



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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ALFREDO J. NON, GLORIA
VICTORIA C. YAP-TARUC,
JOSEFINA PATRICIA A.
MAGPALE-ASIRIT AND
GERONIMO D. STA. ANA,
Petitioners,

G.R. No. 239168

Present:

PERALTA, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GISMUNDO,
REYES, J. JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,*
ZALAMEDA,
LOPEZ,
DELOS SANTOS,
GAERLAN, and
BALTAZAR-PADILLA,* JJ.

- versus -

OFFICE OF THE OMBUDSMAN
and ALYANSA PARA SA BAGONG
PILIPINAS, INC.,

Promulgated:

Respondents.

September 15, 2020

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DECISION

REYES, J. JR., J.:

Before the Court is a Petition for *Certiorari*¹ assailing the 29 September 2017 Resolution² and the 20 April 2018 Order³ of the Office of the Ombudsman (Ombudsman), respectively finding probable cause to hold petitioners Alfredo J. Non (Non), Gloria Victoria C. Yap-Taruc (Yap-Taruc), Josefina Patricia A. Magpale-Asirit (Magpale-Asirit), and Geronimo D. Sta. Ana (Sta. Ana; collectively, petitioners) — Commissioners of the

* No part.

* On sick leave.

¹ Under Rule 65 of the RULES OF COURT; *rollo*, pp. 3-35.

² Signed by Graft Investigation and Prosecution Officer II, Cezar M. Tirol II, *id.* at 37-51.

³ *Id.* at 52-58.

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Energy Regulatory Commission (ERC) — for prosecution under Section 3(e)⁴ of Republic Act (R.A.) No. 3019,⁵ and denying reconsideration.

Antecedents

In 2001, the state enacted the Electric Power Industry Reform Act⁶ (EPIRA) to ensure quality, reliable, secure, and affordable electric power supply in a regime of free and fair competition, and full public accountability. Thus, the ERC⁷ came into being, vested with powers to enforce the said law and to issue rules and regulations for that purpose.⁸ One of its principal mandates, as a regulatory body, is to ensure consumer protection and to enhance competitive operations within the electric power industry. It is specifically tasked to institutionalize a working methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a power distribution utility.⁹

On 4 November 2015, after a series of public consultations with power industry stakeholders,¹⁰ the ERC issued Resolution No. 13, Series of 2015 (Resolution No. 13-2015).¹¹ The issuance proceeds from the directive¹² of the Department of Energy (DOE) to require all distribution utilities (DUs) to undergo a competitive selection process (CSP) in procuring power supply agreements (PSAs), as well as from a Joint Resolution¹³ of the DOE and the ERC whereby the latter has committed to issue regulations requiring DUs to undertake CSP in securing supply agreements affecting the captive markets. The CSP requirement is seen to ensure transparency in the supply procurement of DUs and to provide opportunities to elicit the best price offers from suppliers.¹⁴

⁴ **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 (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.

⁵ THE ANTI-GRAFT AND CORRUPT PRACTICES ACT.

⁶ Republic Act No. 9136, entitled, AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES.

⁷ The Commission replaced the Energy Regulatory Board.

⁸ Id., Section 2.

⁹ Section 7 of R.A. No. 9136.

¹⁰ Per the Resolution No. 13 s. 2015, the ERC had posted a notice on its website directing interested parties to comment on the first and second draft of the rules governing power supply agreements. After making all inputs of record, the ERC then conducted a series of public consultations in February 2014 as well as focus group discussions in April of the same year.

¹¹ Signed by herein petitioners in their official capacity, as well as by the ERC Chairman, Jose Vicente B. Salazar.

¹² In Circular No. DC2015-06-0008. Sec. 3 thereof provides:

Sec. 3. Standard features in the conduct of CSP. After the effectivity of this Circular, all DUs shall procure PSAs only through CSP conducted through a Third Party duly recognized by the ERC and the DOE. In the case of the ECs, the Third Party shall also be duly recognized by the National Electrification Administration.

¹³ Dated October 20, 2015.

¹⁴ Final Whereas Clause of Resolution No. 13-2015.

