



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

VICTOR ABADIEZ G.R. No. 231490  
BONGHANOY, ISIDORE  
GAVIOLA BESAS, and  
EUSTAQUIO RAÑA BACOLOD,  
*Petitioners,*

- versus -

OFFICE OF THE OMBUDSMAN,  
*Respondent.*

x-----x  
GALICANO E. ATUP, NELSON L. G.R. No. 231566  
UY, EFREN S. TANJAY,  
SABINIANO B. ATUPAN,  
MERLINDA B. GALLEGRO, ROD Present:  
ARTHUR P. CAÑETE, ALAN B.  
MENDEZ, LETECIA Q. PERLAS-BERNABE, S.A.J.,  
BUNADO, CONSTANTINA B. *Chairperson,*  
VILLASAN, ANTONIO I. HERNANDO,  
CUTAMURA,\* JOHNNY JIM Q. INTING,  
GARCES, and ARME A. TAAN, GAERLAN, and  
*Petitioners,* ROSARIO,\*\* JJ.

- versus -

HONORABLE OMBUDSMAN  
CONCHITA CARPIO MORALES,  
in her capacity as the  
OMBUDSMAN of the OFFICE OF  
THE OMBUDSMAN,  
*Respondent.*

Promulgated:

SEP 15 2021

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DECISION

\* Spelled as Cutamora in some parts of the *rollo*.  
\*\* Designated additional member per Special Order No. 2835 dated July 15, 2021.

**INTING, J.:**

Before the Court are the consolidated petitions for *certiorari*<sup>1</sup> under Rule 65 of the Rules of Court with prayers for the issuance of a temporary restraining order (TRO) filed by petitioners assailing the Resolution<sup>2</sup> dated October 11, 2016 and the Order<sup>3</sup> dated January 17, 2017 issued by the Office of the Ombudsman in OMB-V-C-15-0285. The assailed issuances found probable cause against petitioners for violation of Presidential Decree No. (PD) 449, as amended by PD 1602, otherwise known as the “Cockfighting Law of 1974” and denied petitioners’ Motion for Reconsideration,<sup>4</sup> respectively.

*The Antecedents*

On November 6, 2013, the *Sangguniang Bayan* of the Municipality of Ubay, Bohol passed and approved Resolution No. 205, Series of 2013,<sup>5</sup> requesting the Municipal Mayor to allow the *Sangguniang Bayan* to hold 3-win cockfights on February 1 and 2, 2014 at the Ramon Magsaysay Memorial Gymnasium. The resolution was attested to by Vice Mayor and *Sangguniang Bayan* Presiding Officer Nelson L. Uy (Vice Mayor Uy) and approved by then Municipal Mayor Galicano E. Atup (Mayor Atup).<sup>6</sup>

On January 4, 2014, the *Sangguniang Barangay* of Union, Ubay, Bohol passed and approved Resolution No. 06, Series of 2014,<sup>7</sup> requesting favorable endorsement for the approval of the request of the *Sangguniang Bayan* to hold 3-win cockfights on January 28, 29 and 30, 2014 at the covered court of Union, Ubay, Bohol. The resolution was attested to by *Barangay* Chairperson and *Sangguniang Barangay* Presiding Officer Merlinda B. Gallego (Gallego).<sup>8</sup>

On January 8, 2014, the *Sangguniang Bayan* of Ubay, Bohol passed and approved Resolution No. 08, Series of 2014,<sup>9</sup> amending the

<sup>1</sup> See Petition for *Certiorari* dated April 28, 2017, *rollo* (G.R. No. 231566), pp. 3-30; see also Petition for *Certiorari*, Prohibition and *Mandamus* dated March 15, 2017, *rollo* (G.R. No. 231490), pp. 3-15.

<sup>2</sup> *Rollo* (G.R. No. 231490), pp. 19-29; penned by Acting Director Ruth Laura A. Mella and approved by Ombudsman Conchita Carpio Morales.

<sup>3</sup> *Id.* at 31-42.

<sup>4</sup> *Id.* at 111-117.

