



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

THE OFFICE OF THE G.R. No. 230679  
OMBUDSMAN and the  
DEPARTMENT OF INTERIOR  
AND LOCAL GOVERNMENT,  
Petitioners,

-versus-

REXLON T. GATCHALIAN,  
Respondent.

X-----X

PEOPLE OF THE PHILIPPINES, G.R. Nos. 232228-30  
Petitioner,

-versus-

Present:

REXLON T. GATCHALIAN,  
RENCHI MAY M. PADAYAO and  
EDUARDO Y. CARREON,  
Respondents.

PERALTA, *CJ.*, Chairperson,  
CAGUIOA,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, *JJ.*

Promulgated:  
FEB 10 2021

*with winds*

X-----X

DECISION

ZALAMEDA, *J.*:

Before the Court are two consolidated Petitions which stemmed from the tragic fire on 13 May 2015 inside the premises of Kentex Manufacturing

Corporation (Kentex) in Valenzuela City, which led to the death of seventy-four individuals and injury of several others.

In **G.R. No. 230679**, petitioners Office of the Ombudsman (Ombudsman) and the Department of Interior and Local Government (DILG) assail the Decision<sup>1</sup> and Resolution<sup>2</sup> dated 28 November 2016 and 20 March 2017, respectively, of the Court of Appeals (CA) in CA-GR SP No. 144428,<sup>3</sup> dismissing the administrative cases for grave misconduct and gross neglect of duty against Mayor Rexlon T. Gatchalian (Mayor Gatchalian). The dispositive portion of the assailed Decision reads:

“WHEREFORE, the Petition for Certiorari is hereby GRANTED. Accordingly, this Court REVERSES and SETS ASIDE that portion of the Ombudsman’s Joint Resolution involving OMB-P-A-15-0581 promulgated on 11 February 2016 in that Mayor Rexlon T. Gatchalian is found NOT ADMINISTRATIVELY LIABLE for GRAVE MISCONDUCT and/or GROSS NEGLIGENCE OF DUTY.

SO ORDERED.”<sup>4</sup>

On the other hand, in **G.R. Nos. 232228-30**, the People of the Philippines, through the Office of the Special Prosecutor, challenges the dismissal of the criminal cases docketed as SB-16-CRM-0802,<sup>5</sup> SB-16-CRM-0803,<sup>6</sup> and SB-16-CRM, 0804,<sup>7</sup> against respondents Mayor Gatchalian, Atty. Renchi May Padayao (Atty. Padayao) and Eduardo Y. Carreon (Carreon), by the Sandiganbayan in its Joint Resolution<sup>8</sup> dated 13 December 2016 and Resolution<sup>9</sup> dated 8 June 2017. The dispositive portion of the Joint Resolution dated 13 December 2016 reads:

“WHEREFORE, in light of the foregoing, the Court hereby finds that no probable cause exists for the issuance of warrants of arrest against accused Rex T. Gatchalian, Renchi May Padayao, and Eduardo Carreon in [C]riminal [C]ases SB-16-CRM-0802, SB-16-CRM-0803, and SB-16-CRM-0804, and accordingly dismisses the instant cases.

<sup>1</sup> *Rollo*, G.R. No. 230679, pp. 72-94; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Ramon R. Garcia and Jhosep Y. Lopez of the Fifteenth Division, Court of Appeals, Manila.

<sup>2</sup> *Id.* at 95-98.

<sup>3</sup> Entitled “Rexlon T. Gatchalian vs. Hon. Conchita Carpio-Morales, in her capacity as the Ombudsman, Department of Interior and Local Government, and Fact-Finding Investigation Bureau-MOLEO.”

<sup>4</sup> *Rollo*, G.R. No. 230679, p. 93.

<sup>5</sup> For Violation of Section 3 (e) of R.A. No. 3019.

<sup>6</sup> For Violation of Section 3 (j) of R.A. No. 3019,

<sup>7</sup> For Reckless Imprudence resulting in Multiple Homicide & Multiple Physical Injuries

<sup>8</sup> *Rollo*, G.R. Nos. 232228-30, pp. 98-114; penned by Associate Justice Michael Frederick L. Musngi, and concurred in by Associate Justices (later SC Justice and now Ombudsman) Samuel R. Martires and Justice Geraldine Faith A. Econg of the Second Division, Sandiganbayan, Quezon City.

<sup>9</sup> *Id.* at 116-123.

SO ORDERED.”<sup>10</sup>

### Antecedents

On 13 May 2015, a tragic fire occurred inside the compound of Kentex in Valenzuela City causing the death of seventy-four individuals and injury to several other persons. The Inter-Agency Anti-Arson Task Force<sup>11</sup> (IATF) conducted an investigation on the tragic fire. In its Memorandum dated 29 May 2015<sup>12</sup> submitted to then DILG Secretary and IATF Chairman Mar Roxas, the IATF Team<sup>13</sup> found that the immediate cause of the fire was the stockpiling of 400 sacks or ten tons of Supercell Blowing Agent known as Azodicarbonamide,<sup>14</sup> in an area not intended for such storage and adjacent to the welding activities near the stockpile. Due to the lack of fire exits, sixty-nine casualties were found at the second floor of Building 3, while three were found on the mezzanine stairs of Building 2, which indicated that they died due to lack of exit point.

Based on available records, Kentex was issued by the City of Valenzuela Business Permits for 2010 and 2011 despite the lack of Fire Safety Inspection Certificate (FSIC) for the years 2010 and 2011.<sup>15</sup> On 18 December 2012, an FSIC was issued by the Valenzuela City Fire Station, which was valid for one year or until 18 December 2013. No subsequent FSIC was renewed or issued for the years thereafter.

Despite the lack of FSIC, the City of Valenzuela issued a Business Permit on 15 January 2014 to Kentex. For the year 2015, the City likewise issued Kentex a Business Permit on 14 January 2015 after an application for renewal was filed by its President, Mr. Ong King Guan, before the Business Permits and Licensing Office (BPLO). The Business Permit for 2015 was issued upon the recommendation of Carreon, Licensing Officer IV and signed by Atty. Padayao, OIC, BPLO, for Mayor Gatchalian.<sup>16</sup>

Aside from the absence of FSIC, the Fire Code Technical Support Group<sup>17</sup> of the IATF Team noted other fire safety violations committed by

<sup>10</sup> *Rollo*, G.R. Nos. 232228-30, p. 114.

<sup>11</sup> Created through Mission Order No. 05-02-2015 by the DILG on 14 May 2015.

<sup>12</sup> *Rollo*, G.R. No. 230679, pp. 275-308.

<sup>13</sup> Composed of various personnel from the Bureau of Fire Protection, the Philippine National Police (PNP) and the National Bureau of Investigation. F/Supt. Samuel C. Tadeo of the BFP was designated as the Team Leader.

<sup>14</sup> A thermally unstable compound, flammable chemical used as a blowing agent for rubbers and plastics in the production of slippers.

<sup>15</sup> *Rollo*, G.R. No. 230679, p. 282.

<sup>16</sup> *Id.* at 282-284.

<sup>17</sup> Composed of F/CInsp Arnel A. Inandan, F/SInsp Garry D. Lunas, F/SInsp Joel Luis I Tabada, Engr. Ariel T. Miranda, SPO1 Anselmo C. Idago III, and FO1 Timothy C. Magangat.