Power distribution utilities are entities responsible for billing the end-users of electric power supply. They transact with generation companies through power supply agreements that are, in turn, filed with and reviewed by the ERC to determine whether the retail rates are at their lowest and most efficient. Thus, Resolution No. 13 requires that as a precondition to an award of a supply agreement to a generation company, there has to be either a successful, transparent, and competitive selection process, or a direct negotiation where at least two CSPs have failed. A CSP is said to be successful when the DU has received two qualified bids from entities with which it is not prohibited from entering into a contract of power supply.¹⁵

At the time, the ERC has not yet issued the prescribed CSP guidelines, but distribution utilities have been allowed to adopt any accepted form of selection process subject only to the minimum terms of reference laid out in Resolution No. 13-2015.¹⁶ Exempted from the CSP requirement are PSAs already filed with and pending review by the ERC at the time the Resolution took effect on 6 November 2015.¹⁷

A barrage of inquiries from different stakeholders were lodged before the ERC in the *interim*. Individually, they put forth their concerns on the legal implications of Resolution No. 13-2015 on PSAs already existing, up for renewal, and already executed. They also asked for clarification and guidance on what the acceptable forms of CSP could be applied, as well as possible exemptions from said requirement.¹⁸

Manila Electric Company (MERALCO) was among these stakeholders. In its letter dated 26 November 2015, it sought the ERC's approval of its request for exemption from the CSP requirement. The ERC, in a letter signed by Jose Vicente B. Salazar (Salazar), denied said request.

ERC Resolution No. 1, Series of 2016

On 15 March 2016, the ERC issued Resolution No. 1, Series of 2016 (Resolution No. 1-2016) which, although declaring to merely clarify¹⁹ the effective date of Resolution No. 13-2015, actually extended the same from 6 November 2015 to 30 April 2016. The leeway was meant to be a transition period for the facilitation of the full implementation of Resolution No. 13-

¹⁵ Resolution No. 13-2015, Sec. 1 and Sec. 3.

¹⁶ Id. at Sec. 2. The terms of reference include: (a) Required/Contracted Capacity and/or Energy Volumes; (b) Generation Sources; (c) Method of Procurement for Fuel, if applicable; (d) Cooperation/Contract Period; (e) Tariff Structure Unbundled to Capacity Fees, Variable and Fixed Operating and Maintenance Fee, Fuel Fee and Others, including the derivation of each component. Base Fee Adjustment Formula, if any; (f) Form of Payment; (g) Penalties, if applicable; (h) If applicable, details regarding any transmission projects necessary to complement the proposed generation capacity; and (i) Other Key Parameters.

¹⁷ Id. at Sec. 4.

¹⁸ *Rollo*, pp. 162-191. Some of these letter-inquiries challenged the legality of Resolution No. 13-2015.

¹⁹ Entitled, A RESOLUTION CLARIFYING THE EFFECTIVITY OF ERC RESOLUTION NO. 13, SERIES OF 2015.

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2015, such that all PSAs executed on or after the later date would be bound without exception to abide by the CSP requirement.

MERALCO allegedly entered into seven PSAs on 26 April 2016, and filed all of them with the ERC on the day before the new deadline.

Cases arising from ERC Resolution No. 1-2016

Believing that the ERC issued Resolution No. 1-2016 merely to unduly favor MERALCO, respondent Alyansa Para sa Bagong Pilipinas, Inc. (ABP) filed several cases against petitioners.

Petition for certiorari with the Court

In November 2016, ABP filed a petition for *certiorari* and prohibition before this Court against ERC, docketed as **G.R. No. 227670**. On 3 May 2019, the Court granted the petition and declared void *ab initio* the first paragraph of Section 4 of ERC Resolution No. 13-2015 (CSP Guidelines), and ERC Resolution No. 1-2016 (ERC Clarificatory Resolution).²⁰

Complaint for violation of R.A. No. 3019 with the Ombudsman

On 24 November 2016, ABP also filed a verified Complaint²¹ before the Ombudsman charging the ERC commissioners, petitioners herein, together with Chairman Salazar, with violation of Section 3(e) of R.A. No. 3019. It specifically alleged that the collective act of the ERC members in extending the implementation date of Resolution No. 13-2015 *via* Resolution No. 1-2016 was a mere ploy to accommodate MERALCO's sister companies and affiliates and allow them to bag lucrative PSAs without complying with the mandated CSP requirement. It noted that the seven PSAs filed by MERALCO in the *interim* were in fact deregulated and would prejudice the consuming public in the succeeding 20 years of overpriced power charges.