<sup>5</sup> *Id.* at 76.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 104-105.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 75.

date and venue of Resolution No. 205, Series of 2013,<sup>10</sup> from February 1 and 2, 2014 to January 28, 29 and 30, 2014, and the venue from Ramon Magsaysay Gym to *Barangay* Union Gym (known as Union Cultural and Sports Center). The resolution was also attested to by then Vice Mayor Uy and approved by then Mayor Atup.<sup>11</sup>

Upon the *Sangguniang Bayan's* request, Provincial Director PSSupt. Dennis Palo Agustin (DSC) of the Bohol Provincial Police Office, on behalf of the Chief of the Philippine National Police (PNP), issued a Special Permit<sup>12</sup> dated January 9, 2014 to hold the three-day special cockfight on the dates and place above-mentioned on the occasion of the entertainment of tourists and *balikbayans* during the annual town fiesta of Ubay, Bohol.<sup>13</sup>

Then Mayor Atup issued a special permit<sup>14</sup> for the holding of the cockfighting on the date and venue requested, subject to the conditions that the regulatory fees shall be complied with and that the municipal ordinances and existing laws governing cockfights shall be strictly followed.<sup>15</sup>

The 3-win cockfighting event was subsequently held.

On April 10, 2014, private complainant Cesar C. Arro, Sr. filed before the Office of the Ombudsman for the Visayas in Cebu City a Complaint-Affidavit<sup>16</sup> for violation of PD 449 against the following public officials, to wit: then Mayor Atup, then Vice Mayor Uy, Councilors Efren S. Tanjay (Tanjay), Victor A. Bonghanoy (Bonghanoy), Isidore G. Besas (Besas), Sabiniano B. Atupan (Atupan), and Eustaquio R. Bacolod (Bacolod), (collectively, petitioner-councilors), *Barangay* Chairperson Gallego, *Barangay Kagawads* Rod Arthur P. Cañete (Cañete), Alan B. Mendez (Mendez), Letecia Q. Bunado (Bunado), Constantina B. Villasán (Villasán), Gemma B. Malinao (Malinao), Antonio I. Cutamura (Cutamura), and Johnny Jim Q. Garces (Garces), and *Barangay* Treasurer Arme A. Taan (Taan) (collectively, petitioners-*barangay* officials) (all herein petitioners with the exception of Gemma

<sup>10</sup> *Id.* at 76.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 98.

<sup>13</sup> *Id.*

<sup>14</sup> See Mayor's Permit (Special) dated January 8, 2014, *id.* at 97.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 67-69.

B. Malinao).<sup>17</sup> Petitioners were alleged to have authorized and/or caused the holding of a 3-win cockfighting event on January 28, 29, and 30, 2014 at Union Cultural Sports Center, which is an unlicensed cockpit.<sup>18</sup>

Then Mayor Atup was indicted for approving the resolutions for the holding of the cockfighting and for signing the Mayor's Permit. Then Vice Mayor Uy and petitioners-councilors were indicted for attesting and sponsoring the resolutions, respectively. Petitioners-*barangay* officials were included in the charge for attesting to, signing, and approving *Barangay* Resolution No. 06, Series of 2014 which endorsed the holding of the cockfighting. They were all impleaded for allowing the cockfighting to be held in an unlicensed cockpit.<sup>19</sup>

After its fact-finding investigation, the Field Investigation Office of the Office of the Ombudsman (Ombudsman) filed a formal Complaint<sup>20</sup> against petitioners for violation of PD 449, as amended by PD 1602.

Petitioners filed their respective counter-affidavits.<sup>21</sup>

### *The Ruling of the Ombudsman*

On October 11, 2016, the Ombudsman issued its assailed Resolution,<sup>22</sup> the dispositive portion of which reads:

WHEREFORE, this Office finds PROBABLE CAUSE to indict Galicano E. Atup, Nelson L. Uy, Efren S. Tanjay, Victor A. Bonghanoy, Isidore G. Besas, Sabiniano B. Atupan, Eustaquio R. Bacolod, Merlinda B. Gallego, Rod Arthur P. Cañete, Alan B. Mendez, Letecia Q. Bunado, Constantina B. Villasan, Antonio I. Cutamura, Johnny Jim Q. Garces and Arme A. Taan, for one (1) count of violation of Presidential Decree 449, and accordingly RECOMMENDS the immediate filing of the corresponding

<sup>17</sup> *Id.* at 68.