Kentex at the time of the incident.<sup>18</sup> Thus, the IATF recommended the filing of criminal and administrative charges against several individuals, including Mayor Gatchalian and Atty. Padayao. Consequently, the Fact-Finding Investigation Bureau-MOLEO (FFIB-MOLEO) filed an administrative complaint for Grave Misconduct, Gross Neglect of Duty, and Neglect of Duty before the Ombudsman against, among others, Mayor Gatchalian, Atty. Padayao and Carreon. It likewise filed criminal complaints for violation of Section 3 (e) and (j) of R.A. No. 3019<sup>19</sup> and Reckless Imprudence Resulting to Multiple Homicides and Multiple Physical Injuries under Article 365 of the Revised Penal Code.

The Ombudsman later found Mayor Gatchalian, Atty. Padayao, Carreon liable for granting licenses and permits in 2014 and 2015 in favor of Kentex, despite the latter's failure to secure the required FSICs. Carreon recommended the approval of the permits while Atty. Padayao approved them for Mayor Gatchalian. The Ombudsman concluded that this constituted gross and inexcusable negligence in enforcing the law and their partiality to Kentex. In addition, the Ombudsman found conspiracy among the BFP-Valenzuela and the City of Valenzuela.

The dispositive portion of the Joint Resolution dated 11 February

<sup>18</sup> These are:

- a. The maximum travel distance of the occupants of the second floor of Building 3 exceeded (approximately 64 meters) the allowable travel distance (31 meters) allowed by Section 10.2.15.2 para F(1);
- b. The secondary stairway of Building 3 did not terminate in safe discharge area. The fire exit discharge was obstructed in violation of Section 10.2.5.2 para M and Section 10.2.15.2 para G;
- c. The door in the main entrance/exit of the second floor was not self closing. It was permanently attached to the railing of the stairway in violation of Section 10.2.5.3 para G;
- d. There were no directional exit signs, exit signs and emergency lighting systems in the buildings in violation of Section 10.2.5.11 and Section 10.2.5.12;
- e. Secondary stairway of Building 3 and the stairway of the mezzanine floor (office) of Building 2 were not protected or enclosed in violation of Section 10.2.15.3 para A1 and A2;
- f. The buildings were not equipped with Automatic Detection and Alarm System in violation of Section 10.2.15.3 para C1;
- g. The buildings were not protected with Automatic Fire Suppression System (Sprinkler System) in violation of Section 10.2.15.3 para D1;
- h. The hazardous storage area was not separated or enclosed from other areas of the building in violation of Section 10.2.6.8 para A, Section 10.2.6.8 para B and Section 10.3.1.2 div 3 para B;
- i. The above ground tank storage for the diesel was not provided with containment dike section 10.3.4.2.1 para I;
- j. The above ground tank storage for the diesel was not properly separated from the boiler machine in violation of Section 10.2.6.8 para A, Section 10.2.6.8 para B and Section 10.3.1.2 div 3 para B;
- k. No fire drills and seminars were conducted in violation of Section 10.2.18.6;
- l. No organized fire brigade in violation of Section 6.0.2.1
- m. No storage clearance for the hazardous materials in violation of Division 2A, Chapter 3, Rule 10;
- n. No fire safety clearance for the hotworks operation (welding) in violation of Section 10.4.17.1.

<sup>19</sup> The Anti-Graft and Corrupt Practices Act.

2016,<sup>20</sup> which then Ombudsman Conchita Carpio Morales approved on 17 February 2016, reads:

“WHEREFORE, premises considered –

x x x

3. For issuing a Business Permit to Kentex Manufacturing in 2015 despite its delinquent status, respondents REXLON T. GATCHALIAN, RENCHIE MAY M. PADAYAO, EDUARDO Y. CARREON and ONG KING GUAN a.k.a. TERENCE KING ONG are indicted for violation of Section 3 (e) of RA No. 3019. Let the corresponding Information be FILED before the proper court;

4. For issuing a Business Permit to Kentex Manufacturing in 2014 despite not being qualified or entitled thereto, respondents REXLON T. GATCHALIAN, RENCHIE MAY M. PADAYAO, [and] EDUARDO Y. CARREON are indicted for violation of Section 3(j) of RA 3019. Let the corresponding Information be FILED before the proper court;

5. For failure to perform their official duties of enforcing the precautionary measures under the Fire Code, respondents REXLON T. GATCHALIAN, RENCHIE MAY M. PADAYAO, EDUARDO Y. CARREON, MEL JOSE P. LAGAN, EDGROVER OCULAM, ROLANDO S. AVENDAN and ONG KING GUAN a.k.a. TERENCE KING ONG are indicted for Reckless Imprudence resulting in Multiple Homicides and Multiple Physical Injuries under Article 365 of the Revised Penal Code. Let the corresponding Information be FILED before the proper court;

6. There being substantial evidence, respondents REXLON T. GATCHALIAN, RENCHIE MAY M. PADAYAO, EDUARDO Y. CARREON x x x are found GUILTY of Grave Misconduct and Gross Neglect of Duty and are meted the penalty of DISMISSAL FROM THE SERVICE with the same accessory penalties of forfeiture of benefits and privileges and perpetual disqualification to hold office.

x x x

SO ORDERED.”<sup>21</sup>

Instead of filing a Petition for Review under Rule 43 of the Rules of Court (Rules) to assail the said Joint Resolution, Mayor Gatchalian filed on 03 March 2016 a Petition for *Certiorari* (with urgent prayer for issuance of a temporary restraining order and/or a writ of preliminary injunction)<sup>22</sup> under Rule 65, before the CA, insisting the lack of a plain, adequate and speedy

<sup>20</sup> *Rollo* (G.R. No. 230679), pp. 99-157.

<sup>21</sup> *Id.* at 152-153.

<sup>22</sup> *Id.* at 158-185.



remedy available to him. It was docketed as CA-GR SP No. 144428.

On 04 March 2016, the CA issued a temporary restraining order (TRO) against the implementation of the Ombudsman's Joint Resolution dated 11 February 2016. Consequently, the appellate court issued a Writ of Preliminary Injunction on 02 May 2016, enjoining the Ombudsman and the DILG from implementing the aforementioned Joint Resolution.<sup>23</sup>

Mayor Gatchalian, *et al.*, also moved for the reconsideration of the Joint Resolution with respect to the criminal aspect, which the Ombudsman denied in its Joint Order dated 28 April 2016<sup>24</sup> and approved by then Ombudsman Carpio Morales on 05 May 2016. Accordingly, criminal informations were filed before the Sandiganbayan, docketed as SB-16-CRM-0802, SB-16-CRM-0803, and SB-16-CRM-0804. Eventually, however, the Sandiganbayan dismissed the same in its Joint Resolution<sup>25</sup> dated 13 December 2016 and Resolution<sup>26</sup> dated 08 June 2017.

### Issues

From the pleadings submitted, the following are the issues raised for consideration of this Court:

1. Whether Mayor Gatchalian correctly filed a Petition for *Certiorari* under Rule 65 instead of a Petition for Review under Rule 43 of the Rules of Court before the CA;
2. Whether Mayor Gatchalian is administratively liable for grave misconduct and gross neglect of duty, as head of the City Government of Valenzuela City when its BPLO issued business permits to Kentex despite the absence of FSICs;<sup>27</sup>
3. Whether the Sandiganbayan gravely erred when it dismissed the cases against Mayor Gatchalian, *et al.*, on the basis of *Ordinance No. 62, Series of 2012, Joint Memorandum Circular No. 01, Series of 2016 and other Issuances*, as against the express mandate of the Fire Code – a national law – on the requirement of a Fire Safety Inspection Certificate; and despite facts and circumstances clearly showing the existence of probable cause against the respondents for the offenses charged, thus depriving the State of the

<sup>23</sup> *Id.* at 232.