The complaint was docketed as OMB-C-C-16-0497 for the criminal aspect and OMB-C-A-16-0438 for the administrative aspect.

OMB-C-C-16-0497

On 29 September 2017, the Ombudsman found probable cause to indict petitioners and their co-respondent *a quo*, Salazar,²² for violation of Section 3(e) of R.A. No. 3019 and directed the filing of the corresponding

²⁰ *Alyansa Para sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission*, G.R. No. 227670, May 3, 2019.

²¹ *Rollo*, pp. 59-79.

²² Salazar filed a separate petition for *certiorari* before the Court, docketed as G.R. No. 240288.

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information in court.²³ Petitioners filed a Joint Motion for Reconsideration²⁴ and a Supplemental Motion for Reconsideration²⁵ which the Ombudsman denied in the assailed 20 April 2018 Order.²⁶

From these Ombudsman issuances, petitioners Non, Yap-Taruc, Magpale-Asirit and Sta. Ana filed the present Petition for *Certiorari*, docketed as **G.R. No. 239168**.

Their co-respondent, Salazar, on the other hand, filed a separate petition docketed as **G.R. No. 240288** against ABP and the Ombudsman raising the defense that he never approved Resolution No. 1-2016 in the first place. Said petition is still pending with the Court.

Meanwhile, on 7 June 2018, the criminal information against petitioners and Salazar was filed with the Regional Trial Court (RTC) of Pasig City.²⁷

OMB-C-A-16-0438

In a Decision dated 29 September 2017, the Ombudsman found petitioners²⁸ guilty of Conduct Prejudicial to the Best Interest of the Service, aggravated by Simple Misconduct and Simple Neglect of Duty, for which they were meted the penalty of suspension for one year without pay.

Petitioners appealed to the CA with a prayer for temporary restraining order (TRO) which the CA granted on 9 February 2018. This prompted ABP to file a petition for *certiorari* with this Court, docketed as **G.R. No. 237586** assailing the 9 February 2018 Resolution of the CA which granted a 60-day TRO on the Decision of the Ombudsman in OMB-C-A-16-0438.²⁹

²³ *Rollo*, pp. 49-50. The dispositive portion of the Resolution reads:

WHEREFORE, this Office finds probable cause to prosecute Jose Vicente Buenviaje Salazar, Gloria Victoria Cabaies Yap-Taruc, Alfredo Jacinto Non, Josefina Patricia Almendras Magpale-Asirit, and Geronimo Delgado Sta. Ana for violation of Section 3(e) of Republic Act No. 3019, as amended. Let the corresponding Information be filed against them with the proper court.

SO ORDERED.

²⁴ *Rollo*, pp. 117-161.

²⁵ *Id.* at 192-196.

²⁶ *Id.* at 52-56. The dispositive portion reads:

WHEREFORE, the Motions for Reconsideration are DENIED.

SO ORDERED.

²⁷ Branch 155, *rollo*, pp. 844-846.

²⁸ Together with Salazar.

²⁹ *Alyansa Para sa Bagong Pilipinas, Inc., rep. by Noel G. Villones and Evelyn V. Jallorina v. Court of Appeals, Jose Vicente B. Salazar, Gloria Victoria C. Yap-Taruc, Alfredo J. Non*, G.R. No. 237586, *rollo*, pp. 3-4.

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Deconsolidation of the cases

G.R. Nos. 239168 and 240288 were consolidated on 30 July 2018. These two cases, together with G.R. No. 237586 were further consolidated with G.R. No. 227670 on 17 October 2018.