<sup>18</sup> *Id.* at 67.

<sup>19</sup> *Id.* at 21.

<sup>20</sup> *Id.* at 49-63.

<sup>21</sup> See Counter-Affidavit dated October 24, 2015 of Victor A. Bonghanoy, Isidore G. Besas and Eustaquio R. Bacolod, *id.* at 106-110; see also Counter-Affidavit dated October 29, 2015 of Merlinda B. Gallego, Alan B. Mendez, Letecia Q. Bunado, Constantina B. Villasan, Rod Arthur P. Cañete, Antonio I. Cutamura, Johnny Jim Q. Garces and Arme A. Taan, *rollo* (G.R. No. 231566), pp. 149-154 and Counter-Affidavit dated October 29, 2015 of Galiciano E. Atup, Nelson L. Uy, Efren S. Tanjay and Sabiniano B. Atupan, *rollo* (G.R. No. 231566), pp. 155-162.

<sup>22</sup> *Rollo* (G.R. No. 231490), pp. 19-29.

Information against them in court.

The complaint against Gemma B. Malinao is DISMISSED for lack of probable cause.

SO ORDERED.<sup>23</sup>

In finding probable cause to indict petitioners for violation of PD 449, the Ombudsman applied Section 5(d) of the law because the purpose of holding the cockfighting event was to celebrate the local town fiesta. It ratiocinated as follows:

In Section 5(d) of P.D. 449, the rule is: (i) if the cockfighting event is done during Sundays, legal holidays and local fiestas, (ii) it must last only for three days; and (iii) must be held in a licensed cockpit.

Section 5(e) of P.D. 449, on the other hand, is applicable (i) if the cockfighting is intended to entertain foreign dignitaries, tourists and/or balikbayans, (ii) or the cockfighting is intended to support a national fund raising campaign for charitable purposes authorized by the Office of the President.

A perusal of the following documents reveals that the controlling event which led to the holding of the cockfight at the Union Cultural Sports Center was the local town fiesta: (i) SB Resolution No. 06, Series of 2014, (ii) Certification dated 13 April 2015 of Arch. Samuel A. Mendez, Municipal Administrator, and (iii) Certification dated 06 January 2014 of PCI George Salcedo Caña.

Although the purpose of entertaining balikbayans and tourists was mentioned in SB Resolution No. 205, Series of 2013, the same was merely incidental and not the primary reason. The SB Resolution reads:

WHEREAS, the Municipality will again be celebrating its Town Fiesta on the last Friday of January 2014;

WHEREAS, cockfighting has always been one of the traditional entertainment highlights for visitors and cockfighting aficionados during the celebration of the Ubay town fiestas;

WHEREAS, the activity is also anticipated to entertain balikbayans and both local and foreign tourists;

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<sup>23</sup> *Id.* at 28.

Clearly, the holding of cockfighting was also intended to entertain balikbayans and tourists whose presence was anticipated. Regardless of the Special Permit issued by PSSupt Agustin indicating that the cockfighting event was “for the Entertainment of Tourists and Balikbayan during the Annual Town Fiesta,” it is SB Resolution No. 205, Series of 2013 which is controlling. In the first place, a special permit from the Philippine National Police is not necessary when the cockfighting event is to be done on the occasion of a local town fiesta. It is only when the cockfighting is done during a provincial, city or municipal fair, carnival or exposition; or when it is primarily intended to entertain foreign dignitaries, tourist and/or balikbayans; or it is intended to support a national fund raising campaign for charitable purposes authorized by the Office of the President, that securing a permit from the Chief Constabulary becomes necessary.

x x x x

In line with the procedural rule that special laws may be supplemented by the provisions of the Revised Penal Code, respondents found to be probably guilty of P.D. 449 are to be treated as principals under the principle of conspiracy.

x x x x

Moved by a single criminal intent, respondents each performed their individual act of either proposing, endorsing and/or approving the arrangement to hold the cockfighting event on 28, 29 and 30 January 2014 in a place other than a licensed cockpit. Their participation, albeit done on various dates, is a byproduct of single plan.<sup>24</sup>

Petitioners filed their respective motions and joint motions for reconsideration which the Ombudsman denied in the assailed Order<sup>25</sup> dated January 17, 2017.

