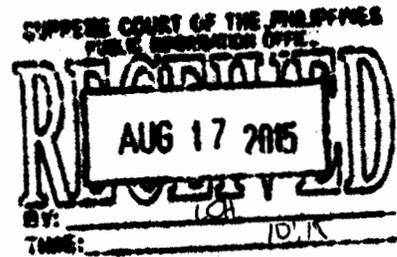




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 29, 2015** which reads as follows:*

“G.R. Nos. 150226 & 150230 – COMIE P. DOROMAL and CATHERINE J. PABLO, Petitioners, v. HON. OMBUDSMAN ANIANO A. DESIERTO, THE FACT-FINDING AND INVESTIGATION BUREAU represented by: Atty. Maria Olivia A. Roxas, and the RESIDENT OMBUDSMAN, NPC, represented by Atty. Christopher S. Soguilon, Respondents.

Before Us is a Petition for *Certiorari* and Prohibition with Application for Temporary Restraining Order (TRO) and Writ of Preliminary Injunction, filed by petitioners Comie P. Doromal (Doromal) and Catherine J. Pablo (Pablo), seeking the reversal of the Order¹ dated September 4, 2001 issued by respondent Aniano A. Desierto (Desierto) as Ombudsman, which placed petitioners under preventive suspension for six months without pay in connection with the complaints for Grave Misconduct against petitioners docketed as OMB-ADM-0-01-0373 and OMB-ADM-0-01-0374.

The antecedents of the case are as follows:

On July 12, 1995, National Power Corporation (NPC) filed with the Regional Trial Court (RTC), Imus, Cavite, Branch 21, a complaint for expropriation of several parcels of land located in San Agustin, Dasmariñas, Cavite, with total areas of 96,963.38 square meters and 48,103.12 square meters (subject properties), which were owned by Vine

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¹ Rollo, pp. 28-34.

Development Corporation (VINE) and Romonafe Corporation (ROMONAFE), respectively. The case was docketed as Civil Case No. 1140-95. Armed with a writ of possession issued by the RTC on January 26, 1996, NPC took possession of the subject properties on February 12, 1996 after depositing with the Philippine National Bank (PNB) the amount of ₱4,616,223.37, representing the assessed value of said properties.

The panel of commissioners constituted by the RTC, after an ocular inspection of the subject properties, submitted to the trial court an undated Commissioners Valuation Report,² estimating the price per square meter of the subject properties to be ₱3,500.00.

In the meantime, the Provincial Appraisal Committee (PAC) of Cavite – composed of the provincial assessor, provincial treasurer, and the provincial engineer – issued Resolution No. 08-95 dated October 25, 1995 fixing the market values of the properties of VINE and ROMONAFE at only ₱2,000.00 and ₱1,500.00 per square meter, respectively. ROMONAFE sought reconsideration or reevaluation of the market value of its property in the said Resolution and submitted additional data/information, on the basis of which the PAC issued Resolution No. 07-97³ dated June 25, 1997 increasing the market value of the property of ROMONAFE from ₱1,500.00 to ₱3,500.00 per square meter.

Also during the pendency of Civil Case No. 1140-95 before the RTC, NPC was negotiating with ROMONAFE for the acquisition of another parcel of land with an area of 27,293.88 square meters, adjacent to the property of ROMONAFE already subject of the expropriation case (adjacent property).

On September 5, 1997, the RTC rendered a Decision⁴ granting the expropriation of the subject properties and adopting the appraisal by the panel of commissioners of the just compensation for the said properties in the amount of ₱3,500.00 per square meter. The dispositive portion of the RTC judgment reads:

WHEREFORE, judgment is hereby rendered declaring that the parcels of land of the defendants hereinabove described consisting of 146,066.5 square meters, to have been lawfully expropriated and now belong to the plaintiff to be used for public purpose.

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² Records (OMB-ADM-0-01-0373), pp. 366-369.

³ Id. at 370-371.

⁴ Id. at 356-365.

The plaintiff is hereby ordered to pay to the defendants, through the Branch Clerk of this Court, the fair market value of the property at ₱3,500.00 per square meter, that is, for defendant Vine Development Corporation, the total sum of ₱339,371,830.00 and for defendant ROMONAFE Corporation, the total sum of ₱168,360,920.00, plus legal rate of interest – *i.e.*, 6% per annum – starting from the time the plaintiff took possession of the property up to the time the full amount shall have been paid.

Dissatisfied, NPC appealed the RTC Decision before the Court of Appeals. The appeal was docketed as CA-G.R. CV No. 57710.

