

SECOND DIVISION

[G.R. No. 241152, March 09, 2020]

DON ANTONIO MARIE V. ABOGADO, PETITIONER, VS. OFFICE OF THE OMBUDSMAN AND TASK FORCE ABONO - FIELD INVESTIGATION OFFICE, RESPONDENTS.

D E C I S I O N

INTING, J.:

This is a Petition for *Certiorari* under Rule 65^[1] of the Rules of Court assailing the Order^[2] dated May 25, 2018 of the Office of the Ombudsman (Ombudsman) in OMB-C-A-13-0031 which, among others, denied Don Antonio Marie V. Abogado's (petitioner) Consolidated Motion^[3] filed on December 11, 2017.

The Consolidated Motion assailed the Decision^[4] dated July 14, 2017 of the Ombudsman which found petitioner guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service and imposing upon him the penalty of dismissal from service with cancellation of civil service eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office, and bar from taking civil service examinations.^[5]

Antecedents

As culled from the Decision of the Ombudsman dated July 14, 2017:

This case stemmed from a Complaint^[6] filed on February 8, 2013 by the Field Investigation Office (FIO) charging the following officials of the Province of Isabela with Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service: Danilo B. Tumamao (Tumamao), Pete Gerald L. Javier (Javier), William D. Nicolas (Nicolas), Dionisio E. Bala, Jr. (Bala), Alfredo B. Mendoza (Mendoza), Medardo B. Aggari (Aggari), Leticia Q. Mabbayad (Mabbayad), (collectively, respondents to the Complaint) and herein petitioner.

The charges arose from the alleged irregularities or anomalies committed in the implementation of the *Ginintuang Masaganang Ani* (GMA) Program of the Department of Agriculture (DA) under the Agriculture and Fisheries Modernization Act of 1997.^[7]

Pursuant to the GMA Program, the Department of Budget and Management (DBM) issued a Special Allotment Release Order (SARO) No. E-04-00164 for P728,000,000.00 with Notice of Cash Allocation No. 222447-I for P291,200,000.00, in the DA's favor. The DA thereafter transferred the amount of P728,000,000.00 to its Regional Field Units (DA-RFUs) through the issuance of Advice of Sub-allotment (ASA) with the corresponding Notice of Transfer Allocation (NTA) for the

implementation of the program. The amount released as Farm Input/Farm Implement Fund (FI/FI) was allocated to purchase farm inputs/farm implements for the identified proponents comprising of congressional districts or local government units (LGU).^[8]

However, from the total amount of P728,000,000.00, the amount of P5,000,000.00 was deducted by the DBM for realignment to the farm-to-market road project for the 3rd District of Bukidnon, upon the request of Juan Miguel Zubiri, who was then its representative. The amount was transferred to the Department of Public Works and Highways (DPWH). Only the amount of P723,000,000.00 was released for the GMA Program where the P23,000,000.00 was received by the Province of Isabela (LGU-Isabela).^[9]

The Municipal Mayors of Alicia, Aurora, Echague, Gamu, Maconacon, Malig, Quirino, San Mateo and Tumauini, all of LGU-Isabela, through separate letters all dated February 12, 2004, requested then DA Undersecretary Jocelyn I. Bolante (Usec. Bolante) to let the Provincial Government, through the assistance of the Office of the Provincial Agriculturist, implement the GMA Program.^[10]

Pursuant to the Memorandum dated March 17, 2004 issued by Usec. Bolante, the DA-RFU II Regional Executive Director, Gumersindo D. Lasam entered into an undated Memorandum of Agreement (MOA) with LGU-Isabela, represented by Governor Faustino S. Dy, Jr. (Governor Dy), that provided for the transfer of the P23,000,000.00 sub-allotment funds to LGU-Isabela in two tranches.^[11]

On March 18, 2004, DA Assistant Secretary Belinda A. Gonzales approved the Advice Sub-Allotment No. 101-2004-129 dated March 18, 2004 for DA-RFU II, Tuguegarao, Cagayan.^[12]

Through Land Bank of the Philippines (LBP) Check No. 960196 dated March 23, 2004, the DA-RFU II transferred to LGU-Isabela the amount of P14,950,000.00 or the 65% of the total allocation which was covered by Disbursement Voucher (DV) No. 2004-3-3766 dated March 23, 2004. As proof of receipt of the first tranche, the LGU-Isabela issued an Official Receipt (OR) No. 1805951^[13] dated March 26, 2004.^[14]

Subsequently, the second tranche was released by the DA-RFU II to LGU-Isabela through LBP Check No. 962910 dated May 7, 2004 amounting to P8,050,000.00 and supported by DV No. 2005-05-370.^[15]