<sup>24</sup> *Rollo* (G.R. No. 232228-30), pp. 238-247.

<sup>25</sup> *Id.* at 98-114.

<sup>26</sup> *Id.* at 116-123.

<sup>27</sup> *Rollo*, G.R. No. 230679, p. 50

fundamental right to due process; and

4. Whether the Sandiganbayan gravely erred when it supplanted the Ombudsman's finding of probable cause and went beyond its judicial authority of determining the propriety of issuing warrant of arrest.<sup>28</sup>

### Ruling of the Court

The petitions lack merit.

*On the filing of Petition for Certiorari under Rule 65 vis-à-vis a Petition for Review under Rule 43 of the Rules of Court to challenge the decision of the Office of the Ombudsman*

In **G.R. No. 230679**, the Court is asked to rule on whether Mayor Gatchalian correctly filed a Petition for *Certiorari*, instead of a Petition for Review, and whether substantial evidence exists to hold petitioner administratively liable for grave misconduct and gross neglect of duty.

Petitioners, the Ombudsman and DILG, insist that the proper remedy is to file a Petition for Review under Rule 43 of the Rules, and that it could have incorporated therein an application for TRO or writ of injunction, in the same manner as he incorporated such application in the erroneous Petition for *Certiorari*. Later on, however, they backtracked and claimed that whether or not the case is an appeal or a petition for *certiorari*, the CA cannot enjoin the Ombudsman from implementing the Joint Resolution since it would be an encroachment on the latter's rule-making powers.<sup>29</sup>

Mayor Gatchalian, who filed the Petition for *Certiorari* before the CA, just a day after he received a copy of the Joint Resolution, contends that a Petition for Review was not the plain, adequate and speedy remedy considering that an order of dismissal issued by the Ombudsman is immediately executory. This would affect his bid to seek a fresh mandate from his constituents as the accessory penalty of perpetual disqualification is likewise executory.

<sup>28</sup> *Rollo*, G.R. Nos. 232228-30, p. 71.

<sup>29</sup> *Rollo*, G.R. No. 230679, pp. 504-505.



It is significant to note that petitioners Ombudsman and the DILG did not assail the issuance of the TRO and the writ of injunction by the CA by filing a motion for reconsideration or a *certiorari* petition before this Court. On the contrary, it was a non-party to the case, a certain Arthur Morales I (Morales), who filed an administrative complaint<sup>30</sup> against CA Associate Justices Leoncia Real-Dimagiba, Jhosep Y. Lopez, and Ramon Garcia for gross ignorance of the law in issuing an injunctive writ.<sup>31</sup>

Although the Court did not squarely rule on the correctness of the issuance of the TRO, the Court observed in its Resolution dated 11 October 2016 disposing the administrative charge filed by Morales that

The Fifteenth Division of the CA is not without basis in acting on the petition of Mayor Gatchalian. In the decision in *Carpio-Morales v. Binay, Jr.*, this Court declared the second paragraph of Section 14 of R.A. No. 6770 UNCONSTITUTIONAL, while the policy against the issuance of provisional injunctive writs by courts other than the Supreme Court to enjoin an investigation conducted by the Office of the Ombudsman under the first paragraph of the said provision was DECLARED ineffective until the Court adopts the same as part of the rules of procedure through an administrative circular duly issued therefor.

Although the case of Erwin Binay, Jr. pertains to a preventive suspension, the pronouncement therein may arguably apply to any other OMB case since this Court did not make any distinction. The doctrine laid down in the case is that the CA has the authority to issue TRO and injunctive writs in the exercise of its *certiorari* jurisdiction conferred to it under Section 9 (1), Chapter I of Batas Pambansa 129, as amended.

This Court further discussed that the determination on whether there was error on the part of the respondent associate justices of the CA in issuing the TRO or whether the CA justices can now enjoin all decisions of the OMB would have to be squarely addressed by Us the moment the issue is raised before it in a proper judicial proceeding.

From the foregoing, it appears the present petition in **G.R. No. 230679** is not the proper judicial proceeding mentioned above. Petitioners Ombudsman and the DILG should have assailed the TRO and the writ of injunction by filing a motion for reconsideration and a petition for *certiorari* before this Court. By failing to do so, they are deemed to have accepted the propriety of issuing the same.

Considering, however, that Mayor Gatchalian premised his petition for *certiorari* on his theory that he could not successfully stop the implementation of the Ombudsman's immediately executory order of

<sup>30</sup> *Morales I v. Real-Dimagiba*, I.P.I. No. 16-243-CA-J (Resolution), I.P.I.No. 16-243-CA-J 11 October 2016.

<sup>31</sup> Docketed as I.P.I No. 16-243-CA-J.



dismissal had he filed a Petition for Review under Rule 43, the Court deems it proper to discuss the same.

In the landmark case of *Carpio Morales vs. The Court of Appeals*,<sup>32</sup> this Court held that the order of the Ombudsman may be enjoined as an ancillary remedy in a Petition for Certiorari before the CA. It must be stressed, however, that the order in the *Carpio Morales* case is an interlocutory and not a final order – an order imposing preventive suspension on then Mayor Binay. Thus, in *Gatchalian vs. Office of the Ombudsman*,<sup>33</sup> the Court enlightens:

The Court agrees with the CA that the *Morales* decision should be read and viewed in its proper context. The Court in *Morales* held that the CA had subject matter jurisdiction over the petition for *certiorari* under Rule 65 filed therein because what was assailed in the said petition was a preventive suspension order, which was an interlocutory order and thus unappealable, issued by the Ombudsman. Consistent with the rationale of *Estrada*, the Court held that a petition for *certiorari* under Rule 65 was proper as R.A. 6770 did not provide for an appeal procedure for interlocutory orders issued by the Ombudsman. The Court also held that it was correctly filed with the CA because the preventive suspension order was an incident of an **administrative case**. The Court in *Morales* was thus applying only what was already well-established in jurisprudence.

It must likewise be pointed out that the Court, in arriving at the decision in *Morales*, cited and was guided by the case of *Office of the*

<sup>32</sup> G.R. No. 217126-27, 10 November 2015. The Court, speaking through Justice Perlas-Bernabe, held:

“Under its rule-making authority, the Court has periodically passed various rules of procedure, among others, the current 1997 Rules of Civil Procedure. **Identifying the appropriate procedural remedies needed for the reasonable exercise of every court’s judicial power, the provisional remedies of temporary restraining orders and writs of preliminary injunction were thus provided.**

A temporary restraining order and a writ of preliminary injunction both constitute temporary measures availed of during the pendency of the action. They are, by nature, ancillary because they are mere incidents in and are dependent upon the result of the main action. It is well-settled that the **sole object of a temporary restraining order or a writ of preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo until the merits of the case can be heard.** They are usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the *status quo* of the controversy before a full hearing can be had on the merits of the case. In other words, they are preservative remedies for the protection of substantive rights or interests, and, hence, not a cause of action in itself, but merely adjunct to a main suit. In a sense, they are regulatory processes meant to prevent a case from being mooted by the interim acts of the parties. Rule 58 of the 1997 Rules of Civil Procedure generally governs the provisional remedies of a TRO and a WPI. A preliminary injunction is defined under Section 1, Rule 58, while Section 3 of the same Rule enumerates the grounds for its issuance. Meanwhile, under Section 5 thereof, a TRO may be issued as a precursor to the issuance of a writ of preliminary injunction under certain procedural parameters.