On 15 January 2019, the Court deconsolidated the cases and returned to same original members in charge.

In the meantime, petitioners in G.R. No. 239168 filed an Urgent Motion for Issuance of TRO or Writ of Preliminary Injunction due to the filing of Information against them with the RTC of Pasig City. They alleged that they filed a motion to quash with the RTC arguing that R.A. No. 10660,³⁰ which directs that criminal cases within the RTC's jurisdiction involving public officials shall be tried in a judicial region other than where the official holds office, applies to them as they hold office in Pasig City. They reiterated this argument in their Supplemental Petition dated 20 September 2019.

On 28 January 2020, the Court re-docketed the Supplemental Petition dated 20 September 2019 as a separate petition, **G.R. No. 251177**.

**Present Petition
G.R. No. 239168**

From the 29 September 2017 Resolution³¹ and the 20 April 2018 Order³² of the Ombudsman in OMB-C-C-16-0497, petitioners filed the present Petition for *Certiorari*, docketed as **G.R. No. 239168**, attributing grave abuse of discretion amounting to excess in jurisdiction on the part of the Ombudsman *(a)* in finding probable cause for their indictment when said finding is not supported by substantial evidence; *(b)* in arrogating unto herself the authority of declaring Resolution No. 1-2016 invalid, which could be done only by the Court; and *(c)* in proceeding to resolve the complaint despite the fact that the constitutionality of Resolution No. 1-2016 is still pending resolution before this Court.³³

Told to comment, the Ombudsman remains unswayed in its finding and prays for the dismissal of this Petition.³⁴

³⁰ AN ACT STRENGTHENING FURTHER THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE SANDIGANBAYAN, FURTHER AMENDING PRESIDENTIAL DECREE NO. 1606, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR.

³¹ Signed by Graft Investigation and Prosecution Officer II, Cezar M. Tirol II.

³² *Rollo*, p. 52-57.

³³ *Id.* at 10-11.

³⁴ The Comment was filed also in connection with G.R. No. 240288 (*rollo*, pp. 642-657). Note that the OSG filed a Manifestation and Motion on September 3, 2018 in which it made a preliminary assessment that the petition in G.R. No. 227670 is a prejudicial question in the resolution of the instant petition (*rollo*, pp. 265-292). It has not yet filed its Comment on the present petition. ABP also submitted its Comment on 17 December 2018, but only on Meralco's earlier Manifestation in G.R. No. 227670 (*rollo*, pp. 851-853).

The Court's Ruling

We grant the petition.

***The principle of non-interference
does not apply in this case***

While the Court generally upholds the policy of non-interference when it comes to the Ombudsman's determination of the existence of probable cause and in deciding whether the Information should be filed, the Court will also not hesitate from wielding its power of review and correct actions that result to needless prosecution.

Both the Constitution and the Ombudsman Act of 1989 give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. Thus, the consistent policy of the Court has been to maintain non-interference in the determination of the Ombudsman of the existence of probable cause. As this Court is not a trier of facts, we give due deference to the sound judgment of the Ombudsman.³⁵

Such policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well.³⁶ Otherwise, a deluge of petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the courts.³⁷

Nevertheless, the Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion.³⁸ While as a rule, the determination of probable cause for the filing of information lies with the public prosecutors, it is equally settled that the aggrieved person charged for an offense, has the present recourse, a petition for *certiorari* under Rule 65 of the Rules of Court, to challenge the finding of probable cause on the ground of grave abuse of discretion.³⁹ Whenever there are allegations of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny under the Court's own constitutional power and duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.⁴⁰

“There is grave abuse of discretion where power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross as to amount to evasion of positive duty

³⁵ *Villarosa v. Ombudsman*, G.R. No. 221418, January 23, 2019.

³⁶ *Joson v. Office of the Ombudsman*, 816 Phil. 288, 320 (2017).

³⁷ *Villarosa v. Ombudsman*, *supra*.

³⁸ *Estrada v. Office of the Ombudsman*, G.R. Nos. 212761-62, July 31, 2018.

