

## SECOND DIVISION

[ G.R. No. 225718, March 04, 2020 ]

**JOSE M. ROY III, PETITIONER, V. THE HONORABLE  
OMBUDSMAN, CONCHITA CARPIO MORALES AND FIELD  
INVESTIGATION OFFICE, OFFICE OF THE OMBUDSMAN AS  
REPRESENTED BY LUISITO S. SUAREZ, RESPONDENTS.**

### DECISION

**A. REYES, JR., J.:[\*]**

In this Special Civil Action for *Certiorari*<sup>[1]</sup> under Rule 65 of the Rules of Court filed on August 2, 2016, petitioner seeks that a Temporary Restraining Order or a Writ of Preliminary Injunction be issued, restraining the filing of an information against him and that the Resolution<sup>[2]</sup> of the Ombudsman dated November 9, 2015 and the Joint Order<sup>[3]</sup> dated April 29, 2016 be reversed and set aside for being issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

#### The Factual Antecedents

In January 2006, Domingo B. Nunez (Dean Nuñez), the former dean of the Pamantasan ng Lungsod ng Maynila (PLM), requested the purchase of a vehicle intended for the use of the PLM-Open University Distance Learning Program with the following specifications:

Vehicle, 10-seater, equipped with D4BH 2476 cc diesel engine turbo intercooler; maximum power 145 @ 2500 rpm; GVW 2512 kg; 5-speed manual transmission; power/tilt steering, windows, side mirrors; glass antenna; door locks; premium stereo with 6-speakers; dual aircon/heater; driver side airbag; keyless entry with alarm; automatic lights; digital odometer; 2-tone paint with side garnish; rear spoiler with break light; back-up warning sensor; rear wiper/washer; rotating seat (2<sup>nd</sup> row) with arm rests; ABS with 4 wheel disc brakes; 205 wide tires with aluminum 15" wheels.

Dimensions of:	Exterior:	Interior:
Overall length	4695 mm	2835 mm
Overall width	1820 mm	1605 mm
Overall height	1685 mm	1240 mm <sup>[4]</sup>

On January 19, 2006, then PLM President Benjamin G. Tayabas (President Tayabas) approved the request.<sup>[5]</sup>

Supply Officer Alfredo C. Ferrer (Ferrer), Jr., on February 13, 2006, told President Tayabas that only a Hyundai Starex van had the requirement of the requested vehicle and therefore suggested buying the same. Dean Nuñez subsequently prepared the Purchase Application, which was accepted by President Tayabas. Angelita G. Solis (Solis), Vice President for Finance and Planning, certified that the funds were available. A favorable recommendation was given by Atty. Lawrence Villanueva on the application and directed the Bids and Awards Committee (BAC) to determine the applicability of an alternative method of procurement.<sup>[6]</sup>

Nevertheless, as early as February 10, 2006, the sum of the equivalent cash price of a Hyundai Starex or P1,168,000.00 was already allocated, as shown in the Budget Utilization Slip (BUS) before the BAC, by means of pre-procurement conference, wherein the budget for the purchase of the vehicle was calculated and approved.<sup>[7]</sup>

The vehicle's procurement was not reported nor advertised as per Republic Act (R.A.) No. 9184. Alternatively, Ferrer demanded and obtained their cost quotes for the requested vehicle from a few car dealers. Several suppliers or dealers then submitted their quotations and during the meeting of the BAC, composed of Solis, Felix F. Aspiras, Albert S. Dela Cruz, and Eloisa M. Macalinao, Ferrer, reiterated that only Hyundai Starex van had qualified and suggested that the procurement be done through direct contracting instead of public bidding.<sup>[8]</sup>

On February 24, 2006, petitioner was appointed as the Acting President of PLM with full exercise of all rights, powers, functions, and authority thereunto appertaining.<sup>[9]</sup> Thereafter, on May 10, 2006, the members of the BAC met to evaluate the quotations submitted to them and they decided to purchase the van from Hyundai Otis.<sup>[10]</sup> In Resolution No. 09-G-06, dated May 17, 2006, the BAC recommended direct contracting as an alternative mode of procurement in lieu of public bidding which was signed by petitioner, who was then the acting president of PLM.<sup>[11]</sup>

