

# FIRST DIVISION

[ G.R. No. 239871, March 18, 2021 ]

## LYNNA G. CHUNG, PETITIONER, VS. OFFICE OF THE OMBUDSMAN AND OFFICE OF THE OMBUDSMAN-FIELD INVESTIGATION OFFICE, RESPONDENTS.

### DECISION

#### CAGUIOA, J:

This is a Petition for *Certiorari*<sup>[1]</sup> (Petition) under Rule 65 of the 1997 Rules of Civil Procedure, with an application for a temporary restraining order and a writ of preliminary injunction, assailing the: (1) Joint Resolution<sup>[2]</sup> dated March 14, 2018 of the Office of the Ombudsman (Ombudsman) in OMB-C-C-16-0055 and OMB-C-A-16-0046; and (2) its Order<sup>[3]</sup> dated May 8, 2018 denying petitioner Lynna G. Chung's (petitioner) motion for partial reconsideration.

The assailed Joint Resolution and Order found probable cause to indict petitioner, former Manager of the Administrative and Finance Department of the Philippine National Railways (PNR), along with five other PNR officials, for violation of Section 3(e)<sup>[4]</sup> of Republic Act No. (RA) 3019<sup>[5]</sup> in connection with the PNR's procurement of rail fastenings, clips and insulators from Pandrol Korea Limited (Pandrol Korea).

### FACTS

The PNR-Bids and Awards Committee (BAC) passed Resolution No. 04-2009 (BAC Resolution) recommending Direct Contracting with Pandrol Korea in the procurement of 170,000 sets of rail fastenings at a unit cost of US\$44.58 per set or an aggregate price of US\$7,624,500.00 and 50,000 pieces of clips and insulators at a unit cost of US\$3.90 per piece or an aggregate price of US\$195,000.00 for the repair of rail tracks and replacement of parts in the Quezon Province and in the Bicol Region. In justifying the recommended mode of procurement, the PNR-BAC relied on Section 50<sup>[6]</sup> of the Implementing Rules and Regulations Part A (IRR-A) of RA 9184,<sup>[7]</sup> as well as on the fact that Pandrol Korea owns the patents of the certain types of rail fastenings needed and that it does not have a sub-dealer in the Philippines. The prices indicated in the BAC Resolution were based on the quotation from K.B. Hong of Pandrol Korea that former PNR General Manager Manuel D. Andal (Andal) had requested.<sup>[8]</sup>

Petitioner was among the members of the PNR-BAC.<sup>[9]</sup> She, however, inhibited from the PNR-BAC proceedings of the subject procurement because she is the adoptive mother of Jaewoo Chung, the Manila Liaison Officer of Pandrol Korea.<sup>[10]</sup>

Andal endorsed the BAC Resolution to the PNR Board of Directors, which approved

the same via another resolution. It was also through Andal that the PNR entered into a contract with Pandrol Korea for the supply of 170,000 sets of rail fastening system at US\$38.50 per piece or an aggregate price of US\$6,545,000.00; 50,000 pieces of rail clips at US\$3.50 per piece or an aggregate price of US\$175,000.00; and 50,000 pieces of rail nylon insulators at US\$1.00 apiece or an aggregate price of US\$50,000.00. The contract stipulated that the PNR had to open an irrevocable letter of credit (LC) in favor of and acceptable to Pandrol Korea for the amount of the items to be delivered.<sup>[11]</sup> The contract also stipulated for a delivery and payment schedule, to wit:

[(A) Item No. 1: e-AT20123 Concrete Sleeper Fastening Assembly

- (1) Delivery No. 1: 30,000 sets, in the total price of US\$1,155,000.00; deadline of delivery is 16 weeks after opening of LC;
- (2) Delivery No. 2: 60,000 sets, in the total price of US\$2,310,000.00; deadline of delivery is 16 weeks after opening of LC;
- (3) Delivery No. 3: 50,000 sets, in the total price of US\$1,925,000.00; deadline of delivery is 16 weeks after opening of LC; and
- (4) Delivery No. 4: 30,000 sets, in the total price of US\$1,155,000.00; deadline of delivery is 16 weeks after opening of LC.