Hence, petitioners-councilors Bonghanoy, Besas, and Bacolod filed a Petition for *Certiorari*, Prohibition and *Mandamus*<sup>26</sup> with prayer for the issuance of a TRO assailing the Ombudsman Resolution dated October 11, 2016 and the Order dated January 17, 2017. The petition was docketed as G.R. No. 231490.

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<sup>24</sup> *Id.* at 24-27.

<sup>25</sup> *Id.* at 31-42.

<sup>26</sup> *Id.* at 3-15. While the petition was captioned as a petition for *certiorari*, prohibition and *mandamus*, petitioner’s allegations and prayer pertained only to a petition for *certiorari* under Rule 65, thus it is to be treated as such.

Petitioners then Mayor Atup, then Vice Mayor Uy, Councilors Tanjay and Atupan, *Barangay* Chairperson Gallego, and *Barangay Kagawads* Mendez, Bunado, Villasan, Cañete, Cutamura, Garces, and Taan also filed a Petition for *Certiorari*<sup>27</sup> assailing the same issuances of the Ombudsman. The petition was docketed as G.R. No. 231566.

In the Resolution<sup>28</sup> dated June 7, 2017, the Court resolved to require respondents to file their Comment to the separate petitions filed. The Court also issued a TRO<sup>29</sup> enjoining the Ombudsman and/or all persons acting upon its Orders or, in its place or stead, from filing the Information in court.

The two petitions were subsequently consolidated in a Resolution<sup>30</sup> of the Court dated December 11, 2017 because they arose from the same Resolution and Order issued by the Ombudsman in OMB-V-C-15-0285.

However, prior to the issuance of the TRO, the Ombudsman had already filed the Information<sup>31</sup> with the Sandiganbayan on April 17, 2017 docketed as Criminal Case No. SB 17-CRM-0753. The Sandiganbayan issued the corresponding warrants of arrest by virtue of the Sandiganbayan Resolution dated May 2, 2017.<sup>32</sup>

Petitioners in G.R. No. 231566 filed a Manifestation with Prayer for Clarification<sup>33</sup> with regard to the issued TRO. The Court, in a Resolution<sup>34</sup> dated January 29, 2018, clarified that the TRO issued by the Court on June 7, 2017 included the suspension of further proceedings in Criminal Case No. SB 17-CRM-0753 before the Sandiganbayan and any and all other proceedings arising from the enjoined filing of the Information subject of the TRO.

Petitioners, in their respective petitions, argued that the Ombudsman committed grave abuse of discretion amounting to lack of jurisdiction in finding probable cause for the filing of Information for

<sup>27</sup> *Rollo* (G.R. No. 231566), pp. 3-30.

<sup>28</sup> *Id.* at 221.

<sup>29</sup> *Id.* at 224-225.

<sup>30</sup> *Rollo* (G.R. No. 231490), pp. 185-186.

<sup>31</sup> *Id.* at 142-144.

<sup>32</sup> *Id.* at 145-146.

<sup>33</sup> *Rollo* (231566), pp. 289-294.

<sup>34</sup> *Id.* at 326-327.

violation of PD 449 against them; and that the applicable provision of law is not Section 5(d) but Section 5(e) of PD 449, which allows the holding of cockfighting for the entertainment of *balikbayans* in places other than a licensed cockpit; hence, there is no probable cause for their indictment.

In its Comment,<sup>35</sup> the Ombudsman contended: (1) that the issues raised by petitioners merely revolve around the correctness of its factual findings which is outside the province of a writ of *certiorari*; (2) that it has been the policy of the Court not to interfere with the Ombudsman's exercise of investigatory and prosecutorial powers; (3) that the main reason for the holding of the cockfighting was the municipality's town fiesta as evidenced by the *Sangguniang Bayan* Resolution No. 205, Series of 2013; and (4) that Section 5(d) of PD 449 requires that it must be held in a licensed cockpit which was not complied with.<sup>36</sup>

Petitioners filed their respective replies to the Comment.<sup>37</sup>

### *Issue*

The pivotal issue for resolution is whether the Ombudsman committed grave abuse of discretion amounting to lack of jurisdiction in finding the existence of probable cause for the filing of Information against petitioners for violation of PD 449, as amended.