The petitioner, on May 18, 2006, signed the Purchase Order of the purchase of the Starex van at Hyundai Quezon Avenue, Quezon City.<sup>[12]</sup> Eventually, the vehicle was purchased from Hyundai Quezon Avenue as provided in the Disbursement Voucher, and Check No. 890045, both dated June 6, 2006.<sup>[13]</sup>

The Commission on Audit (COA) issued a Notice of Suspension of the purchase of the Starex van by the PLM on March 29, 2010, the document contained the following:

- (a) The Board of Regents (BOR) as Head of the Procuring Entity (HOPE) of the PLM did not approve any (i) contract, (ii) authority of the award of the contract to Hyundai Otis, (iii) Annual Procurement Plan (APP) pursuant to Section 7, RA 9184, and (iv) authority to resort to alternative modes of procurement (direct contracting) *in lieu* public bidding, as required under Section 48 of R.A. No. 9184;
- (b) The conditions stated under BAC Resolution No. 09-G-06 for direct contracting is not in accordance with Section 50, RA 9184, considering that "Hyundai Otis is not an exclusive dealer or manufacturer of the motor vehicle that was purchased [and] there are other Hyundai dealers in the market"; and

- (c) Although the recommendation for the purchase of the motor vehicle per BAC Resolution No. 09-G-06 was Hyundai Otis, premised on its accessibility to PLM and as a goodwill gesture for being a favored taxpayer in Manila, documents showed that the purchase was made at Hyundai Quezon Avenue, Inc., Quezon City<sup>[14]</sup>

The Field Investigation Office (FIO) of the Office of the Ombudsman, on August 7, 2013, instituted a complaint against the petitioner and other PLM officials to hold them criminally and administratively liable for grave misconduct, conduct prejudicial to the best interest of the service, gross neglect of duty, inefficiency, and incompetence, as well as violation of R.A. No. 9184<sup>[15]</sup> and Section 3(e) of R.A. No. 3019.<sup>[16]</sup>

The FIO argued that the vehicle should have undergone public bidding because Hyundai Otis was not an exclusive dealer or manufacturer of the Hyundai Starex and it was done without getting authorization from the Board of Regents. Furthermore, it noted that the COA also issued a Notice of Suspension dated March 29, 2010, which specified that there might have been irregularities committed in the procurement of the vehicle. It also discovered that there was no Annual Procurement Plan prepared for 2006.<sup>[17]</sup>

The other PLM officials, except the petitioner, submitted their counter-affidavits and argued that the procurement of the vehicle was in accordance with the Government Procurement Reform Act (GPRA).<sup>[18]</sup>

On November 9, 2015, the Ombudsman issued a Resolution finding probable cause to indict petitioner and his co-respondents for violation of Section 3(e) of R.A. No. 3019. The dispositive portion of the assailed Resolution reads:

**FOREGOING CONSIDERED**, this Office finds probable cause to indict respondents **BENJAMIN G. TAYABAS, DOMINGO B. NUÑEZ, ANGELITA G. SOLIS, JOSE M. ROY III, ELOISA M. MACALINAO, ALFREDO C. FERRER, JR., CECILIA L. CALMA, ANGELES C. RAMOS, LAWRENCE VILLANUEVA, FELIX F. ASPIRAS, ALBERT S. DELA CRUZ, JUSTINA A. BONTUYAN, and VIRGINIA N. SANTOS** for violation of Sec. 3(e) of R.A. 3019. Accordingly, let the corresponding Information be filed with the appropriate court.

x x x x

SO ORDERED.<sup>[19]</sup> (Emphasis in the original)

On November 23, 2015, COA issued a Notice of Settlement of Suspension/Disallowance/Charge (NSSDC), which pronounced as settled the earlier suspension of PLM's purchase of the Starex van. Petitioner, armed with the NSSDC as newly discovered evidence, filed motions for reconsideration/reinvestigation of the assailed Resolution and the Decision. However, the Ombudsman, subsequently denied it through a Joint Order dated April 29, 2015.