While CA-G.R. CV No. 57710 was pending before the Court of Appeals, the parties carried on efforts to arrive at a compromise, evidenced by written exchanges between the counsels and officers of NPC and VINE and of NPC and ROMONAFE. Both VINE and ROMONAFE maintained that the RTC valuation of their properties at ₱3,500.00 per square meter was already reasonable. In the case of ROMONAFE, it requested that in the computation of just compensation, NPC increase the total area of its property being expropriated to 75,397 square meters to already include the adjacent property.

In two Memoranda,⁵ NPC Management recommended to the National Power Board that NPC already pay VINE and ROMONAFE for the subject properties at the price of ₱3,500.00 per square meter, plus 6% interest from the time NPC took possession of said properties, to save on litigation costs and accrual of more interests.

On April 13, 1998, the National Power Board issued Resolutions⁶ Nos. 98-90 and 98-91 authorizing NPC Management to negotiate for the acquisition of the properties of ROMONAFE and VINE, respectively, and specifying the negotiation points which NPC Management should take up with said companies. In the last two paragraphs of both Resolutions, the National Power Board resolved as follows:

RESOLVED, FURTHER, That Management shall submit the required compliance and result of negotiation to the Board for confirmation of this resolution; and

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⁵ The two Memoranda are: (1) Memorandum dated January 23, 1998 from Alberto L. Pangcog (Pangcog), Vice President (VP)-General Counsel, and Tomas L. Agtarap, Officer-in-Charge (OIC)-Office of the Vice President (OVP)-Projects Management and Engineering Services (PMES); and (2) Memorandum dated April 2, 1998 from Mehol K. Sadain (Sadain), OIC-OVP-General Counsel.

⁶ Records (OMB-ADM-0-01-0373), pp. 412-416.

RESOLVED, FINALLY, That upon confirmation of this resolution, Management be and is hereby authorized to enter into a compromise agreement with [ROMONAFE CORPORATION/VINE DEVELOPMENT CORPORATION] based on the foregoing terms and conditions and to sign, execute and deliver documents and other necessary papers for the execution and consummation of the sale.

Two weeks later, on April 27, 1998, the National Power Board issued Resolutions⁷ Nos. 98-96 and 98-97 approving the acquisition by NPC of the properties of ROMONAFE and VINE, respectively, under the terms and conditions agreed upon during negotiations. Both Resolutions have the same ultimate paragraph, and we quote:

RESOLVED, FINALLY, that the President and Chief Executive Officer, National Power Corporation, or his duly designated representative, be and is hereby authorized to sign the Compromise Agreement and other related documents pertaining to the said sale with [**ROMONAFE CORP./VINE DEVELOPMENT CORPORATION**], for and in behalf of the Corporation.

Thereafter, NPC and ROMONAFE submitted to the Court of Appeals for approval a Compromise Agreement dated June 8, 1998,⁸ wherein the properties of ROMONAFE were valued at ₱3,500.00 per square meter. The Compromise Agreement was signed by Oscar Tina as President of ROMONAFE; and by petitioner Doromal as Assistant General Counsel for Litigation and Land & Land Rights Departments and petitioner Pablo as OIC-Land and Land Rights Department, among other officers and lawyers of NPC.

The Court of Appeals directed the Office of the Solicitor General (OSG) to file its comment on the said Compromise Agreement. In its Comment and Supplemental Comment, and at the hearing/oral arguments on the case, the OSG prayed for the disapproval of the Compromise Agreement for being grossly disadvantageous to the government and for lack of legal authority of the deputized NPC lawyers to enter into such an Agreement. The OSG also brought to the attention of the Court of Appeals that per Section 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987, the deputized NPC lawyers were authorized to appear as Special Attorneys of the Solicitor General only in cases before the trial courts, and not before the Court of Appeals.

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⁷ Id. at 424-428.

⁸ Id. at 429-437.

The Court of Appeals, in a Resolution⁹ dated January 19, 1999, dismissed CA-G.R. CV No. 57710. The OSG filed a Motion for Reconsideration, claiming that it did not ask for the dismissal of CA-G.R. CV No. 57710. The OSG clarified its position that the NPC lawyers had the authority to file notices of appeal but said authority did not extend to entering into compromise agreements. In a Resolution dated March 8, 1999, the Court of Appeals denied the Motion for Reconsideration of the OSG.

Despite the foregoing developments in CA-G.R. CV No. 57710, NPC and VINE submitted to the Court of Appeals for approval a Partial Compromise Agreement¹⁰ dated May 17, 1999 wherein the properties of VINE were valued at ₱3,400.00 per square meter. The Partial Compromise Agreement was signed by Vicente C. Ponce as President and Nestor Ifurung, Jr. as counsel of VINE; and by petitioners, among other officers and lawyers of NPC and officials of the OSG.