(B) Item No. 2: Rail Clips and Insulators

- (1) Rail Clips: 50,000 pieces in the total price of US\$175,000.00; deadline of delivery is 16 weeks after opening of LC;
- (2) Rail Insulators: 50,000 pieces, in the total price of US\$50,000.00; deadline of delivery is 16 weeks after opening of LC.]

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5. Payment Schedule

The payment shall be made to the Supplier as herein mentioned:

- a) In general, the PURCHASER will pay the SUPPLIER the corresponding value of the number of sets of concrete sleeper fastening assembly (consisting of rail clips, rail insulators, rail pads and shoulders) to be delivered in accordance with the Delivery Schedule indicated in Item 6 below. The PURCHASER shall submit a Purchase Order for each delivery indicated in the Delivery Schedule. The

Purchase Order will indicate the expected date of delivery of the GOODS.

- b) For each scheduled payment, an advance payment equivalent to fifteen percent (15%) of the Price of the delivery shall be paid to the SUPPLIER within ten (10) calendar days from receipt of the SUPPLIER of a Purchase Order from the PURCHASER, subject to the provision of Item 5(c) below.
- c) Before the advance payment is made, the SUPPLIER shall submit to the PURCHASER a Letter of Guarantee covering the advance payment issued by a reputable local or foreign bank acceptable to the PURCHASER. This Letter of Guarantee shall be released upon presentation to the PURCHASER of the original Bill of Lading and related documents of the particular shipment of the GOODS.
- d) The payment of the remaining eighty-five percent (85%) of the amount for each delivery shall be paid to the SUPPLIER upon presentation to the advisory bank of the following shipment documents:
  - (1) Packing List;
  - (2) Bill of Lading;
  - (3) Inspection Certificate;
  - (4) Commercial Invoice;
  - (5) Authenticated Export Declaration;
  - (6) Marine Insurance Policy: at least one hundred ten percent (110%) of the total contract value of shipment and shall cease thirty (30) days after arrival of GOODS at the warehouse designated by the PURCHASER.<sup>[12]</sup>

Thereafter, Andal issued a Memorandum to petitioner as the Department Manager of Administrative and Finance, directing her to effect the payment of the peso equivalent of US\$1,155,000.00 to be charged to the Philippine Veterans Bank (PVB) Current Account No. 00501-00593-3 to cover the payment to Pandrol Korea for the importation of Pandrol rail fastening assembly. In compliance, petitioner sent a letter to the manager of PVB, Gagalangin Branch, Tondo, Manila, with the exact tenor.<sup>[13]</sup> Later, she also sent another letter to the manager of PVB requesting that the amount of P345,352.96 be debited from PVB Current Account No. 00501-00593-3 for payment of additional charges for the importation of the rail fastening assembly. In another letter, petitioner requested PVB to debit from the same account the amount of P1,561,293.26 to cover payment of customs duties and taxes.<sup>[14]</sup>

Subsequently, Andal issued another Memorandum to petitioner, directing her to effect the payment of 110% of US\$225,000.00 upon opening an LC to cover payment to Pandrol Korea for the purchase of 50,000 rail clips and 50,000 nylon insulators. It was to be charged against Philippine National Bank (PNB) Savings Account No. 41-648-8300001-5. Once again, in compliance, petitioner sent a letter to the manager of the PNB, Tutuban Branch, Tondo, Manila with the exact tenor of the directive in Andal's Memorandum.<sup>[15]</sup>

On January 12, 2016, the OMB-Field Investigation Office (FIO) filed a Complaint<sup>[16]</sup> against the members of the PNR-BAC, the PNR Board of Directors, and Jaewoo Chung for violation of Section 3(e), (g),<sup>[17]</sup> (h),<sup>[18]</sup> and (i)<sup>[19]</sup> of RA 3019 and Section 7(a)<sup>[20]</sup> of RA 6713.<sup>[21]</sup> The Complaint, insofar as petitioner is concerned, alleged that she and Andal were responsible for the unusually hasty payments to Pandrol Korea. All payments to Pandrol Korea were made in full without adhering to the 15% and 85% schedule of payments and even before Pandrol Korea issued the Letter of Guarantee, Commercial Invoice, Packing List, Bill of Lading, Inspection Certificate, Authenticated Export Declaration, and Marine Insurance Policy.<sup>[22]</sup> The Complaint also noted that the importation documents for the 30,000 sets of concrete sleeper fastening assembly showed a delivery shortage of 70,000 rail clips.<sup>[23]</sup>