The power of a court to issue these provisional injunctive reliefs coincides with its **inherent power to issue all auxiliary writs, processes, and other means necessary to carry its acquired jurisdiction into effect under Section 6, Rule 135 of the Rules of Court** [.]

x x x [Emphasis, underscoring and italics in the original.]

<sup>33</sup> G.R. No. 229288, 01 August 2018.

*Ombudsman v. Capulong*. In *Capulong*, a preventive suspension order issued by the Ombudsman was questioned through a petition for *certiorari* under Rule 65 filed with the CA. The Court in *Capulong* held that:

[t]he preventive suspension order is interlocutory in character and not a final order on the merits of the case. The aggrieved party may then seek redress from the courts through a petition for *certiorari* under Section 1, Rule 65 of the 1997 Rules of Court. x x x There being a finding of grave abuse of discretion on the part of the Ombudsman, it was certainly imperative for the CA to grant incidental reliefs, as sanctioned by Section 1 of Rule 65.

x x x (Emphasis and italics in the original)

In any event, this Court, after the promulgation of the landmark case of *Carpio Morales vs. The Court of Appeals*,<sup>34</sup> came up with the 2017 case of *Cobarde-Gamallo vs. Escandor*.<sup>35</sup> In the said case, Escandor was found guilty of gross misconduct and ordered dismissed from the service. Aggrieved, he went to the CA via a petition for *certiorari* with application of an injunctive writ under Rule 65 of the Rules, seeking to set aside, reverse and declare null and void the OMB Order dated 14 June 2007 directing the immediate implementation and execution of the OMB-Visayas Decision dated 21 March 2007 (approved on 14 June 2007) dismissing him from the service. This Court discussed:

Having been superseded by this Court's recent rulings declaring that the OMB's decisions, resolutions and orders are immediately executory pending motion for reconsideration or appeal, it is, therefore, an error on the part of the CA to still rely on those old rulings and make them its bases in granting Escandor's writ of *certiorari* and enjoining the OMB from implementing its Decision and Order dismissing Escandor from the service. Notably, the assailed CA Decision and Resolution were rendered in 2008 while the ruling in *Buencamino* was made in 2007 and the amendments to the OMB Rules of Procedure stating that the OMB's decisions, resolutions and orders are immediately executory pending appeal were already in effect as early as 2003. Yet, the CA still enjoined the implementation of the OMB Decision and Order on the ground that the same were not yet final and executory as Escandor has pending motion for reconsideration before the OMB. This is a clear error on the part of the CA, which this Court now corrects.

*As a final note.* The OMB is authorized to promulgate its own rules of procedure by none other than the Constitution, which is fleshed out in Sections 18 and 27 of Republic Act No. (RA) 6770, otherwise known as "The Ombudsman Act of 1989" empowering the OMB to "promulgate its rules of procedure for the effective exercise or performance of its powers,

<sup>34</sup> G.R. No. 217126-27, 10 November 2015.

<sup>35</sup> G.R. No. 184464, 21 June 2017.

functions, and duties" and to accordingly amend or modify its rules as the interest of justice may require. **With that, the CA cannot just stay the execution of decisions rendered by the OMB when its rules categorically and specifically warrant their enforcement, else the OMB's rule-making authority be unduly encroached and the constitutional and statutory provisions providing the same be disregarded.** [Emphasis supplied.]

To sum it up, what can be enjoined by the CA via a petition for *certiorari* are interlocutory orders, and not final orders. In a petition for review under Rule 43 of the Rules on the other hand, the CA cannot enjoin the Ombudsman from implementing its final decision, although still subject to appeal.

Thus, Mayor Gatchalian could not be faulted when he opted to file a petition for *certiorari* under Rule 65, as he had, in the same manner as the CA, relied on the strength of *Carpio Morales*, which, as this Court ruled in the administrative complaint against the CA Justices, is "arguably appl[icable] to any other OMB case since this Court did not make any distinction."<sup>36</sup>

We are aware that decisions of the OMB rendered in administrative disciplinary cases should be taken to the CA via petition for review under Rule 43 of the Rules.<sup>37</sup> However, the Court finds it proper to dwell on the substance, rather than on the technicalities of the case. The case of *Punongbayan-Visitacion vs. People*<sup>38</sup> is instructive:

"Nevertheless, the general rule that an appeal and a *certiorari* are not interchangeable admits exceptions. In *Department of Education v. Cuanan*, the Court exercised liberality and considered the petition for *certiorari* filed therein as an appeal:

The remedy of an aggrieved party from a resolution issued by the CSC is to file a petition for review thereof under Rule 43 of the Rules of Court within fifteen days from notice of the resolution. Recourse to a petition for *certiorari* under Rule 65 renders the petition dismissible for being the wrong remedy. Nonetheless, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority. As will be shown forthwith, exception (c) applies to the present case.

<sup>36</sup> *Rollo*, G.R. No. 230679, p. 182. In his Petition for Certiorari, Mayor Gatchalian alleged:

"48. Petitioner seeks to enjoin the implementation of the Assailed Resolution by the DILG. In the light of the recent Supreme Court Decision in *Carpio Morales vs. Court of Appeals and Binay*, the Court of Appeals was given powers to review the Decisions and Resolutions of the Ombudsman, and grant ancillary relief to prevent mootness of the pending case."

*Rollo*, G.R. No. 230679, p. 182.

<sup>37</sup> *Crebello v. Office of the Ombudsman*, G.R. No. 232325, 10 April 2019.

<sup>38</sup> G.R. No. 194214, 10 January 2018.

Furthermore, while a motion for reconsideration is a condition precedent to the filing of a petition for *certiorari*, immediate recourse to the extraordinary remedy of *certiorari* is warranted where the order is a patent nullity, as where the court *a quo* has no jurisdiction; where petitioner was deprived of due process and there is extreme urgency for relief; where the proceedings in the lower court are a nullity for lack of due process; where the proceeding was *ex parte* or one in which the petitioner had no opportunity to object. These exceptions find application to Cuanan's petition for *certiorari* in the CA.

At any rate, Cuanan's petition for *certiorari* before the CA could be treated as a petition for review, the petition having been filed on November 22, 2004, or thirteen (13) days from receipt on November 9, 2004 of CSC Resolution No. 041147, clearly within the 15-day reglementary period for the filing of a petition for review. Such move would be in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice. (emphases and underlining supplied)

In the case at bar, the Court finds that the interest of substantial justice warrants the relaxation of the rules and treats Visitacion's petition for *certiorari* as an appeal. This is especially true considering that the same was filed within the reglementary period to file an appeal. It is noteworthy that in the litany of cases where the Court did not consider *certiorari* as an appeal, the former remedy was filed beyond the 15-day period to interpose an appeal.”

Indeed, the Court has treated a petition for *certiorari* as one for review (1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review; or (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules.<sup>39</sup>

A reading of the petition for *certiorari* filed by Mayor Gatchalian before the CA shows that it was filed the next day following his receipt of the Joint Resolution of the Ombudsman; hence, it was filed within the reglementary period within which to file a petition for review. Also, the *certiorari* petition avers errors of judgment committed by the Ombudsman. In fine, the broader interest of justice dictates that the case be resolved on the merits.