Meanwhile, the OSG filed before us a Petition for Review of the Resolutions dated January 19, 1999 and March 8, 1999, which was docketed as G.R. No. 137785, with the title *National Power Corporation v. Vine Development Corporation and Romonafe Corporation*. In our Decision dated September 4, 2000,¹¹ we held:

The CA ruled that the deputization of the NPC lawyers excluded the authority to file appeals in the higher courts. We disagree. Under Section 2(a), Rule 41 of the Revised Rules of Court which pertains to ordinary appeals, the notice of appeal is filed in the very same court which rendered the assailed decision, which in this case was the Regional Trial Court (RTC) of Imus, Cavite. Since the notice was filed before the RTC, the NPC lawyers acted clearly within their authority. Indeed, their action ensured that the appeal was filed within the reglementary period. Regardless of which mode of appeal is used, the appeal itself is presumed beneficial to the government; hence, it should be allowed. After all, the OSG may withdraw it, if it believes that the appeal will not advance the government's cause.

The reason for the continuous dismissal of NPC appeals in the CA is not the absence of authority of the lawyers *per se*, but the failure of these lawyers to inform the OSG of the lower court's adverse decision, resulting in the OSG's lack of participation in the appellate proceeding.

Granting *arguendo* that the NPC lawyers had no authority to file the appeal, this defect was cured by the OSG's subsequent Manifestation, the full text of which reads:

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⁹ Id. at 446.

¹⁰ Id. at 458-466.

¹¹ *National Power Corporation v. Vine Development Corporation*, 394 Phil. 76, 86-88 (2000).

“THE OFFICE OF THE SOLICITOR GENERAL (OSG) to this Honorable Court, respectfully manifests that the OSG[-] deputized counsels of the National Power Corporation (NAPOCOR) have the authority to file notices of appeal in cases being handled by them such as the subject case pursuant to their deputation letters. However, such authority does not extend to withdrawal of said appeal, execution of compromise agreements and filing of pleadings before the appellate courts without the review and approval of the Solicitor General.”

Authority to Compromise

“A compromise is an agreement between two or more persons who, to avoid a lawsuit, amicably settle their differences on such terms as they can agree on.” A compromise may be effected by persons who, as expressed or implied from their relations, are representing and acting under the authority of the parties to a controversy. In the absence of such authority, no compromise by a third person is binding, as Article 1878 of the Civil Code provides that an agent, such as the counsel for the case, needs a special power to compromise. Hence, in *Monte de Piedad v. Rodrigo*, the Court ruled that “if an attorney is not authorized by the client, he cannot compromise his client’s claim.” Furthermore, Section 23, Rule 138 of the Rules of Court requires “special authority” for attorneys to bind their clients:

“Section 23. *Authority of attorneys to bind clients.* - Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. But they cannot, without special authority, compromise their client’s litigation, or receive anything in discharge of a client’s claim but the full amount in cash.”

If, as already ruled, NPC lawyers cannot even handle Napocor cases in the CA, how indeed can they be allowed to bind Napocor to compromises? Definitely then, their signatures on the instant Compromise Agreement are invalid.

WHEREFORE, the Petition is **GRANTED** and the appealed Decision **REVERSED** and **SET ASIDE**. The case is hereby **REMANDED** to the Court of Appeals for disposition on the merits as prayed for by the Office of the Solicitor General. No costs.

It appears that as G.R. No. 137785 was pending our resolution, NPC proceeded to implement its compromise agreements with ROMONAFE and VINE, making payments to said corporations from 1999 to 2000. In total, NPC paid ROMONAFE ₱279,999,998.00 and VINE ₱391,916,060.00.

On June 7, 2001, Commission on Audit (COA) Corporate Auditor Norberto D. Cabibihan (Cabibihan) issued Notices of Disallowance¹² Nos. 2001-001-00-(99) and 2001-002-00-(99) for the payments made by NPC in favor of ROMONAFE and VINE, respectively.

Taking cue from the Notices of Disallowance of COA, respondent Christopher S. Soguilon (Soguilon), Resident Ombudsman of NPC and DENR, conducted an investigation. In his Investigation Report¹³ dated May 2, 2001, which was submitted to respondent Desierto, respondent Soguilon commented as follows:

It clearly appears from the foregoing findings that the properties owned by Romonafe Corporation and Vine Development Corporation which were affected by the expansion project of Dasmariñas Substation were expropriated by the National Power Corporation. Records also disclose that pending appeal of the expropriation case, compromise agreements were entered into by the NPC and the owners of the property. On account of the compromise agreements, NPC paid the following:

a) Romonafe Corporation	₱	279,999,998.00
b) Vine Development Corporation	₱	391,916,060.00
Total	₱	671,916,058.00

The only ISSUE to be resolved in this case is whether or not there was sufficient bases for NPC to enter into Compromise Agreement?