The Statement of Receipts and Disbursements as of September 30, 2004 issued by the Office of the Provincial Accountant of Isabela showed that the P23,000,000.00 fund allotted to LGU-Isabela was divided into seven transactions.^[16]

The subject complaint pertained to the purchase of four units of Massey Ferguson Model 445 and four units of ACT Trailing Harrow Model 20x24 from Equity Machineries, Inc. (Equity Machineries).^[17]

In the complaint, the FIO alleged that through the undated Purchase Request (PR) No. 121-04-03-008, Tumamao requested the purchase of (a) six units of 4WD Farm

Tractor, 90HP-Massey Ferguson (farm tractors) at P1,800,000.00 per unit or a total of P11,340,000.00; and (b) six units of ACT 20x24.2 gang Trailing Harrow (trailing harrows) at P188,000.00 per unit or a total of P1,128,000.00. The grand total of the requested farm equipment amounted to P12,468,000.00. Nicolas certified the availability of funds. Governor Dy approved the undated PR and the corresponding Purchase Order (PO) No. 04-03-008^[18] addressed to Equity Machineries.^[19]

The undated Equity Machineries Delivery Receipt (DR) No. 43283,^[20] the Certificate of Acceptance^[21] dated April 28, 2004 of Governor Dy, and the undated Certificate of Inspection^[22] signed by Aggari, Mendoza, Tumamao, Nicolas and Nestor O. Salvador, Provincial Planning and Development Officer showed that only four units of farm tractors and four units of trailing harrows were delivered to and inspected by LGU-Isabela.^[23]

Governor Dy certified and approved the May 7, 2004 DV No. 302-04-03-00187 which allowed the payment of P8,009,745.45, net of tax, for the equipment. While Javier and Nicolas, acting as provincial accountant and provincial treasurer, respectively, signed the DV. Governor Dy and Nicolas issued the May 7, 2004 LBP Check No. 0000233300^[24] in the amount of P8,009,745.45, net of tax. As proof of receipt, Equity Machineries issued the undated Sales Invoice (SI) No. 66455^[25] and OR No. 182268.^[26]

Based on the Certification^[27] dated March 30, 2004 issued by the Pre-Qualification, Bids and Awards Committee (PBAC), as approved by Governor Dy, the award for the procurement of land preparation equipment, which consisted of the six units of farm tractors and six units of trailing harrows was given to Equity Machineries based on the lowest bid during the public bidding conducted on March 18, 2004. The PBAC was composed of Bala as chairman, and Mendoza, Tumamao, Aggari, Mabbayad and petitioner as members.^[28]

The FIO pointed out the irregularities attending the transaction between LGU-Isabela and Equity Machineries, citing the October 28, 2004 Commission on Audit (COA)-Audit Observation Memorandum (AOM) No. 2004-030^[29] and the January 18, 2007 Sworn Statement^[30] of Beatris A. Pataueg (Pataueg), COA State Auditor IV, to wit: (a) the four units of farm tractors and four units of trailing harrows were purchased through direct contracting with Equity Machineries instead of via public bidding; (b) the alleged public bidding was conducted on March 18, 2004 or prior to the execution of the MOA on March 19, 2004 between DA-RFU II and LGU-Isabela, and the receipt by the latter of the P14,950,000.00 initial fund on March 23, 2004; (c) no bidding documents duly authenticated by the PBAC was submitted; (d) the purchased farm tractors and trailing harrows were not among the farm inputs, farm implements and facilities enumerated in the Letter dated November 14, 2005 of Frisco M. Malabanan, National Coordinator, GMA Rice Program, DA; and (e) the memorandum receipts issued to four *barangay* captains of Cauayan, Isabela did not specify the purpose or reason for the distribution of the farm tractors and trailing harrows.^[31]

Thus, the charge against the respondents to the Complaint, including petitioner, for Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best interest of the

Service.

