finally, for reasons herein discussed, the criminal charge against respondents for Technical Malversation is **DISMISSED**, without prejudice to its proper re-filing.

SO ORDERED.

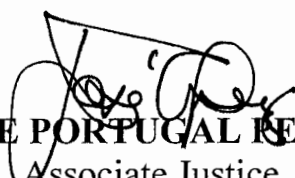

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


PRESBITERO J. VELASCO, JR.
Associate Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


JOSE PORTUGAL PEREZ
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's Division.


MARIA LOURDES P. A. SERENO
Chief Justice