After preliminary investigation, the Ombudsman issued the assailed Joint Resolution finding petitioner and five other PNR officials liable for violation of Section 3(e) of RA 3019, the dispositive portion of which reads:

**WHEREFORE,** this Office finds probable cause to indict respondent **Manuel D. Andal** for two (2) counts of violation of Section 3 (e) of Republic Act No. 3019, and respondents **Rafael G. Mosura, Jr., Edgardo R. Remonte, Jose P. Marayag, Constantino [R]. Dominguez,** and **Lynna G. Chung** for one (1) count of violation of Section 3 (e) of Republic Act No. 3019. Let the corresponding Information be filed against them before the proper court.

The charge against respondents **Michael T. Defensor, Dolores C. Aserre, Gerard L. Rabonza, Teodoro B. Cruz, Jr., Feroisa T. Concordia, Ernesto A. Nieva, Jaewoo Chung,** and **Andronica T. Roma** for violation of Section 3 (e) of Republic Act No. 3019 is DISMISSED.

The charges against **ALL** respondents for violation of Section 7 (a) of Republic Act No. 6713 and Section 3 (g), (h), and (i) of Republic Act No. 3019 are DISMISSED.

The administrative charge for Grave Misconduct against respondents **Dolores C. Aserre** and **Feroisa T. Concordia** is DISMISSED.

**SO ORDERED.**<sup>[24]</sup>

The Ombudsman held petitioner liable for violation of Section 3(e) of RA 3019 as Manager of the PNR's Administrative and Finance Department for irregularities in the payments to Pandrol Korea. Her failure to ensure that the payments were made in accordance with the terms of the contract, coupled by the fact that she is the adoptive mother of Jaewoo Chung who negotiated for Pandrol Korea, was purportedly indicative of bad faith, manifest partiality and gross inexcusable negligence in the discharge of her functions that resulted in unwarranted benefits,

advantage or preference to Pandrol Korea.<sup>[25]</sup>

Petitioner filed a motion for partial reconsideration of the Joint Resolution, but the same was denied. Hence, this present Petition.

### **PETITION BEFORE THE COURT**

In her Petition, petitioner avers that she did not act with manifest partiality, evident bad faith or inexcusable negligence and that she did not cause any undue injury to any party, including the government, or give any private party unwarranted benefits, advantage or preference. She argues further that there were no irregularities in the payments to Pandrol Korea, stressing that the mere opening of an LC did not amount to payment. Petitioner also points out that the absence of a notice of disallowance by the Commission on Audit against the payments made to Pandrol Korea indicates that the payments were, in fact, regular, necessary and lawful.

In their Comment,<sup>[26]</sup> respondents counter that the Petition is not the plain, speedy and adequate remedy in the ordinary course of law and that there is no compelling reason to deviate from the long-standing policy of non-interference with the Ombudsman's exercise of its constitutionally mandated investigatory and prosecutory powers. Respondents further argue that there is no manifest bad faith or grave abuse of discretion attendant in the filing of the indictment against petitioner before the Sandiganbayan. Neither was the preliminary investigation conducted a sham as would merit the issuance of the extraordinary writ of *certiorari* to nullify the proceedings.

Petitioner filed her Reply<sup>[27]</sup> which essentially repleads her arguments in her Petition.

### **ISSUE**

The sole issue to be resolved here is whether the Ombudsman gravely abused its discretion in finding probable cause against petitioner for violation of Section 3(e) of RA 3019.

### **RULING OF THE COURT**

The Petition is meritorious.

At the very outset, it is important to distinguish this case from the other on-going criminal proceedings related to PNR's procurement of rail fastenings, clips and insulators from Pandrol Korea and Nikka Trading through Direct Contracting.

To reiterate, there are four members of the PNR-BAC who were charged for recommending that the PNR undergo Direct Contracting with Pandrol Korea without following the requirements set forth under RA 9184, its IRR, and the General Procurement Manual.<sup>[28]</sup> Moreover, Andal was charged with two (2) counts of