For his defense, petitioner clarified that the bidding conducted on March 18, 2004 was for the Grains Highway Project of LGU-Isabela using the loan from the DBP. The corresponding publication for the bidding was published in February 6 and 13, 2004 issues of the *Philippine Daily Inquirer* (PDI).^[32]

Petitioner asserted that no public bidding was conducted on March 18, 2004 for the implementation of the FI/FI Program with ASA No. 101-2004-129 as the fund was only transferred by the DA to LGU-Isabela on March 22, 2004; and that it was impossible for the PBAC to conduct a public bidding earlier than the receipt or availability of funds. In fact, as shown in LGU-Isabela's OR No. 1805951 dated March 26, 2004, the GMA fund was only transferred to LGU-Isabela on March 26, 2004.^[33]

To bolster his claim, petitioner noted the following: (1) the differences in the engine and serial numbers for the delivered farm tractors and trailing harrows for the GMA Program and that for the Grains Highway Project; (2) the PO numbers, invoices and ORs of Equity Machineries for the two projects are different; (3) the words *General Fund-Loan/DBP* were stamped in all documents for the Grains Highway Projects, while for the GMA Program; the words *Trust Fund-NALGU* were stamped.^[34]

Petitioner averred that he did not conspire with his co-respondents; that LCU-Isabela cleared him of any accountability when he left after Governor Dy lost in the 2004 elections; that he used the clearance issued by the office when he re-entered government service in 2005; and that the act complained of was more than eight years ago.^[35]

Ruling of the Ombudsman

On July 14, 2017, the Ombudsman rendered the assailed Decision^[36] finding all the respondents to the Complaint, including herein petitioner, guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service. The Ombudsman found that respondents to the Complaint, in the discharge of their official administrative functions, exhibited evident bad faith, manifest partiality, and gross inexcusable negligence when they gave Equity Machineries unwarranted benefit, advantage, and preference because of their failure to conduct public bidding in the procurement of the farm tractors and trailing harrow. Consequently, the purchase of four units of MF445 Massey Ferguson 4WD Farm Tractor and four units of ACT 20x24 Trailing Harrow was not only irregular, but was a clear violation of the provisions of Section 10, Article IV of RA 9184, causing undue injury to the government.^[37] Thus, the Ombudsman ruled:

For failing to observe the due care and vigilance expected of them in the discharge of their respective duties, and for intentionally distorting the truth in the procurement documents which shows their lack of interests and disposition to cheat, respondents Tumamao, Javier, Nicolas, Bala, Mendoza, Aggari, Mabbayad, and [petitioner] committed a flagrant breach thereof, to the serious damage of the government and the public in general.^[38] (Emphasis and italics omitted.)

In this regard, the Ombudsman imposed upon the respondents to the Complaint, including petitioner, the penalty of dismissal from the service with cancellation of civil service eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.^[39]

On December 11, 2017, petitioner filed a Consolidated Motion^[40] dated October 30, 2017 invoking a speedy disposition of his case and praying for the dismissal by the Court of similar cases due to inordinate delay; that, as a PBAC member, his function was only necessary when PBAC was called upon to convene. He alleged that PBAC faithfully and officiously dispensed its duty and nothing anomalous or irregular was uncovered, and that should there be irregularities in the project, he had no idea or knowledge or participation thereof. Hence, he prayed, among others, that the Decision dated July 14, 2017 be reconsidered and modified or set aside particularly reversing the adverse findings against him and to absolve him from any administrative or criminal liability.^[41]

On May 25, 2018, the Ombudsman issued the assailed Order^[42] denying, among others, the motion filed by petitioner and stating that the latter failed to submit a newly-discovered evidence which would materially alter the findings of the Ombudsman; and that petitioner failed to establish that grave errors of facts or laws or serious irregularities had been committed that are prejudicial to their interest.

Issue

Did the Ombudsman err in finding petitioner guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service in connection with the alleged irregularities/anomalies committed in the implementation of the GMA Program in the LGU-Isabela?

Petitioner maintains that, being the provincial legal officer of Isabela, he cannot be held liable.^[43] His function was only necessary when the PBAC was called to convene upon request of the personnel in charge of the procurement.^[44] Thus, as to the alleged irregularities in the GMA Program, he denies having any idea, knowledge, or participation therein. Consequently, petitioner alleges that to implicate or charge the members of the PBAC, including himself, with any administrative and criminal offense will be the height of injustice.^[45]

Also, petitioner stresses that there is no *prima facie* case against him for dishonesty, gross misconduct, and conduct prejudicial to the best interest of the service.^[46] He argues that the element of dishonesty is missing and not shown by the Ombudsman,^[47] that he did not make false statements or deceitful report relative to the GMA Program;^[48] and that because of his admission that there was no bidding conducted on the GMA Program, he claims that it even strengthened the evidence of the Ombudsman.^[49]

Further, petitioner avers that he had adduced more than substantial evidence and legal arguments to prove his innocence to the charges filed against him saying that it is clear that there were two purchases that were undertaken by the LGU-Isabela in the year 2004—first, that which pertains to the Isabela Grains Highway Project, which was a subject of the public bidding held on March 18, 2004 and to which