This Resident Ombudsman believes that there was no sufficient basis for the NPC to enter into compromise agreement with Romonafe Corporation because the decision of the RTC, Imus, Cavite, fixing the compensation at ₱3,500.00 per square meter plus legal rate of interest of 6% per annum – starting from the time the NPC took possession of the property up to the time the full amount have been paid, was timely appealed to the Court of Appeals. The OSG, in compliance with the Court of Appeals [R]esolution dated April 8, 1999, stated that:

“5. Under the assailed decision of the trial court vis-à-vis the determination of just compensation, the defendants-appellees Romonafe and Vine a whooping (sic) amount of Five Hundred Seven Million Seven Hundred Forty-Eight Pesos (₱507,732,748.00) as “against” the aggregate amount of Two Hundred Sixty-[F]ive Million Eighty-One Thousand Four Hundred Forty Pesos (₱265,081,440.00) which it is bound to pay Romonafe and Vine under the ₱1,500 and ₱2,000 per square meter valuation, respectively, which rates the OSG consistently maintains to be the proper bases in computing the just compensation.”

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¹² Records (OMB-ADM-0-01-03730), pp. 538-539.

¹³ Rollo, pp. 39-53.

The Court of Appeals did not decide the case on the merits but based the decision on the compromise agreement entered into by the NPC with the Romonafe Corporation. Likewise, the resolution of the Court of Appeals dismissing the appeal was timely appealed to the Supreme Court.

In view of the fact that there was a pending appeal, the compromise agreement entered into by the National Power Corporation with Romonafe Corporation is invalid. There is no basis for compromise agreement because the fair market value of the property has not yet been determined. Besides, the Supreme Court ruled that:

“NPC lawyers cannot even handle NAPOCOR cases in the Court of Appeals, how indeed they be allowed to bind Napocor to compromises? Definitely then, their signature on the instant compromise agreement are invalid.”

Likewise, the compromise agreement entered into by the NPC with Vine Development Corporation was invalid for reasons adverted above. Besides the Supreme Court did not resolve nor approve the compromise agreement, instead the Honorable Court remanded the case to the Court of Appeals for disposition on the merits as prayed for by the Office of the Solicitor General.

The compromises entered into by the NPC with Romonafe Corporation and Vine Development Corporation, without the Court's decision as to the correct valuation of the property, was manifestly and grossly disadvantageous to the NPC in particular and to the government in general. The compromise agreement entered by NPC with Romonafe Corporation which was executed on July 8, 1998 appears to be a midnight transaction or sweetheart deal because the term of office of the members of the NPC Board was about to expire. July 1, 1998 was the start of President Estrada's administration.

The compromise agreement which caused undue injury to the corporation and gave unwarranted benefits to the owners of the property constitutes as violation of Section 3 (e) (g) & (i) of R.A. 3019 as amended quoted hereunder:

“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 unlawfull (sic):

(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. x x x.

(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.

(i) Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong.”

The persons who are liable for the anomalous compromise agreements are the following:

1. Members of the National Power Board who approved the compromise agreement notwithstanding the fair market value of the properties have not yet been determined;

2. The NPC lawyers and officials of the Office of the Solicitor General (OSG) who affixed their signatures to the compromise agreements. Despite their knowledge that the compromise agreements have no bases because the appeal has not yet been resolved by the Supreme Court, and the compromise agreement will cause great damage/injury to the corporation (NPC), the aforesaid officials did not stop the execution of the compromise agreement. Their failure to stop the execution of the compromise agreement is a clear manifestation that they are parts (sic) of these anomalies.

3. The official/representative of the Romonafe Corporation and Vine Development Corporation who are recipient of the unwarranted benefits.

At the end of his Report, respondent Soguilon specifically named the chairman, vice-chairman and members of the National Power Board, officers and lawyers of NPC, and officials of the OSG who approved and signed the compromise agreements, against whom he recommended the filing of criminal and administrative cases.

Accordingly, respondent Maria Olivia Elena A. Roxas (Roxas), Graft Investigation Officer I, Fact-Finding Intelligence Bureau, Office of the Ombudsman, filed a Complaint-Affidavit, with two separate administrative charges for Grave Misconduct (*i.e.*, one each for the compromise agreements with ROMONAFE and VINE) against petitioners, one other NPC officer, and two OSG officials (collectively referred to as petitioners, *et al.*), docketed as OMB-ADM-0-01-0373 and OMB-ADM-0-01-0374.

