

EN BANC

[G.R. No. 133954, August 03, 2000]

**VICTORIANO B. TIROL, JR. PETITIONER, VS. COMMISSION ON
AUDIT, REGION VIII, REPRESENTED BY ITS DIRECTOR, LEYTE
GOVERNMENT CENTER, CANDAHUG, PALO, LEYTE, RESPONDENT.**

D E C I S I O N**DAVIDE JR., C.J.:**

In this petition for review on *certiorari* under Section 27 of R.A. No. 6770, otherwise known as the Ombudsman Act of 1989, in relation to Rule 45 of the Revised Rules of Court, petitioner seeks the reversal of the Resolution^[1] of 20 March 1997 and the Order^[2] of 5 March 1998 of the Office of the Ombudsman which, respectively, found petitioner and his co-respondents in OMB-Visayas-Crim-94-0836 criminally culpable for violation of Section 3(g) of R.A. No. 3019,^[3] as amended, and denied petitioner's motion for reconsideration of the said Resolution.

Petitioner is the incumbent Regional Director of the Department of Education, Culture and Sports (DECS), Region V. Prior to such assignment he was the DECS Regional Director of Region VIII. In the latter capacity, he and some officials of the Lalawigan National High School, Lalawigan, Borongan, Eastern Samar, were charged with the violation of Section 3(g) of Republic Act No. 3019, as amended, for entering into a contract alleged to be manifestly and grossly disadvantageous to the government. The charge originated from a complaint filed by the school's Teachers and Employees Union alleging overpricing of various school equipment for the Lalawigan National High School. Specifically, petitioner's participation consisted in approving the Requisition and Issue Voucher (RIV) and the check in connection with the transaction.

On the strength of the complaint, Region VIII of respondent Commission on Audit (COA) audited the operations and accounts of the Lalawigan National High School. The audit covered the period from 1 January 1990 to 30 April 1993.

Per the audit report,^[4] COA found that there was malversation of public funds. It cited the purchase of certain supplies and equipment which was done through a negotiated contract and not through a competitive public bidding, contrary to COA Circular No. 85-55A. The circular requires public bidding in the purchase of supplies, materials and equipment in excess of P50,000, unless the law or agency charter provides otherwise. In the questioned purchase the agency failed to ascertain the reasonableness of the contract prices, resulting in an overprice of P35,100 in comparison with COA's actual canvass of prices, thus:

		Per Voucher		Per Canvass		
Quantity	Description	Unit Price	Total	Unit Price	Total Amount	Price

			Amount			Variance
2	Singer Sewing machine	P7,850	P15,700	P4,450	P8,900	P6,800
4	16" Hitachi / Union Coiling Fan	3,800	15,200	1,200	4,800	10,400
3	Molodione	3,675	11,025	1,850	5,550	5,475
2	Xylophone	1,750	3,500	560	1,120	2,380
2	Makita Electric Planer Model No. 19008 3 ¼ in. 82 mm	8,837.50	17,675	8,500	17,200	475
1	Makita Electric Circular Saw Model No. 5601 N 160 mm	16,900	16,900	7,330	7,330	9,570
TOTAL		P80,000			P44,900	P35,100

In its letter^[5] to the Deputy Ombudsman for the Visayas, the COA recommended the filing of both criminal and administrative cases against the persons liable therefor, including petitioner for his approval of the RIV for the assailed purchase and signing of the check in payment therefor. This complaint was docketed as OMB-Visayas-Crim-94-0836.

In his counter-affidavit,^[6] petitioner alleged that the aforesaid documents were previously reviewed by his subordinates. He approved them only upon the certification and representation of the said subordinates that everything was in order. Accordingly, his approval was purely a ministerial act.

In her Resolution of 20 March 1997,^[7] Virginia Palanca Santiago, Graft Investigation Officer III of the Office of the Ombudsman-Visayas, rejected petitioner's defense because had he carefully scrutinized the documents he would have discovered that the purchases were made without competitive public bidding and the magnitude of the amount involved would prevent a reasonable mind from accepting the claim that petitioner was merely careless or negligent in the performance of his functions.

Santiago gave credence to COA's detailed report which clearly showed an overpriced value of the supplies and materials purchased, to the great disadvantage of the government. Had the proper bidding procedure been observed, no such damage would have occurred. Moreover, petitioner's co-respondents did not dispute the charge of overpricing. Their main defense was that the purchase was emergency in nature. The Office of the Ombudsman-Visayas, however, ruled that emergency purchases could only refer to those which were urgent such that failure to make

them would endanger the lives of the students. It held that the doubtful purchase did not qualify as an emergency purchase.

Accordingly, Santiago recommended that petitioner and his co-respondents be indicted for violation of Section 3(g) of R.A. No. 3019, as amended, for entering into a contract or transaction manifestly and grossly disadvantageous to the Government.