³⁹ *Crucillo v. Office of the Ombudsman*, 552 Phil. 699, 713 (2007).

⁴⁰ *Casing v. Ombudsman*, 687 Phil. 468, 476 (2012).

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or virtual refusal to perform a duty enjoined by law.”⁴¹ When the Ombudsman does not take essential facts into consideration in the determination of probable cause, we have ruled that such constitutes grave abuse of discretion.

This Court will not shirk from its duty to intervene upon proof of commission of grave abuse of discretion by the Ombudsman as we are not precluded from reviewing the Ombudsman’s action when there is grave abuse of discretion, in which case the *certiorari* jurisdiction of the Court may exceptionally be invoked pursuant to Section 1, Article VIII of the Constitution.⁴²

Cases have enumerated the exceptions to the general rule of non-interference. These are:

1. **When necessary to afford adequate protection to the constitutional rights of the accused;**
2. **When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;**
3. When there is a prejudicial question which is *sub judice*;
4. When the acts of the officer are without or in excess of authority;
5. Where the prosecution is under an invalid law, ordinance or regulation;
6. When double jeopardy is clearly apparent;
7. Where the court has no jurisdiction over the offense;
8. Where it is a case of persecution rather than prosecution;
9. Where the charges are manifestly false and motivated by the lust for vengeance;
10. **When there is clearly no *prima facie* case against the accused and motion to quash on that ground has been denied.**⁴³ (Emphases supplied)

A review of the attendant circumstances shows that the present case falls under the exception.

Lack of probable cause

The Ombudsman found probable cause to indict herein petitioners for violation of Section 3(e) of R.A. No. 3019. We know that probable cause

⁴¹ *Sistoza v. Desierto*, 437 Phil. 117, 129 (2002).

⁴² *Crucillo v. Ombudsman*, supra note 39, at 712-713.

⁴³ *Mendoza-Arce v. Office of the Ombudsman*, 430 Phil. 101, 113 (2002).

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exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof.⁴⁴

It should also be stressed, however, that to determine if the suspect is probably guilty of the offense, the elements of the crime charged should, in all reasonable likelihood, be present. This is based in the principle that every crime is defined by its elements, without which, there should be, at most, no criminal offense.⁴⁵

There are three modes by which Section 3(e) of R.A. No. 3019 may be committed by a public officer: through manifest partiality, evident bad faith, or through gross inexcusable negligence.⁴⁶

“Partiality” connotes bias which excites a disposition to see and report matters as they are wished for rather than as they are. “Bad faith” meanwhile does not simply connote bad judgment or negligence. It imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive, or intent, or ill will, and partakes of the nature of a fraud. Finally, “gross negligence” refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected. It is that omission of care which even inattentive and thoughtless men never fail to take on their own property.⁴⁷

Here, the Ombudsman supported its finding of probable cause with this disquisition:

x x x [R]espondents acted with manifest partiality, evident bad faith or gross inexcusable negligence when they suspended the implementation of the required CSP, to accommodate the PSAs/PSCs of [distribution utilities] and [generation companies], particularly of MERALCO, thereby exempting them from the CSP mandated requirement.

The manifest partiality, evident bad faith or gross inexcusable negligence of respondents can be gleaned from the following documented chronological events:

1. On 20 October 2015, the ERC issued [Resolution No. 13-2015] with the provision that all PSAs and PSCs not filed with the ERC as of 06 November 2015 should already be covered by CSP as their Mandatory Selection Process;

⁴⁴ *Alberto v. Court of Appeals*, 711 Phil. 530, 553 (2013).

⁴⁵ *Id.* at 553-554.

⁴⁶ *Rivera v. People*, G.R. No. 228154, October 16, 2019.