In his Order dated September 4, 2001, respondent Desierto found that:

Based on the complaint-affidavit of Atty. **MARIA OLIVIA ELENA A. ROXAS** and Investigation Report of Resident Ombudsman **CHRISTOPHER S. SOGUILON**, it is alleged that the respondents conspired with the former high officials of the NPC and with the officers of **ROMONAFE CORPORATION** and **VINE DEVELOPMENT CORPORATION** (respondents in the criminal aspect of the case) in entering into an anomalous compromise agreements for the purchase of lands affected by the expansion project of the NPC Dasmariñas Substation despite the pendency of a timely appeal of the Decision of [the] Regional Trial Court Imus in Civil Case No. 1140-95. That the payment to **ROMONAFE CORPORATION** and **VINE DEVELOPMENT CORPORATION** of the aggregate amount of **FIVE HUNDRED SEVEN MILLION SEVEN HUNDRED THIRTY-TWO THOUSAND SEVEN HUNDRED FORTY-EIGHT PESOS (₱507,732,748.00)** based in the said compromise agreement was grossly disadvantageous to the government as NPC should have paid only the aggregate amount of **TWO HUNDRED SIXTY-FIVE MILLION EIGHTY-ONE THOUSAND FOUR HUNDRED FORTY-FOUR PESOS (₱265,081,440.00)** (sic) based on the P1,500.00 and ₱2,000.00 per square meter valuation, as maintained by the Office of the Solicitor General.

It is further alleged that the Supreme Court in a Decision dated September 4, 2000 in G.R. No. 137785 entitled *NPC vs. Vine Development Corporation and Romonafe Corporation* categorically stated that herein lawyers of the National Power Corporation cannot enter into [a] compromise agreement without any specific authority to do so and that their signatures on the said compromise agreements are invalid.

After a careful evaluation of the records, the same show that the charge against the respondents clearly involve the administrative offense of **GRAVE MISCONDUCT** that may warrant their removal from the service. It likewise appear that the evidence of guilt is strong as against all the herein respondents. There is therefore, sufficient basis to preventively suspend all the respondents in accordance with Section 24 of Republic Act 6770.¹⁴

Resultantly, at the end of the same Order, respondent Desierto placed petitioners, *et al.*, under preventive suspension for six months without pay, from their receipt of said Order; and required petitioners, *et al.*, to file their counter-affidavits and other controverting evidence to the charges against them within 10 days from receipt of the Order.

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¹⁴ Id. at 29-31.

Petitioners now come before us via the instant Petition for *Certiorari* and Prohibition, docketed as G.R. Nos. 150226 and 150230, asserting grave abuse of discretion on the part of respondents, committed as follows:

I. THE RESPONDENTS ACTED WITH SUCH GRAVE ABUSE OF DISCRETION AMOUNTING TO LOSS OF JURISDICTION WHEN THEY ORDERED/CAUSED THE PREVENTIVE SUSPENSION OF PETITIONERS DOROMAL AND PABLO WITHOUT DUE PROCESS OF LAW.

II. THE RESPONDENTS ACTED WITH SUCH GRAVE ABUSE OF DISCRETION AMOUNTING TO LOSS OF JURISDICTION WHEN THEY ORDERED/CAUSED THE DISCRIMINATORY PREVENTIVE SUSPENSION AND FILING OF ADMINISTRATIVE CASES AGAINST PETITIONERS DOROMAL AND PABLO WHEN OTHER NPC LAWYERS ATTY. ALBERTO L. PANGCOG AND ATTY. LILIBETH SUMBILLA SANDAG APPEAR TO BE ADMINISTRATIVELY LIABLE.

III. THE RESPONDENTS ACTED WITH SUCH GRAVE ABUSE OF DISCRETION AMOUNTING TO LOSS OF JURISDICTION WHEN THEY ORDERED/CAUSED TO BE ISSUED THE SAID PREVENTIVE SUSPENSION AND THE INITIATION OF CRIMINAL CASES AGAINST PETITIONERS DOROMAL AND PABLO WHEN THE ISSUE, I.E. THE DETERMINATION OF JUST COMPENSATION OF PRIVATE PROPERTY EXPROPRIATED FOR PUBLIC PURPOSE, IS EXCLUSIVELY A JUDICIAL FUNCTION AND STILL SUB JUDICE BEFORE THE COURT OF APPEALS.

III.1. THE DETERMINATION OF JUST COMPENSATION OF PRIVATE PROPERTIES EXPROPRIATED FOR PUBLIC PURPOSE/USE IS EXCLUSIVELY A JUDICIAL FUNCTION IN CONCLUDING THAT THE JUST COMPENSATION DETERMINED BY THE REGIONAL TRIAL COURT OF CAVITE, BRANCH 21, IS GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT, THE RESPONDENTS HAVE USURPED A JUDICIAL FUNCTION.