*On whether Mayor Gatchalian is administratively liable for grave misconduct and gross neglect of duty*

Mayor Gatchalian argues that in issuing business permits to Kentex, the City Government merely followed the procedure set forth by Joint Memorandum Circular No. 1 dated 06 August 2010 issued by the

<sup>39</sup> *China Banking Corporation v. Cebu Printing and Packaging Corporation*, G.R. No. 172880, 11 August 2010.

Department of Trade and Industry (DTI) and DILG and Ordinance No. 62 enacted by the Sangguniang Panlungsod (SP) of Valenzuela City on 26 November 2012, allowing the renewal of business permits prior to the issuance of a Fire Safety Inspection Certificate (FSIC) by the Bureau of Fire Protection (BFP). In fact, the validity of the business permits previously issued following the said procedure was essentially upheld in a Joint Decision rendered by the Regional Trial Court of Valenzuela City in the cases docketed as Civil Case No. 101-V-15 and Civil Case No. 106-V-15 filed by Aaron Cabiltes and the Chamber of Commerce and Industry of Valenzuela, Inc., respectively, which became final and executory on 30 September 2015.

It appears that Mayor Gatchalian had no hand in the issuance of the business permits of Kentex and all other business establishments during the time material to the case since the matter has been delegated to the BPLO.<sup>40</sup> Carreon recommended the approval of the permits, while Atty. Padayao approved the same for Mayor Gatchalian.

Grave misconduct is defined as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer coupled with the elements of corruption, willful intent to violate the law or to disregard established rules. Corruption, as an element of grave misconduct, consists in the official or employee's act of unlawfully or wrongfully using his position to gain benefit for one's self.<sup>41</sup>

On the other hand, gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, or by 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 the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.<sup>42</sup>

The Court holds that no substantial evidence exists to support the assailed Joint Resolution of the Ombudsman. Administrative proceedings

<sup>40</sup> Joint Memorandum Circular No. 01, series of 2010 provides:

“4.4. Signatories. All cities and municipalities shall follow the prescribed number of signatories required in processing new business applications, business renewals to five days following the ARTA. However, LGUs are enjoined to require only two (2) signatories, namely, the Mayor and the Treasurer of the BPLO. To avoid delay in the release of permits, alternate signatories (e.g. the Municipal or City Administrator or the BPLO) may be properly deputized by the Mayor.

<sup>41</sup> *Fajardo v. Corral*, G.R. No. 212641, 05 July 2017.

<sup>42</sup> *Re: Complaint of Aero Engr. Darwin A. Reci against Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Thelma C. Bahia relative to Criminal Case No. 05-236956*, A.M. No. 17-01-04-SC, 07 February 2017.

are governed by the substantial evidence rule where a finding of guilt would have to be sustained for as long as it is supported by substantial evidence that the respondent committed acts stated in the complaint. Substantial evidence is such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The standard of substantial evidence is met when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence is not overwhelming or even preponderant, and respondent's participation therein renders him unworthy of the trust and confidence demanded by his position.<sup>43</sup>

To begin with, the DTI and DILG issued Joint Memorandum Circular No. 1 dated 06 August 2010<sup>44</sup> which encouraged Local Government Units (LGU) to reduce the steps and processing time for business permits, and allowed LGUs to issue "temporary permits" that would give applicants a period of time (usually 2-3 months after issuance of the permit) to comply with the other requirements such as the FSIC. This streamlined procedure allowed the submission of the FSIC within a reasonable time after a business permit had been issued; if no FSIC is submitted, the business permit is then revoked.

The *Sangguniang Panglungsod* of Valenzuela City enacted Ordinance No. 62, Series of 2012<sup>45</sup> instituting "The 3-S in Public Service Program"<sup>46</sup> and the post-audit scheme for the issuance of business permits and clearances in Valenzuela City. Section 6 thereof states:

"Section 6: POST AUDIT INSPECTION. The Main feature of this program is the post auditing scheme. This warrants post inspection of the issued regulatory permits and clearances within reasonable time to double check the owner's faithful confirmation to any regulatory measures and requirements. This includes sanitation permits, locational clearance and fire safety inspection permits. This is to ensure that only the compliant and first rate businesses subsists (sic) in the city."<sup>47</sup>

Ordinance No. 62 was uniformly applied in the issuance of all business permits in Valenzuela City, including those issued to Kentex. In addition, DILG Memorandum Circular No. 2011-05 dated 04 January 2011<sup>48</sup> reiterated that the fire safety inspection must be conducted promptly and should be completed before the end of the year. It likewise required the City/Municipal Fire Marshall to submit a written report notifying the Local Chief Executive of the names of non-compliant establishments expressly

<sup>43</sup> *Rodriguez-Angat v. Government Service Insurance System*, G.R. No. 204738, 29 July 2015.

<sup>44</sup> *Rollo*, G.R. No. 232228-30, pp. 486-491.

<sup>45</sup> *Rollo*, G.R. No. 230679, pp. 309-313.

<sup>46</sup> Stands for Simple, Speed and Service

<sup>47</sup> *Rollo*, G.R. No. 230679, p. 311.

<sup>48</sup> *Rollo*, G.R. No. 232228-30, pp. 498-499.

stating therein a recommendation not to issue a business permit or revoke existing ones in case of non-compliance.<sup>49</sup>

The BFP Memorandum dated 24 September 2012,<sup>50</sup> on the other hand, provides the guidelines in the processing of FSIC during renewal of business permits specifically in areas where a One-Stop Shop is implemented. Meanwhile, the BFP Operational Procedures Manual released in 2015<sup>51</sup> likewise provides for the procedure in the issuance of the FSIC in cases where the LGUs employ a Business One-Stop Shop (BOSS). The BFP Manual provides that Section 7 of the Fire Code mandates that a fire safety inspection is a pre-requisite in the granting of business permits. However, due to the BOSS scheme, the BFP is obligated to prescribe a shortened procedure. Following the procedure in the BFP Manual, it is only after the business permits are issued on the same day of application that the applications are forwarded to the Chair of the Fire Safety Enforcement Section of the BFP for the scheduling of fire safety inspections, without which no FSIC could be issued. And, most of the cities in Metro Manila, including Valenzuela City, adopted the system in the renewal of business permits allowing the release thereof within a short period of time.

Considering the foregoing, it is beyond dispute that the streamlined procedure for the issuance of business permits allowed submission of the FSIC within a reasonable time after the issuance of business permits. **Therefore, in issuing business permits to Kentex, the City Government of Valenzuela merely followed the procedure laid down in Joint Memorandum Circular No. 1, Ordinance No. 62 and other administrative issuances of the BFP and DILG.**

Being officers of the BPLO of Valenzuela City charged with the issuance of business permits to applicants thereof, it is incumbent upon Atty. Padayao, who has been delegated by the Mayor to act on such applications, to issue the same to qualified applicants subject to their post compliance with the national government requirements such as the fire safety inspection and the submission of the corresponding FSIC. Moreover, under the Revised Fire Code of the Philippines (Fire Code), the administration and enforcement of the same rest not with the City Government of Valenzuela

<sup>49</sup> It provides:

“3. In addition to the *“Notice To Comply/Notice to Correct Violations”* issued to the erring occupancies, the City/Municipal Fire Marshall shall then issue a *written report notifying the Local Chief Executive* wherein all the names of non-compliant establishments are listed, and expressly stating therein a recommendation not to issue any of the following permits, or revoke existing ones, when applicable – Business or Mayor’s Permit, Permit to Operate, Occupancy Permit, PHILHEALTH Accreditation for Hospitals, DOH License to Operate, and other licenses being issued by the local government unit (LGU). The written notice to the LGU shall be submitted within the first seven (7) calendar days following the last month of the quarter when inspection is conducted.” (Italics in the original)

<sup>50</sup> *Rollo*, G.R. No. 232228-30, pp. 498-499.