⁴⁷ *Id.*

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2. Thus, by 07 November 2015, the requirement that PSAs not filed with ERC as of said date should already be covered by CSP, already took effect [sic];

3. In a Letter dated 26 November 2015, MERALCO sought the permission of ERC to exempt their PSCs from the CSP requirement;

4. On 10 December 2015, the ERC, through Salazar's letter, denied MERALCO's request;

5. On 15 March 2016, ERC, through respondents, issued ERC [Resolution No. 1-2016], modifying the effectivity date of the Resolution from 07 November 2015 to 30 April 2016, thus, giving a window period for PSAs without CSPs to be filed from 15 March 2016 to 30 April 2016; [and]

6. On 29 April 2016, a day before the extended deadline of 30 April 2016, MERALCO filed seven PSAs that did not undergo the CSP requirement.

x x x x

Their non-implementation of the requirement of CSP cannot hide under the cloak of presumption of regularity in the performance of their official duties. There is sufficient evidence that respondents gave unwarranted benefits to MERALCO and other companies by exempting them from the coverage of the CSP requirement which was already in effect after 06 November 2015. The 45-day period gave MERALCO and other companies the opportunity to dispense with CSP. Their gross inexcusable negligence led to the circumvention of the government policy requiring CSP, and denied the consumers the opportunities to elicit the best price offers and other PSA terms and conditions from suppliers.⁴⁸

It is clear therefore that the Ombudsman's finding of probable cause rests on the supposition that petitioners violated R.A. No. 3019 with the issuance of ERC Resolution No. 1-2016, which suspended the implementation of the CSP requirement. For the Ombudsman, the mere act of suspending the implementation of the CSP, shows that petitioners acted with manifest partiality, evident bad faith or gross and inexcusable negligence to accommodate the PSAs/Power Supply Contracts (PSCs) of DUs and generation companies, specifically, MERALCO. Stated differently, the premise is that since MERALCO benefited from Resolution No. 1-2016, then the subject resolution was, from the start, meant only to give an undue advantage to MERALCO, that is tantamount to a crime.

A perusal of Resolution No. 1-2016, however, would readily show that the ERC temporarily deferred the implementation of the CSP in order to ensure that there were suitable guidelines for its execution in light of the concerns raised by the power industry's various stakeholders. To quote:

⁴⁸ *Rollo*, pp. 44-45, 49.

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WHEREAS, since the publication of the CSP [Guidelines] on 06 November 2015, the [ERC] has received several letters from stakeholders which raised issues on the constitutionality of the effectivity of the CSP [Guidelines], sought clarification on the implementation of the CSP and its applicability to the renewal and extension of PSAs, requested a determination of the accepted forms of CSP, and submitted grounds for exemption from its applicability, among others.

WHEREAS, after judicious study and due consideration of the different perspectives raised in the aforementioned letters, with the end in view of ensuring the successful implementation of the CSP for the benefit of consumers, DUs, and GenCos, the [ERC] has resolved to allow a period of transition for the full implementation of the CSP [Guidelines] and, as such, restates the effectivity date of the CSP [Guidelines] to a later date.

Among these stakeholders are: (1) *SMC Global Power* which requested, through a Letter dated 25 November 2015, that they be allowed to file their PSCs because the requirements imposed pursuant to the CSP implementations were non-existent when their PSCs were evaluated and signed;⁴⁹ (2) *Philippine Rural Electric Cooperative Association, Inc.*, which requested for exemption from coverage of Department Circular No. DC2015-06-0008, via a Letter dated 1 December 2015;⁵⁰ (3) *Agusan del Norte Electric Cooperative, Inc.*, which requested, per Letter dated 10 December 2015, confirmation that any extension of PSAs or Energy Supply Agreements previously approved is outside the scope of ERC Resolution No. 13-2015;⁵¹ (4) *Astronergy Development*, which requested, through a Letter dated 15 December 2015, a meeting to discuss their situation following the issuance of Resolution No. 13-2015;⁵² (5) *Camarines Sur IV Electric Cooperative, Inc.* and *Unified Leyte Geothermal Energy, Inc.*, which requested for an extension to file their joint application for the approval of a PSA in their Letter dated 21 December 2015;⁵³ and (6) *Aklan Electric Cooperative, Inc.* which sent a letter dated 9 March 2016 inquiring about the CSP requirement.⁵⁴

The presence of these other stakeholders with their respective concerns, weaken the reasoning that petitioners acted with manifest partiality or evident bad faith that is tantamount to a finding of probable cause. Indeed, Resolution No. 1-2016 was available to all industry players and electric cooperatives alike, not just to MERALCO.