The present petition seeks to annul the Resolution dated November 9, 2015 and Joint Order dated April 29, 2016 of the Ombudsman in the criminal case.

Acting on the Court's Resolution,<sup>[20]</sup> dated August 15, 2016, the Office of the Solicitor General (OSG) filed its Manifestation and Motion (In Lieu of Comment).<sup>[21]</sup> Therein, the OSG recommended that the Court grant the instant Petition and that the criminal case against the petitioner be dismissed for want of probable cause.<sup>[22]</sup> The Court noted the OSG's manifestation and ordered the petitioner to file a Reply.<sup>[23]</sup>

The petitioner filed his Comment (to the Manifestation of the Office of the Solicitor General)<sup>[24]</sup> on July 24, 2018, praying that the Court adopts the Manifestation of the OSG and for the Court to issue a writ of *certiorari* setting aside and terminating any proceedings before the Sandiganbayan relative to OMB-C-C-13-0235.<sup>[25]</sup>

### **The Issue**

WHETHER THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING PROBABLE CAUSE TO INDICT PETITIONER FOR VIOLATION OF SECTION 3(E) OF R.A. NO. 3019<sup>[26]</sup>

### **The Court's Ruling**

*We grant the petition.*

*The second and third elements of Section 3(e) of R.A. No. 3019 are lacking.*

Section 3(e) of R.A. No. 3019 provides:

Sec. 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:

xxxx

(e) Causing any undue injury to any party, including the government, or giving any private party any unwarranted benefits, 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.

In *Garcia, et al. v. Sandiganbayan, et al.*,<sup>[27]</sup> the Court ruled that the elements of the above offense are as follows: (a) the accused must be a public officer discharging administrative, judicial, or official function; (b) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and (c) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.<sup>[28]</sup>

Here, it is indisputable that the first element is present, petitioner being the acting president of PLM. However, the second and third element are lacking. The second

element refers to the three modes by which the offense may be committed, by: (a) manifest partiality (b) evident bad faith, or (c) gross inexcusable negligence. In *Coloma, Jr. v. Sandiganbayan et al.*,<sup>[29]</sup> the Court defined the foregoing terms as follows:

Partiality "is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." Gross negligence has been so defined as negligence characterized by the want of even slight care, 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 consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.<sup>[30]</sup> (Citation omitted)

Otherwise stated, "manifest partiality" is present when there is a clear, notorious, or plain inclination or predilection to support one side or person rather than another. On the other hand, "evident bad faith" means 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 favorably operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.<sup>[31]</sup>

After a careful perusal of the records of the case, the Court finds that the acts of the petitioner do not manifest partiality. First, the contents of BAC Resolution No. 09-G-06 already contained a list of selected dealers. Petitioner himself did not have any participation in the procurement proceedings nor in the actual selection of said dealers. His participation was limited to the approval of the recommendation of the PLM BAC.

In *Sistoza v. Desierto*,<sup>[32]</sup> the Court discussed at length how misguided it would be to ascribe fraudulent and corrupt intent, solely on the basis of a signature on a purchase order. It categorically rejected the contention that the mere act of affixing one's signature, even if coupled with repeated endorsement of the award to the bidder who did not offer the lowest price, is a clear sign of evident bad faith, *to wit*:

We disagree with the conclusions of the Office of the Ombudsman. We have meticulously analyzed the arguments raised by the parties in the various pleadings and motions, together with their documentary evidence, which all formed the basis for the issuance of the questioned resolutions, and we are convinced that no probable cause exists to warrant the filing of charges against petitioner Sistoza for violation of Sec. 3, par. (e), RA 3019.

x x x x

Simply alleging each or all of these methods is not enough to establish probable cause, for it is well settled that allegation does not amount to proof. Nor can we deduce any or all of the modes from mere speculation or hypothesis since good faith on the part of petitioner as with any other