### *The Court's Ruling*

It is settled that the Court does not ordinarily interfere with the Ombudsman's finding and call on the existence of a probable cause.<sup>38</sup> Practical consideration as well as respect for the Constitution and RA 6770,<sup>39</sup> which endow the Ombudsman with a wide latitude of investigatory and prosecutory prerogatives virtually free from legislative, executive, or judicial intervention, are the moving reasons for

<sup>35</sup> *Id.* at 257-270.

<sup>36</sup> *Id.* at 260-266.

<sup>37</sup> See Explanation and Compliance to Resolution dated December 11 2017 with Reply to the Comment on the Petition dated October 24, 2018, *id.* at 351-366; see also Reply dated August 20, 2020, *id.* at 374-388.

<sup>38</sup> *Crucillo v. Office of the Ombudsman*, 552 Phil. 699, 712 (2007), citing *Fuentes, Jr. v. Ombudsman*, 511 Phil. 402, 412-413 (2005) and *Venus v. Hon. Desierto*, 358 Phil. 675, 694-696 (1998).

<sup>39</sup> Entitled, "The Ombudsman Act of 1989," approved on November 17, 1989.



this rule.<sup>40</sup>

This rule of non-interference is, however, far from absolute. Case law has it that the Court will intervene upon proof of commission of grave abuse of discretion by the Ombudsman.<sup>41</sup> In other words, the Court is not precluded from reviewing the Ombudsman's action when there is grave abuse of discretion, in which case the *certiorari* jurisdiction of the Court may exceptionally be invoked pursuant to Section 1, Article VIII of the Constitution.<sup>42</sup> Accordingly, where grave abuse of discretion taints the Ombudsman's finding as to the existence of probable cause, the aggrieved party may file a petition for *certiorari* under Rule 65.<sup>43</sup>

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner—which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law—in order to exceptionally warrant judicial intervention.<sup>44</sup> Since there is an allegation of grave abuse of discretion committed by the Ombudsman in acting on the case, the Court finds it appropriate to look into it.

The Ombudsman found petitioners to have violated Section 5(d) of PD 449. Petitioners, however, insist that it is not Section 5(d) which is applicable in their case but Section 5(e) of PD 449.

The Court finds for the petitioners.

Section 5(d) and (e) respectively provide:

(d) *Holding of Cockfights.* — Except as provided in this Decree, cockfighting shall be allowed only in licensed cockpits during Sundays and legal holidays and during local fiestas for not more than three days. It may also be held during provincial, city or municipal, agricultural, commercial or industrial fair, carnival or

<sup>40</sup> *Crucillo v. Office of the Ombudsman*, *supra* note 38, citing *Loquias v. Office of the Ombudsman*, 392 Phil. 596, 604-605 (2000).

<sup>41</sup> *Id.* at 713, citing *Peralta v. Hon. Desierto*, 510 Phil. 111, 125 (2005).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*, citing *Garcia-Rueda v. Pascasio*, 344 Phil. 323, 329 (1997).

<sup>44</sup> *Casing v. Hon. Ombudsman*, 687 Phil. 468, 476 (2012).

exposition for a similar period of three days upon resolution of the province, city or municipality where such fair, carnival or exposition is to be held, subject to the approval of the Chief of Constabulary or his authorized representative: *Provided, that*, no cockfighting on the occasion of such fair, carnival or exposition shall be allowed within the month of a local fiesta or for more than two occasions a year in the same city or municipality: *Provided, further*, that no cockfighting shall be held on December 30 (Rizal Day), June 12 (Philippine Independence Day) November 30 (National Heroes Day), Holy Thursday, Good Friday, Election or Referendum Day and during Registration Days for such election or referendum.

(e) *Cockfighting for Entertainment of Tourists or for Charitable Purposes.* — Subject to the preceding subsection hereof, the Chief Constabulary or his authorized representative may also allow the holding of cockfighting for the entertainment of foreign dignitaries or for tourists, or for returning Filipinos, commonly known as “*Balikbayan*”, or for the support of national fund-raising campaigns for charitable purposes as may be authorized by the Office of the President, upon resolution of a provincial board, city or municipal council, in licensed cockpits or in playgrounds or parks: *Provided*, that this privilege shall be extended for only one time, for a period not exceeding three days, within a year to a province, city, or municipality.