A reading of Resolution No. 1-2016 would also show that not only did it extend the transition period, it also addressed pressing concerns affecting the impact of the CSP upon the power industry and resolved other matters that involved the other stakeholders, abovementioned. The issuance of the

⁴⁹ Id. at 162-163.

⁵⁰ Id. at 164.

⁵¹ Id. at 167-168.

⁵² Id. at 176-177.

⁵³ Id. at 171-174.

⁵⁴ Id. at 175.

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subject resolution was in the exercise of ERC's sound judgment as a regulator and pursuant to its mandate under the EPIRA to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power. Thus, it cannot be classified as arbitrary, whimsical or capricious. The transition period, together with the clarifications provided in Resolution No. 1-2016, constitute a reasonable response to the various concerns posed by DUs, GenCos and electric cooperatives.

We note that in G.R. No. 227670, the Court, through the *ponencia* of Justice Carpio, declared that the issuance of Resolution No. 1-2016 was attended with grave abuse of discretion. It should be stressed, however, that said case centered on the constitutionality of Resolution No. 1-2016. Even though wrongful, the error of the concerned Commissioners in issuing Resolution No. 1-2016 should not be automatically deemed as criminal.

Power of the Court to order dismissal of the case

We acknowledge the opinions of our esteemed colleagues, Justice Leonen and Justice Zalameda. As they correctly pointed out, the Information in this case was already filed with the RTC of Pasig City. Thus, the RTC already acquired jurisdiction over the case.

A review of the events leading to the present petition would show that, petitioners filed on 29 May 2018 a petition before the Court praying that a TRO and/or Writ of Preliminary Injunction be issued in order to restrain the Ombudsman from filing the Information. The application however was not granted, thus, the Ombudsman proceeded in filing the Information against petitioners on 7 June 2018. The case was raffled to Branch 155 of RTC, Pasig and petitioners were arraigned on 21 November 2018.

Having determined, however, that the Ombudsman committed grave abuse of discretion in issuing the 29 September 2017 Resolution and 20 April 2018 Order which led to the filing of the Information with the trial court, we cannot subscribe to the proposition of our respected colleagues that we should refrain from resolving the instant petition on the ground that the trial court already acquired exclusive jurisdiction over the criminal case.

We have not hesitated in ordering the dismissal of a case already filed in court for want of probable cause.

In *Cabahug v. People*,⁵⁵ we declared:

Judicial power of review includes the determination of whether there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

⁵⁵ 426 Phil. 490, 509-510 (2002).

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Certainly, this will not be the first time that we order the dismissal of a case filed before the Sandiganbayan for want of probable cause. In the case of *Fernando v. Sandiganbayan*, we justified our action as follows:

We emphasize at this point that the Court has a policy of non-interference in the Ombudsman's exercise of his constitutionally mandated powers. The overwhelming number of petitions brought to us questioning the filing by the Ombudsman of charges against them are invariably denied due course. *Occasionally, however, there are rare cases when, for various reasons there has been a misapprehension of facts, we step in with our review power. This is one such case.* (Emphases supplied and citations omitted)

This was reiterated in *Sistoza v. Desierto*⁵⁶ where the Court categorically held that we can direct the Sandiganbayan to dismiss the criminal case filed against petitioner after finding that the Ombudsman wrongfully found probable cause against him. For want of a well-founded and reasonable ground to believe that petitioner violated Section 3(e), of R.A. No. 3019 or for want of probable cause, the Court ordered the Sandiganbayan to dismiss the criminal case against petitioner.