<sup>51</sup> *Id.* at 506-509.

but with the BFP.<sup>52</sup> Section 9 of the Fire Code states:

“Section 9. x x x

Finally, with the failure of the owner, administrator, occupant or other person responsible for the condition of the building, structure and their premises or facilities to comply within the period specified above, the Chief, BFP may issue order for such abatement. If the owner, administrator or occupant of buildings, structure and their premises or facilities does not abate the same within the period fixed in said order, the building, structure, premises or facilities shall be ordered closed by the Chief, BFP or his/her duly authorized representative notwithstanding any permit clearance or certificate earlier issued by the local authorities.”

*On whether the Sandiganbayan gravely err in dismissing the cases against Mayor Gatchalian, et al., on the basis of Ordinance No. 62, Series of 2012, Joint Memorandum Circular No. 01, Series of 2016 and other Issuances*<sup>53</sup>

The OSP posits that FSIC is an indispensable requirement under the Fire Code, and which cannot be dispensed with on the basis of Ordinance No. 62, and other issuances enumerated above. To the mind of the OSP, the Fire Code should prevail over Ordinance No. 62, and all other issuances, notably by the DILG and the DTI.

Ordinances shall only be valid when they are not contrary to the Constitution and to the laws. An ordinance must satisfy two requirements: it must pass muster under the test of constitutionality and the test of consistency with the prevailing laws. That ordinances should be constitutional uphold the principle of the supremacy of the Constitution. The requirement that the enactment must not violate existing law gives stress to the precept that local government units are able to legislate only by virtue of their derivative legislative power, a delegation of legislative power from the national legislature. The delegate cannot be superior to the principal or exercise powers higher than those of the latter.<sup>54</sup>

<sup>52</sup> “Section 5. Responsibility for the Enforcement of this Code. This Code shall be administered and enforced by the Bureau of Fire Protection (BFP), under the direct supervision and control of the Chief of the Bureau of Fire Protection, through the hierarchy of organization as provided for in Chapter VI of Republic Act No. 6975 with the approval of the Secretary of the Department of the Interior and Local Government (DILG), x x x.”

<sup>53</sup> Referring to Joint Memorandum Circular No. 1, series of 2010; Joint DILG-DTI Administrative Order No. 10-07; DILG Memorandum Circular No. 2011-05; BFP Memorandum dated 24 September 2012; and BFP Operations Procedure Manual.

<sup>54</sup> *City of Manila v. Hon. Laguito, Jr.*, G.R. No. 118127, 12 April 2005.



Also, statutes and ordinances are presumed valid unless and until the courts declare the contrary in clear and unequivocal terms.<sup>55</sup> Thus, Mayor Gatchalian cannot be faulted in implementing the Ordinance since it has not been judicially declared invalid. On the contrary, a court of competent jurisdiction, the RTC of Valenzuela City, Branch 171, has declared it valid in the consolidated cases of *Cabiltes vs. The City of Valenzuela*<sup>56</sup> and *Chamber of Commerce and Industry of Valenzuela City, Inc. vs. City Government of Valenzuela*.<sup>57</sup>

With respect to Joint Memorandum Circular No.1, series of 2016<sup>58</sup> issued by the DILG, DTI, and the Department of Information and Communications Technology, We find that while it was only issued on 30 August 2016, or after the fire occurred in 2015, the Sandiganbayan correctly took judicial notice of the same. This is insofar as it provides a persuasive effect that indeed, Mayor Gatchalian, *et al.*, acted within the bounds of law. To stress, the said circular merely reiterates that in cases of renewal of business permits, the BFP shall present a copy of the FSIC or a negative list to the LGU. If the BFP fails to do so, there arises a presumption that the business establishment seeking the renewal of its permit has a valid FSIC.

We rule, however, that the Sandiganbayan correctly took judicial notice of the same as it provides a persuasive effect that indeed, Mayor Gatchalian, *et al.*, acted within the bounds of law. Said Joint Memorandum Circular reiterates that in cases of renewal of business permits, the BFP shall present a copy of the FSIC or a negative list to the LGU. If the BFP fails to do so, there arises a presumption that the business establishment seeking the renewal of its permit has a valid FSIC.

*On whether the Sandiganbayan gravely erred when it supplanted the Ombudsman's finding of probable cause and went beyond its judicial authority of determining the propriety of issuing a warrant of arrest*

The OSP asserts that the Sandiganbayan should have accorded weight to the finding of probable cause of the Ombudsman, and instead of dismissing the cases, should have proceeded to trial on the merits. By dismissing the cases outright, the Sandiganbayan denied the State's "fair

<sup>55</sup> *Social Justice Society v. Atienza, Jr.*, G.R. No. 156052, 13 February 2008.

<sup>56</sup> Docketed as Civil Case No. 101-V-15.

<sup>57</sup> *Id.*

<sup>58</sup> *Rollo*, G.R. No. 230679, pp. 372-393.

opportunity to prosecute and convict.”

When an information is filed in court, the court acquires jurisdiction over the case and has the authority to determine, among others, whether or not the case should be dismissed. The court is "the best and sole judge of what to do with the case before it." The dismissal of a criminal case due to lack of probable cause protects the accused from having to undergo trial based on insufficient evidence.<sup>59</sup> Thus, the Sandiganbayan in this case, has three options. It may a) dismiss the case if the evidence on record clearly failed to establish probable cause; b) issue a warrant of arrest if it finds probable cause; or c) order the prosecutor to present additional evidence within five days from notice in case of doubt on the existence of probable cause.<sup>60</sup> Here, the Sandiganbayan availed of the first option – it dismissed the cases as the evidence on record clearly failed to establish probable cause.

The Court has warned trial courts that they must act with cautious discernment and faithfully exercise their judicial discretion when dismissing cases for lack of probable cause since the evidence before them is preliminary in nature.<sup>61</sup> Thus, trial courts may dismiss the case for lack of probable cause only in clear-cut cases when the evidence on record plainly fails to establish probable cause - that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged.<sup>62</sup> This leads to the question of whether the facts in these cases negate the existence of the elements of the crimes charged.

With respect to **Criminal Case No. SB-16-CRM-0802**,<sup>63</sup> for violation of Section 3(e)<sup>64</sup> of R.A. 3019, as amended, the elements are: (a) that the

<sup>59</sup> *Personal Collection Direct Selling, Inc. v. Carandang*, G.R. No. 206958, 28 November 2017.

<sup>60</sup> *Hao v. People*, G.R. No. 183345, 17 September 2014.

<sup>61</sup> *Personal Collection Direct Selling, Inc. v. Carandang*, *supra* at note 59.

<sup>62</sup> *Young v. People*, G.R. No. 213910, 03 February 2016.