Clearly, Section 5(d) provides that: (1) cockfighting may only be held (a) on Sundays, legal holidays, and local fiestas in a licensed cockpit for not more than three days, or (b) during provincial, city or municipal, agricultural, commercial or industrial fairs, carnivals or expositions for a similar period of three days, (2) but not within the month of a local fiesta or for more than two occasions a year in the same city or municipality. Such event must be (3) authorized by a resolution of the province, city or municipality where such fair, carnival or exposition is to be held, (4) subject to the approval of the Chief of Constabulary (replaced by the PNP) or his authorized representative.

On the other hand, Section 5(e) provides that: (1) subject to the provisions of Section 5(d), cockfighting is allowed (2)(a) for the entertainment of foreign dignitaries or for tourists, or for returning Filipinos, commonly known as “*Balikbayan*,” or (b) for the support of national fund-raising campaigns for charitable purposes as may be authorized by the Office of the President; (3) upon resolution of a provincial board, city or municipal council; (4) with the approval of the Chief of Constabulary (replaced by the PNP) or his authorized representative; (5) to be held in a licensed cockpit or in playgrounds or parks; and (6) with such privilege being extended for only one time, for

a period not exceeding three days, within a year to a province, city, or municipality.

Both Sections 5(d) and (e) prohibit the holding of cockfighting on December 30 (Rizal Day), June 12 (Philippine Independence Day) November 30 (National Heroes Day), Holy Thursday, Good Friday, Election or Referendum Day, and during Registration Days for such election or referendum.

The Court finds that petitioners' case falls under Section 5(e) of PD 449 for the following reasons:

*First*, the *Sangguniang Bayan* of Ubay, Bohol, passed Resolution No. 205, Series of 2013, requesting the Mayor to allow the holding of 3-win cockfights for the entertainment of *balikbayans* and local tourists.

The Whereas Clauses of the resolution stated:

WHEREAS, the Municipality will again be celebrating its Town Fiesta on the last Friday of January 2014;

WHEREAS, cockfighting has always been one of the traditional entertainment highlights for visitors and cockfighting aficionados during the celebration of the Ubay town fiestas;

WHEREAS, the activity is also anticipated to entertain *balikbayans* and both local and foreign tourists;<sup>45</sup>

The Resolution was later amended by Resolution No. 08, series of 2014 passed by the *Sangguniang Bayan* which changed the dates of the cockfighting event to January 28, 29, and 30, 2014 or "within the month" of the local fiesta on the last Friday of January 2014 which is January 31.

The Ombudsman's ruling that although the purpose of entertaining *balikbayans* and tourists was mentioned in *Sangguniang Bayan* Resolution No. 205, Series of 2013, it was merely incidental and not the primary reason for holding the cockfighting which was the town fiesta.

<sup>45</sup> *Rollo* (G.R. No. 231490), p. 76.

The Court does not agree.

While the first Whereas Clause mentioned the town fiesta, the subsequent Whereas Clauses provided the reason for the holding of the cockfighting activity, *i.e.*, it is a traditional entertainment highlight for visitors and aficionados, and it is intended to entertain *balikbayans* and foreign and local tourists. While Section 5(d) provides that no cockfighting during provincial, city or municipal, agricultural, commercial or industrial fair, carnival or exposition shall be allowed “within the month of a local fiesta,” it is worthy to mention that Section 5(e) contains no such prohibition with regard to the holding of cockfighting for the entertainment of tourists and *balikbayans*.

The holding of cockfighting for the entertainment of tourists and *balikbayans* within the month of a local fiesta is not prohibited because some of the *balikbayans* would plan their homecoming within the dates near the town fiesta to celebrate with their families and hometown friends. On the other hand, tourists would also like to experience first-hand the tradition and festivals being celebrated in the country. Thus, petitioners passed the resolutions with the purpose of holding the cockfighting for the entertainment of *balikbayans* and tourists within the month of town fiesta which is not prohibited by law.