III.2. IT IS HIGHLY PREMATURE FOR THE RESPONDENTS TO CONCLUDE THAT THE PRICE OF ₱3,500.00 PER SQUARE METER AS JUST COMPENSATION ARRIVED AT BY THE REGIONAL TRIAL COURT IS GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT AND NPC WHEN SAID ISSUE HAS YET TO BE DETERMINED AND RESOLVED BY THE COURT OF APPEALS AS DIRECTED BY THE SUPREME COURT.¹⁵

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¹⁵ Id. at 3-4.

Petitioners argue that: (1) they were denied due process of law for they were not given the opportunity to refute the charges levelled against them; (2) their constitutional right to equal protection of the laws was violated when respondents instituted administrative charges against them but excluded other NPC officers/lawyers with more substantial participation in the finalization of the compromise agreements; (3) only the courts can determine just compensation, so respondents usurped a judicial function in finding that the price of ₱3,500.00 per square meter for the subject properties was excessive; (4) respondents violated the *sub judice* rule by making a finding on the issue of just compensation for the subject properties even when the said issue is still pending before the Court of Appeals; and (5) the administrative charges against petitioners had been rendered moot and academic by the promulgation on January 17, 2002 of the COA Auditor's Decision No. COA-NPC 2002-001-03 in which COA Corporate Auditor Cabibihan reconsidered the Notices of Disallowance Nos. 2001-001-00-(99) and 2001-002-00-(99) and absolved the former chairman, former vice-chairman, and members of the National Power Board from any liability for payments made by NPC to ROMONAFE and VINE. Hence, petitioners pray that we render a decision setting aside respondent Desierto's Order dated September 4, 2001 and respondent Soguilon's investigation report, and commanding respondents to desist from further proceedings in OMB-ADM-0-01-0373 and OMB-ADM-0-01-0374, as well as any other criminal investigations/proceedings against petitioners.

Acting on petitioners' prayer for injunctive relief in the Petition, we issued a Resolution dated November 12, 2001¹⁶ "enjoining the respondents, their representatives, agents and any other person acting for and in their behalf to immediately refrain from enforcing the assailed preventive suspension order of September 4, 2001 and continuing with the proceedings in OMB-ADM-0-01-0373 and OMB-ADM-0-01-0374 and initiating any other criminal investigation/proceedings against petitioners upon the petitioners' filing of a bond in the amount of Ten Thousand Pesos (₱10,000.00)." We issued a TRO against respondents on November 19, 2001 after petitioners posted the requisite cash bond.

In a Motion to Cite Respondents in Contempt of Court, petitioners allege that the Evaluation and Preliminary Investigation Bureau (EPIB), Office of the Ombudsman, had filed a criminal investigation/proceeding against them, docketed as OMB-0-01-0639, in violation of our TRO. Petitioners subsequently filed a Manifestation with Reiterative Motion to Cite Respondents in Contempt, asserting that Desierto further violated our TRO when he ordered the dismissal of the administrative charges against the two OSG officials.

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¹⁶ Id. at 190-192.

In a Resolution dated August 9, 2009, we required the parties to move in the premises. Petitioners inform us in their Manifestation/Compliance that their former positions had been abolished with the enactment of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" on March 1, 2003. Nevertheless, on March 14, 2003, petitioners were re-employed by NPC: petitioner Doromal as the Department Manager of the Litigation and Bid Secretariat Department, Office of the General Counsel, and petitioner Pablo as Department Manager, Materials Management Department, Logistics. Petitioners also notify us that the ownership, maintenance, and operation of the Electric Power Sub-station involved in this case had already been transferred to the National Transmission Corporation (NTC), which, after being privatized, became the National Grid Corporation of the Philippines.

There is no merit in the Petition at bar.

As a rule, we do not interfere with the Ombudsman's exercise of his investigatory and prosecutory powers. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman but upon practicality as well.¹⁷

The Ombudsman's administrative disciplinary authority emanates from Section 12, Article XI of the 1987 Constitution, which provides:

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Congress subsequently enacted Republic Act No. 6770, otherwise known as "The Ombudsman Act of 1989," providing for the organizational structure and powers of the Ombudsman.

Section 15 of Republic Act No. 6770 gives the Office of the Ombudsman full administrative disciplinary authority. This provision covers the entire range of administrative activities attendant to administrative adjudication, including, among others, the authority to receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty

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Office of the Ombudsman v. Capulong, G.R. No. 201643, March 12, 2014.

imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the corresponding penalty.¹⁸

Petitioners already sought relief from us when OMB-ADM-0-01-0373 and OMB-ADM-0-01-0374 were only in their initial stages, spurred by respondent Desierto's issuance of the Order dated September 4, 2001 placing petitioners under preventive suspension for six months without pay. Since respondent Desierto as Ombudsman clearly had the power to place petitioners under preventive suspension during the pendency of OMB-ADM-0-01-0373 and OMB-ADM-0-01-0374, we can only review and set aside the preventive suspension if the same was imposed with grave abuse of discretion amounting to lack or excess of jurisdiction.