Indeed, in the few occasions when there is evident misapprehension of facts, we set aside the policy of non-interference and step in armed with our power of review. When at the outset the evidence cannot sustain a *prima facie* case or that the existence of probable cause to form a sufficient belief as to the guilt of the accused cannot be ascertained, the prosecution must desist from inflicting on any person the trauma of going through a trial.⁵⁷

While it is the function of the Ombudsman to determine whether petitioners should be subjected to the expense, rigors and embarrassment of trial, the Ombudsman cannot do so arbitrarily. The seemingly exclusive and unilateral authority of the Ombudsman must be tempered by the Court when powers of prosecution are in danger of being used for persecution. Dismissing the case against the accused for palpable want of probable cause not only spares him of the expense, rigors and embarrassment of trial, but also prevents needless waste of the court's time and saves the precious resources of the government.⁵⁸

⁵⁶ Supra note 41.

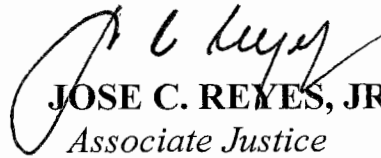
⁵⁷ See *Cabahug v. People*, supra note 55, at 509.

⁵⁸ *Jimenez v. Tolentino, Jr.*, 490 Phil. 367, 375-376 (2005).


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WHEREFORE, the petition is **GRANTED**. The 29 September 2017 Resolution and 20 April 2018 Order of the Office of the Ombudsman are hereby **REVERSED** and **SET ASIDE**. The Information against petitioners is hereby **DISMISSED** for lack of probable cause.

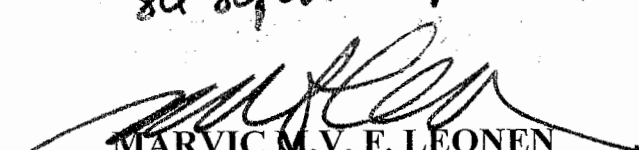
SO ORDERED.


JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

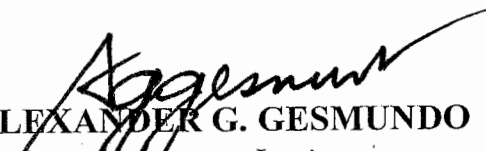

DIOSDADO M. PERALTA
Chief Justice

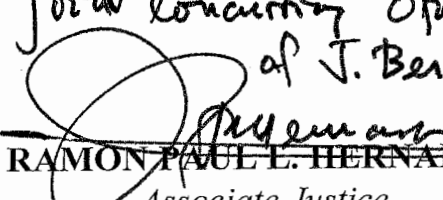
Please see Concurring opinion

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

See separate opinion

MARVIC M.V. F. LEONEN
Associate Justice


See Concurring Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

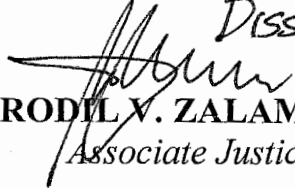
I join concurring opinion of J. Bernabe

RAMON PAUL L. HERNANDO
Associate Justice

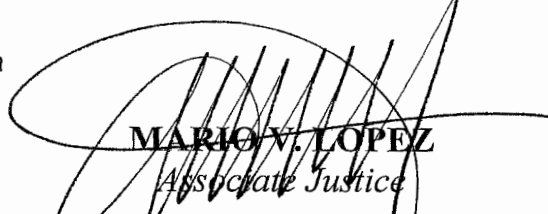

ROSMARI D. CARANDANG
Associate Justice

Pls. See Concurring Opinion

AMY C. LAZARO-JAVIER
Associate Justice

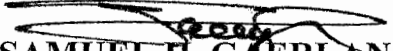
(NO PART)
HENRI JEAN PAUL B. INTING
Associate Justice

*Please see
Dissenting Opinion*


RODIL V. ZALAMEDA
Associate Justice


MARIO V. LOPEZ
Associate Justice

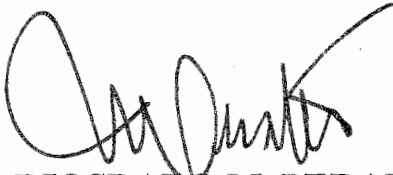

EDGARDO L. DELOS SANTOS
Associate Justice

*I join the dissent of
J Zalameda*

SAMUEL H. GAERLAN
Associate Justice

(ON SICK LEAVE)
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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.


DIOSDADO M. PERALTA
Chief Justice