The Ombudsman’s reliance on the Certification<sup>46</sup> dated April 13, 2015 of the Municipal Administrator and the Certification<sup>47</sup> dated January 6, 2014 of Ubay Chief of Police, Police Chief Inspector George Salcedo Caña, to prove that the controlling event which led to the holding of the cockfight at the Union Cultural Sports Center was the local town fiesta is not persuasive. To stress, cockfighting for the entertainment of tourists and *balikbayans* can be held even within the month of the local fiesta.

*Second*, the *Sangguniang Bayan* asked for a special permit from the Provincial Director for the holding of the cockfights. Notably, the Ombudsman admitted that a special permit from the PNP is not necessary when the cockfighting event is to be done on the occasion of a local town fiesta but only when the cockfighting is primarily intended to

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<sup>46</sup> *Id.* at 100.

<sup>47</sup> *Id.* at 99.

entertain tourists and/or *balikbayans*. Considering that the main purpose in holding the cockfighting was to entertain tourists and *balikbayans*, the *Sangguniang Bayan* found it necessary to secure a Special Permit from the Provincial Director of the PNP. In fact, the Special Permit issued by the Provincial Director proved the reason for the holding of the cockfighting, to wit:

In accordance with the pertinent provisions of Presidential Decree 449 and after complying with the guidelines set by Bohol Police Provincial Office, the undersigned, under the authority of the Chief of Philippine National Police, hereby grants a Special Permit to the Sangguniang Bayan of Ubay, to hold three (3) days special cockfight on occasion for the Entertainment of Tourists and Balikbayan during the Annual Town Fiesta of Ubay, Bohol on *January 28, 29, and 30, 2014* to be held at the Covered Court located at Brgy. Union, Ubay, Bohol.

The grant of special permit during the Entertainment of Tourists and Balikbayan activity can only be given once a year, hence, let it be known that the undersigned can no longer issue another permit for the same purpose in the same city/municipality for this current year.<sup>48</sup>

As the cockfighting is to be held for the purpose stated in the special permit, *i.e.*, to entertain tourists and *balikbayans*, the Provincial Director made it clear that he can no longer issue another permit for that purpose in the same year which is in compliance with Section 5(e) of PD 449. As may be recalled, Section 5(e) provides that the privilege of holding such cockfighting “within the month of a local fiesta,” which is otherwise prohibited under Section 5(d), shall be extended for only one time within a year.

*Third*, Section 5(e) allows cockfighting for the entertainment of tourists or *balikbayans* to be held in licensed cockpits or in playgrounds or parks.

It is admitted that there was no licensed cockpit arena operating within the Municipality of Ubay, Bohol at the time the cockfighting was held in 2014. PD 449 does not specifically provide for a definition of playground or park. Merriam Webster defines playground as *a piece of*

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<sup>48</sup> *Id.* at 98.

*land used and usually equipped with facilities for recreation especially for children; or an area known or suited for activity of a specified sort. A playground is a place for recreational activities to improve the physical and mental well-being of children and people of all ages. The cockfighting was held in Union Cultural and Sports Center which may fall within the same category as a playground. A gymnasium is a place where people can gather for athletic and recreational activities as well as for the holding of special and social events.*<sup>49</sup>


Based on the foregoing, the Court finds that the Ombudsman committed grave abuse of discretion amounting to lack of jurisdiction in finding probable cause against petitioners for violation of Section 5(d) of PD 449, as amended.

**WHEREFORE**, the consolidated petitions for *certiorari* are **GRANTED**. The assailed Resolution dated October 11, 2016 and the Order dated January 17, 2017 issued by the Office of the Ombudsman in OMB-V-C-15-0285 are **REVERSED** and **SET ASIDE**. The Temporary Restraining Order issued by the Court on June 7, 2017, which was clarified on January 29, 2018 to include the suspension of further proceedings in Criminal Case No. SB-17-CRM-0753 before the Sandiganbayan is hereby made **PERMANENT**. The respondent Ombudsman is **DIRECTED** to immediately file the necessary pleading for the **WITHDRAWAL** of the Information in said Criminal Case No. SB-17-CRM-0753 against petitioners.


**SO ORDERED.**

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

WE CONCUR:

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

<sup>49</sup> *Rollo* (G.R. No. 321566), pp. 77-78.


  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

  
**SAMUEL H. GAERLAN**  
*Associate Justice*

  
**RICARDO R. ROSARIO**  
*Associate Justice*

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*