<sup>63</sup> The Information reads:

“That in January 2015 or sometime prior or subsequent thereto, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, accused **REXLON TING GATCHALIAN**, a high ranking public officer being *the Mayor (SG 30)*, **RENCHI MAY MECINA PADAYAO**, *Officer-In-Charge (SG 23)* of the Business Permits and Licensing Office (*BPLO*), and **EDUARDO YCO CARREON**, *Licensing Officer IV (SG 22)* of the *BPLO*, all public officers of the City Government of Valenzuela; while in the performance of their official functions as such; conspiring and confederating with one another and with private individual **ONG KING GUAN** a.k.a. **TERENCE KING ONG**, *General Manager and Treasurer* of **Kentex Manufacturing Corporation (Kentex)**; did then and there willfully, unlawfully and criminally give Kentex unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence, by issuing a Business Permit to Kentex for the year 2015, despite its delinquent status and without requiring a *Fire Safety Inspection Certificate*, and for failing to revoke the permit after Kentex failed to submit the requirements within the prescribed period; thereby allowing Kentex to continue operating with inadequate fire safety measures; resulting in 74 fatalities and multiple physical injuries when a fire took place in the Kentex Compound on 13 May 2015, thereby causing undue injury to the victims in the amount of approximately Three Million Seven Hundred Thousand Pesos (P3,700,000.00).”

<sup>64</sup> 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

accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.<sup>65</sup>

The first element is unquestioned given. With respect to the second element, the Information alleged "manifest partiality, evident bad faith or gross inexcusable negligence" in issuing Business Permit to Kentex for the year 2015.

There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. On the other hand, "evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.<sup>66</sup> These definitions prove all too well that the three modes are distinct and different from each other. Proof of the existence of any of these modes in connection with the prohibited acts under Section 3(e) should suffice to warrant conviction.<sup>67</sup>

The Court agrees with the Sandiganbayan that the second element was negated by the evidence on record. To be sure, the City Government of Valenzuela, through Mayor Gatchalian, Atty. Padayao and Carreon, acted on the basis of Ordinance No. 62, as well as relevant issuances of the DILG, the BFP and the DTI. The Sandiganbayan correctly discussed:

The records do not show that the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence. The accused merely followed the existing memorandum circulars and ordinances on the streamlined procedure for the issuance of business permits. The accused did not state that these issuances dispense with the FSIC requirement. The issuances are as follows: (a) Joint Memorandum Circular No. 1 which aimed to reduce the steps and processing time for business permits, and

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 benefit, 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.

<sup>65</sup> *Fuentes v. People*, G.R. No. 186421, 17 April 2017.

<sup>66</sup> *Id.*

<sup>67</sup> *Tupaz v. The Office of the Deputy Ombudsman for the Visayas*, G.R. No. 212491-92, 06 March 2019.

allowed the Local Government Units to issue "temporary" permits that gave the applicants a period of time to comply with other requirements; (b) Joint DILG-DTI Department Administrative Order No. 10-07 which created a Business One-Stop Shop (BOSS) to receive and process applications for business registration thru a streamline system; (c) DILG Memorandum Circular No. 2011-05 which reiterated the need for fire safety inspection to be conducted promptly, to be completed before the end of the year, and requiring the City/Municipal Fire Marshall to submit a written report notifying the Local Chief Executive of the names of non-compliant establishments and recommending the non-issuance or revocation of permits, as the case may be; (d) BFP Memorandum dated 24 September 2012 which provided for the safety inspection of any structure two (2) or three (3) months in advance before the scheduled renewal of any permits issued by the BPLO, without need for the submission or referral of the application for business permits before such inspection is conducted; and (e) BFP Operational Procedures Manual ("BFP Manual") which provides that only after the business permits are issued that the applications are forwarded to the FSES of the BFP for scheduling of fire safety inspections, and eventually, the issuance of the fire safety inspection certificates.<sup>68</sup>

Anent the third element, it refers to two (2) separate acts that qualify as a violation of Section 3(e) of R.A. No. 3019. An accused may be charged with the commission of either or both. The use of the disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) of R.A. No. 3019.<sup>69</sup>

The first punishable act is that the accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. The loss or damage need not be proven with actual certainty. However, there must be some reasonable basis by which the court can measure it. Aside from this, the loss or damage must be substantial. It must be more than necessary, excessive, improper or illegal. The second punishable act is that the accused is said to have given unwarranted benefits, advantage, or preference to a private party. Proof of the extent or *quantum* of damage is not essential. It is sufficient that the accused has given "unjustified favor or benefit to another."<sup>70</sup>

The Information charges the accused with both acts. Mayor Gatchalian, Atty. Padayao and Carreon caused undue injury to the victims in the amount of approximately Three Million Seven Hundred Thousand (Php3,700,000.00). They likewise allegedly gave Kentex unwarranted benefits, advantage or preference when they issued Business Permit for the year 2015, and their failure to revoke the same, after Kentex failed to submit

<sup>68</sup> *Rollo* (G.R. No. 23222830), p. 121.

<sup>69</sup> *Cabrera v. People*, G.R. No. 191611-14, 29 July 2019.

<sup>70</sup> *Id.*

the requirements within the prescribed period.

Undue injury in the context of Section 3 (e) of R.A. No. 3019 is equated with actual damage in civil law.<sup>71</sup> In this regard, it is important that the injury was produced by the proximate cause, defined as that which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces injury, and without which the result would not have occurred.<sup>72</sup>

**The proximate cause of the fire which resulted to the death and injury of the victims was the stockpiling of 400 sacks or ten tons of Supercell Blowing Agent known as Azodicarbonamide, in an area not intended for such storage and adjacent to the welding activities near the stockpile.** The molten slags from the welding rod came into contact with one of the sacks. There is no direct causal connection between the issuance of the business permit and the fire which resulted to the death and injury of the victims.

On the other hand, **there is no showing that Kentex was given undue advantage, preference or any unwarranted benefits.** It is not shown that with respect to Kentex, the LGU of Valenzuela deviated from the procedures applied to other business establishments. While issuing the business permit “despite its delinquent status and without requiring a Fire Inspection Certificate” would have amounted to unwarranted benefit, advantage or preference, it must be noted that there is no evidence on record to show that respondents were aware of the delinquent status of Kentex.

Meanwhile, in **Criminal Case No. SB-16-CRM-0803**,<sup>73</sup> for violation of Section 3(j)<sup>74</sup> of R.A. 3019, as amended, the elements are: (1) knowingly

<sup>71</sup> *Soriano v. Ombudsman Marcela*, G.R. No. 163178, 30 January 2009.

<sup>72</sup> *Abrogar v. Cosmos Bottling Company*, G.R. No. 164749, 15 March 2017.

<sup>73</sup> The Information reads:

“That in January 2014 or sometime prior or subsequent thereto, in Valenzuela City, Philippines, and within the jurisdiction of this Honorable Court, accused **REXLON TING GATCHALIAN**, a high ranking public officer being the *Mayor (SG 30)*, **RENCHI MAY MECINA PADAYAO**, *Officer-In-Charge (SG 23)* of the Business Permits and Licensing Office (*BPLO*), and **EDUARDO YCO CARREON**, *Licensing Officer IV (SG 22)* of the *BPLO*, all public officers of the City Government of Valenzuela with the duty of approving or granting business permits; taking advantage of their respective official positions and committing the offense in relation to their office; conspiring and confederating with one another, did then and there willfully, unlawfully, criminally and knowingly approve or grant or issue a Business Permit in 2014 in favor of Kentex Manufacturing Corporation, an entity that was not qualified or legally entitled to such permit for not possessing the requisite *Fire Safety Inspection Certificate*.”