The Resolution was recommended for approval by Deputy Ombudsman for the Visayas, Arturo C. Mojica. Ombudsman Aniano A. Desierto approved the Resolution on 21 June 1997.

In an Information^[8] filed with the Sandiganbayan and docketed as SB Criminal Case No. 23785,^[9] petitioner and two other co-respondents were charged with the aforementioned offense allegedly committed as follows:

That on or about the 21st day of October, 1992, at Tacloban City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, all public officers, having been appointed and qualified as such public positions above-mentioned, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping with each other, with deliberate intent, did then and there willfully, unlawfully and feloniously enter into a transaction or contract for and in behalf of Lalawigan National High School, Lalawigan, Borongan, Eastern Samar, for the purchase of the following:

2	Singer Sewing	P
	pcs. Machine	15,700.00
4	16" Hitachi Union	15,200.00
	pcs. Ceiling Fan	
3	Meodione	11,025.00
	pcs.	
2	Xylophone	3,500.00
	pcs.	
2	Makita Elect. Planor	17,675.00
	pcs. Model No. 19008	
	3¼ in. 82 mm	
1	Makita Elect.	16,900.00
	pc. Circular Saw Model	
	No. 5601 N 160 mm	
	TOTAL	P
		80,000.00

in the total amount of P80,000.00, Philippine Currency, with Fairchild Marketing and Construction, based at Tacloban City, without following the procedures of competitive public bidding as required by law, which transaction was manifestly and grossly disadvantageous to the government, particularly the Lalawigan National High School, as the value of above-mentioned items were overpriced in the total amount of P35,100.00, Philippine Currency, to the damage and prejudice of the government.^[10]

Petitioner filed a Motion for Reconsideration^[11] of the Resolution of the Office of the Ombudsman-Visayas. He insisted that his act of approving the RIV arose from the need of the requesting school, and matters pertaining to the price and mode of purchase were not yet considered at that stage. It was only after the approval of the RIV that these matters were deliberated upon, not by him, but by the officials of the requesting school. As to the check, he asserted that the supporting documents had been acted upon and approved by his subordinates and the concerned school officials, and since there was no indication of any patent irregularity, he signed the check. Finally, petitioner assailed the finding of conspiracy since there was no direct proof therefor other than a mere allegation imputing the same.

In the Order of 5 March 1998,^[12] the Office of the Special Prosecutor recommended that petitioner's Motion for Reconsideration be dismissed for lack of merit. The Ombudsman approved the recommendation on 22 May 1998.

Petitioner then filed the instant petition. In the meantime, the proceeding before the Sandiganbayan continued. Upon arraignment on 24 August 1998, petitioner's co-accused pleaded not guilty to the offense charged. On 2 September 1998, petitioner filed a motion to reset the scheduled hearing on 17 and 18 September citing the pendency of the instant petition. The Sandiganbayan denied petitioner's motion as well as his subsequent motion for reconsideration. Consequently, he filed a petition for certiorari under Rule 65 of the Rules of Court claiming that the Sandiganbayan gravely abused its discretion in denying his motions. That action, entitled *Tirol v. Sandiganbayan* and docketed as G.R. No. 135913, was decided on 4 November 1999 adversely against petitioner.

In the instant petition, petitioner seeks the reversal of the assailed Resolution and Order of the Office of the Ombudsman, which, according to him, erred in concluding that he was culpably liable for alleged overpricing of the questioned purchase of supplies and materials. He argues that the acts directly resulting in the overprice were committed by the following officials: (1) co-respondent Conchita C. Devora, Principal 1, who approved the transaction, countersigned the checks and requisitioned the items; (2) co-respondent Maria A. Alvero, Bookkeeper, who affixed her signature in the voucher; and (3) Salome G. Germana, Designated Storekeeper, who signed Box No. 4 of the voucher. His participation was limited to signing the RIV and the check as a matter of routine. Moreover, the RIV did not involve the determination of the price of the supplies and materials to be purchased, and his signing the check was done in compliance with the DECS policy which limited the signing authority of the principal, Conchita C. Devora, to checks not exceeding P50,000. In such case the signing authority was vested in him as the DECS Regional Director.

In maintaining his innocence, petitioner asserts that the presumption of regularity in the performance of public functions by public officers should apply in his favor. He had no ground to doubt the preparation, processing and verification of his subordinates prior to his act of approving the RIV and signing the check. His position required the signing of voluminous documents and it would be unreasonably cumbersome if he were to scrutinize every document that required his signature.

In support of his arguments, petitioner cites the cases of *Arias v. Sandiganbayan*^[13] and *Magsuci v. Sandiganbayan*,^[14] where this Court held that heads of office may rely to a reasonable extent on their subordinates and on the good faith of those who