Grave abuse of discretion is the capricious and whimsical exercise of judgment on the part of 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 invasion 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 and hostility.¹⁹ Mere abuse of discretion is not enough; it must be so grave as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.²⁰

None of petitioners' allegations against respondents is tantamount to grave abuse of discretion.

Section 23(1) of Republic Act No. 6770 mandates that "[a]dministrative investigations conducted by the Office of the Ombudsman shall be in accordance with its rules of procedure and consistent with due process." Section 24 of the same statute lays down the requirements for the issuance of a preventive suspension order by the Ombudsman, thus:

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¹⁸ *Alejandro v. Office of the Ombudsman Fact-Finding and Intelligence Bureau*, G.R. No. 173121, April 3, 2013, 695 SCRA 35, 46-48.

¹⁹ *Dumangcas, Jr. v. Marcelo*, 518 Phil. 464, 477 (2006).

²⁰ *Quasha Ancheta Peña & Nolasco Law Office v. The Special Sixth Division of the Court of Appeals*, 622 Phil. 738, 748 (2009).

SEC. 24. *Preventive Suspension.* – The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; or (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

Consistent with Section 24 of Republic Act No. 6770, Rule III, Section 9 of Administrative Order No. 07, otherwise known as The Rules of Procedure of the Office of the Ombudsman, as amended, states:

Sec. 9. PREVENTIVE SUSPENSION. — Pending investigation, the respondent may be preventively suspended without pay for a period of not more than six (6) months if, in the judgment of the Ombudsman or his proper deputy, the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or gross misconduct, or neglect in the performance of duty; or (b) the charge would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

If the administrative investigation is not terminated within the period the respondent is suspended, the respondent shall be automatically reinstated unless the delay in the disposition of the case is due to the fault, negligence, or any cause attributable to the respondent, in which case the period of such delay shall not be counted in computing the period of suspension.

Under Section 24 of Republic Act No. 6770, two requisites must concur to render the preventive suspension order valid. The first requisite is unique and can be satisfied in only one way. It is that in the judgment of the Ombudsman or the Deputy Ombudsman, the evidence of guilt is strong. The second requisite may be met in three different ways, to wit: (1) that the offense charged involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (2) the charge would warrant removal from the service; or (3) the respondent's continued stay in office may prejudice the case filed against him.²¹

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²¹ *Office of the Ombudsman v. Evangelista*, 600 Phil. 395, 402-403 (2009).

It is incumbent upon petitioners to prove grave abuse of discretion on the part of respondent Desierto in issuing the preventive suspension order without complying with the requirements laid down by Section 24 of Republic Act No. 6770. Petitioners, however, failed in this regard.

Anent the first requisite, the assailed Order dated September 4, 2001 reveals that respondent Desierto based his judgment that there is strong evidence of petitioners' guilt on the following: (a) respondent Roxas's Complaint-Affidavit; (b) respondent Soguilon's Investigation Report; and (c) our Decision in *National Power Corporation v. Vine Development Corporation*.²² There being no showing that respondent Desierto's judgment was baseless, arbitrary, or despotic, then there is no reason for us to disturb the same, much more, to substitute our own judgment for his.

The second requisite for a valid preventive suspension order has also been satisfied as petitioners are charged with Grave Misconduct in both OMB-ADM-0-01-0373 and OMB-ADM-0-01-0374, which is undeniably among the charges enumerated in Section 24 of Republic Act No. 6770.

Since respondent Desierto's preventive suspension order was issued in accordance with Section 24 of Republic Act No. 6770, we are left with no choice but to uphold its validity.

Petitioners cannot invoke the equal protection clause in challenging the preventive suspension order issued against them, for it is a safeguard against the enactment by the State of statutes with arbitrary classifications. We expounded on the constitutional guarantee of equal protection of the laws in *Tiu v. Court of Appeals*²³:

The fundamental right of equal protection of the laws is not absolute, but is subject to reasonable classification. If the groupings are characterized by substantial distinctions that make real differences, one class may be treated and regulated differently from another. The classification must also be germane to the purpose of the law and must apply to all those belonging to the same class. Explaining the nature of the equal protection guarantee, the Court in *Ichong v. Hernandez* said:

“The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either [by] the object to which it is directed or by [the] territory within which it is to operate. It does not demand absolute equality among residents; it

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²² Supra note 11.

²³ 361 Phil. 229, 241-242 (1999).

merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not.”

Classification, to be valid, must (1) rest on substantial distinctions, (2) be germane to the purpose of the law, (3) not be limited to existing conditions only, and (4) apply equally to all members of the same class.