<sup>74</sup> Section 3. *Corrupt practices of public officers.* - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere

approving or granting any (a) license, (b) permit, (c) privilege or (d) benefit; and (2) in favor of any person who is (a) not qualified for; or (b) not legally entitled to such license, permit, privilege or advantage; or (c) a mere representative or dummy of one who is not so qualified or entitled.

To be liable, it must be shown that respondents knew that Kentex was not qualified, and despite that knowledge, they still issued such permit. To the point of sounding like a broken record, there would be no way for respondents to know that Kentex had no FSIC for the year 2014, since the BFP did not give the necessary report. On another perspective, the absence of the report or the FSIC at the issuance of the 2014 Business Permit does not make Kentex "not qualified for" or "not legally entitled to such permit." As the Sandiganbayan correctly ruled, the procedures then being followed allow for the issuance of business permits, even without securing first the required FSIC.

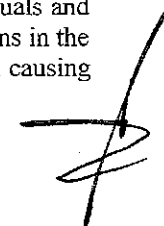
Finally, in **Criminal Case No. SB-16-CRM-0803**<sup>75</sup> for reckless imprudence resulting to Multiple Homicide and Multiple Physical Injuries, the Ombudsman argues that in issuing the business permit in favor of Kentex, respondents caused actual damages to the victims in the approximate amount of Three Million Seven Hundred Thousand Pesos (Php3,700,000.00) and physical injuries to others.

As earlier discussed, in relation to undue injury in Section 3 (e) of R.A. No. 3019, there is no direct causal relation between the death and the physical injuries sustained by the victims and the alleged negligence committed by respondents in issuing the business permits. According to IATF, the proximate cause was the molten slags from the welding rod which came into contact with one of the sacks of the Supercell Blowing Agents' piled almost below or very near the scaffolding which was then being used

representative or dummy of one who is not so qualified or entitled.

<sup>75</sup> The Information reads:

"That on or about 13 May 2015, in Valenzuela City, Philippines and within the Honorable Court's jurisdiction, accused public officers **REXLON TING GATCHALIAN**, being the *Mayor (SG 30)*, **RENCHI MAY MECINA PADAYAO**, *Officer-In-Charge (SG 23)* of the Business Permits and Licensing Office (*BPLO*), all of the City Government of Valenzuela, and **MEL JOSE PAREDES LAGAN**, *City Fire Marshall (SG 25)*, **EDGROVER LIM OCULAM**, *Fire Senior Inspector (SG23)*, and **ROLANDO SANTIAGO AVENDAN**, *Senior Fire Officer 2 (SG 17)*, all of the Valenzuela Bureau of Fire Protection, taking advantage of their respective official positions and committing the offense in relation to their office, conspiring and confederating with one another and with private individual **ONG KING GUAN** a.k.a. **TERENCE KING ONG**, *General Manager and Treasurer of Kentex Manufaciuriug Corporation (Kentex)*, did then and there willfully, unlawfully and feloniously - in a negligent, careless and imprudent manner -- approve, grant, or issue a Business Permit in favor of Kentex, and fail to impose the prescribed sanctions under Section 9 of the Revised Fire Code of the Philippines of 2008, thus abandoning the necessary precautionary fire safety measures designed to protect lives and property, or to prevent accident to persons and damage to property, and allowing Kentex to continue operating under hazardous conditions, resulting in the deaths of 74 individuals and physical injuries to others in the 13 May 2015 Fire, thereby causing actual damages to the victims in the approximate amount of **Three Million Seven Hundred Thousand Pesos (P3,700,000.00)** and causing physical injuries to others."



for the conduct of the said hotwork.<sup>76</sup>

In fine, the Court is convinced that the Sandiganbayan correctly dismissed the cases for lack of probable cause and the CA correctly granted Mayor Gatchalian's Petition.

**WHEREFORE**, in the light of the foregoing, the Court resolves to **DENY** both Petitions for Review. Accordingly, in G.R. No. 230679, the Court **AFFIRMS** the Decision dated 28 November 2016 and Resolution dated 20 March 2017 of the Court of Appeals in CA-GR SP No. 144428, while in G.R. Nos. 232228-30, it **AFFIRMS** the Joint Resolution dated 13 December 2016 and Resolution dated 08 June 2017 of the Sandiganbayan in Criminal Cases Nos. SB-16-CRM-0802, SB-16-CRM-0803 and SB-16-CRM-0804.

**SO ORDERED.**

  
**RODIL V. ZALAMEDA**  
Associate Justice

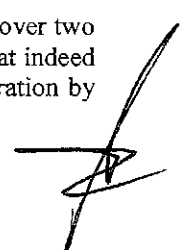
<sup>76</sup> *Rollo*, G.R. No. 230679, pp. 286-288. The LATF Memorandum states:

“b. Cause and Origin of Fire


After examination of the fire scene, analysis of the fire patterns, and evaluation of witness' account, the team was able to trace the origin of the fire to the ground floor of Building 3, near the front entrance door where the stockpile of sacks containing “SUPERCELL” Blowing Agent were being stored. Said findings is supported by the statement of Steven Chua, Checker and Supervisor of Kentex, who was then present at the time that the fire started. According to the witness accounts, the molten slags from the welding rod came into contact with one of the sacks of “SUPERCELL Blowing Agents” piled almost below or very near the scaffoldings which was then being used for the conduct of the said hotwork. The statement[s] of Niño Divino Provido[,] Oscar Romero[,] and Wilmer Arenal likewise support the findings of the team as to how the fire started and its exact location.

Oscar Romero was the one performing the welding/cutting job, while Wilmer Arenal was assisting Romero atop the scaffolding positioned at the left portion of the roll-up door. Niño Provido, on the other hand, was positioned just below the scaffolding and near the pile of sacks, and thereafter he ran to get the pressurized washer but the same did not work so he shouted at Chua to get a fire extinguisher. At that time, the smoke was already heavy so Provido decided to drive their truck outside the premises of Kentex. The aforementioned incident was also witnessed by Security Guard Jemerly Callora.

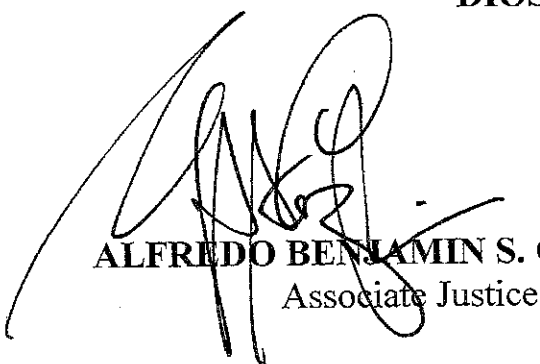
During the sifting process of the ashes/debris at the origin of the fire, the Team was able to recover two remaining parts of the welding rods used during the welding job. This bolstered the findings that indeed the fire was triggered by the molten slags/smoldering metal parts during welding/cutting operation by Romero.



**WE CONCUR:**



**DIOSDADO M. PERALTA**  
Chief Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice




**ROSALIND D. CARANDANG**  
Associate Justice



**SAMUEL H. GAERLAN**  
Associate Justice

**CERTIFICATION**

Pursuant to the 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.



**DIOSDADO M. PERALTA**  
Chief Justice