Evidently, the equal protection clause has no application in the conduct of an administrative investigation by the Ombudsman as it refers to the enactment of laws, which is purely a legislative matter.

We are also not convinced that respondents usurped a judicial function in this case for they did not conclusively determine the amount of just compensation due to ROMONAFE and VINE. Respondent Soguilon’s Investigation Report, on which respondent Roxas’s Complaint-Affidavit and respondent Desierto’s preventive suspension order largely depend, expressly found that in view of the fact that there was a pending appeal before the Court of Appeals, the compromise agreements entered into by NPC with ROMONAFE and VINE were invalid; and that there was no basis for the compromise agreements because the fair market value of the properties have not yet been determined. It becomes apparent after a closer scrutiny of the said Investigation Report that what actually impelled respondents to investigate and file the administrative charges of Grave Misconduct against petitioners was the latter’s actions in representing NPC before the Court of Appeals despite their lack of authority to do so, and in forging compromise agreements with ROMONAFE and VINE even if the appellate court was still in the process of determining the proper amount of just compensation for the expropriated properties. For the same reasons, petitioners’ reliance on the principle of *sub judice* is misplaced. The *sub judice* rule restricts comments and disclosures pertaining to judicial proceedings to avoid prejudging the issue, influencing the court, or obstructing the administration of justice.²⁴ Since the Ombudsman’s investigation is focused on petitioners’ supposed lack of authority to appear before the appellate court and to sign the compromise agreements, comments and disclosures the parties make in said administrative investigation will in no way prejudice the issue of just compensation, influence the Court of Appeals, or obstruct the administration of justice.

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Romero II v. Estrada, 602 Phil. 312, 319 (2009).

As for the COA Auditor's Decision No. COA-NPC 2002-001-03, in which COA Corporate Auditor Cabibihan reconsidered Notices of Disallowance Nos. 2001-001-00-(99) and 2001-002-00-(99), suffice it to state that said Notices of Disallowance were not respondent Desierto's bases for the issuance of the preventive suspension order. Moreover, the COA Auditor's Decision only explicitly released from liability the former chairman, former vice-chairman, and members of the National Power Board, but not petitioners. In fact, COA Corporate Auditor Cabibihan still stated in his Decision that the NPC Management was liable for its failure to secure the approval of the OSG before entering into the compromise agreements.

What is more, we stress that the findings of the COA is not binding or conclusive upon the Ombudsman. The Office of the Ombudsman is an independent constitutional body.²⁵ As the protector of the people, the Ombudsman has the duty to conduct its own investigation, free from outside influence or interference. Only after an independent investigation can the Ombudsman render a decision whether to proceed with the administrative complaints against the petitioners or to dismiss the same.

Absent any showing of grave abuse of discretion on the part of the respondents in issuing the preventive suspension order, we dismiss the Petition for *Certiorari* and Prohibition.

Correspondingly, we lift the TRO earlier issued. Being an ancillary remedy, the TRO owes its existence to the main petition. It follows that, with the dismissal of the main petition, the TRO has no more leg to stand on.

Lastly, we deny petitioners' motion to cite respondents in contempt of court. Petitioners failed to differentiate a direct contempt from an indirect contempt. Direct contempt is committed when a person is guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so. Indirect contempt or constructive contempt is that which is committed out of the presence of the court.²⁶

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²⁵ 1987 CONSTITUTION, Article XI, Section 5.

²⁶ *Barredo-Fuentes v. Albarracin*, 496 Phil. 31, 41 (2005).

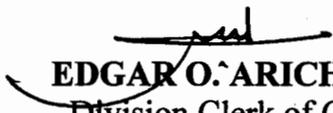
In the case at bar, the alleged contemptuous acts or violation of the TRO were not committed by the respondents in our presence. Said acts would have constituted indirect contempt. Rule 71, Section 4 of the 1997 Rules of Civil Procedure provides that proceedings for indirect contempt, if not initiated *motu proprio* by the court, must be initiated by a verified petition and not by mere motion.²⁷ Considering that petitioners merely filed a motion instead of a verified petition for indirect contempt in violation of Rule 71, Section 4 of the 1997 Rules of Civil Procedure, said motion is denied.

WHEREFORE, premises considered:

- 1) The Petition for *Certiorari* and Prohibition is **DISMISSED**;
- 2) The Temporary Restraining Order dated November 19, 2001 is **LIFTED**;
- 3) The Order dated September 4, 2001 issued by the Office of the Ombudsman is **UPHELD**; and
- 4) The Motion to Cite Respondents in Contempt of Court is **DENIED**.

SO ORDERED."

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court

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Sec. 4. *How proceedings commenced.* – Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

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