

# FIRST DIVISION

[ G.R. No. 238014, June 15, 2020 ]

**FELIPE P. SABALDAN, JR., PETITIONER, VS. OFFICE OF THE OMBUDSMAN FOR MINDANAO AND CHRISTOPHER E. LOZADA, RESPONDENTS.**

## DECISION

**REYES, J. JR., J.:**

This is a Petition for *Certiorari*<sup>[1]</sup> under Rule 65 of the Rules of Court which seeks to set aside the Resolution<sup>[2]</sup> dated March 20, 2017 and the Joint Order<sup>[3]</sup> dated October 13, 2017 of the Office of the Ombudsman (Ombudsman) in OMB-M-C-15-0392-D, which, respectively, found probable cause against Felipe P. Sabaldan, Jr. (petitioner) for violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as The Anti Graft and Corrupt Practices Act, and denied the motion for partial reconsideration thereon.

### The Facts

On November 9, 2015, Christopher E. Lozada (Lozada) filed before the Office of the Deputy Ombudsman for Mindanao a Complaint-Affidavit<sup>[4]</sup> accusing Mayor Librado C. Navarro (Mayor Navarro) of Bislig City, Surigao del Sur of the following: (1) failing to implement the Sikahoy-Pamaypayan Road rehabilitation project; (2) leasing a commercial building without the approval of the Sangguniang Panlungsod; (3) maintaining ghost employees in the City Government of Bislig; (4) failing to account for the P2,200,000.00 allotted for the construction of Poblacion Boulevard in Poblacion, Bislig City; (5) hosting radio and television programs that advance his personal interests; (6) distributing rice with substandard quality in the implementation of the City Social Welfare Development's feeding program; (7) allocating the amount of P400,000.00 for a poultry house livelihood project that did not materialize; (8) occupying two residential units under the housing project of the provincial government for his personal use; and (9) failing to observe the procurement rules in purchasing a hydraulic excavator.

Lozada alleged that the City Government of Bislig purchased from RDAK Transport Equipment, Inc. (RDAK) a Komatsu PC200-8 crawler-type hydraulic excavator worth P14,750,000.00. He maintained that the purchase was disadvantageous to the government since the bid price of the Kobelco SK200-8 model offered by JVF Commercial International Heavy Equipment Corp. (JVF) was substantially lower by P4,214,000.00. This notwithstanding, Mayor Navarro approved the recommendation of the Bids and Awards Committee (BAC) to award the contract to RDAK.

The Ombudsman included as respondents herein petitioner in his capacity as General Services Officer/BAC Member, City Administrator/BAC Chairman Charlito R. Lerog, City Treasurer/BAC Member Roberto V. Viduya, City Planning Development Coordinator/BAC Member Aprodecio A. Alba, Jr., Officer-in-Charge City Budget

Office/BAC Member Belma K. Lomantas, Officer-in-Charge, City Engineer's Office/BAC Member Lorna S. Salgado, City Legal Officer/BAC Member Daisy A. Ronquillo, City Accountant/Technical Working Group (TWG) Chairperson Raquel L. Bautista, TWG Members Gilbert P. Abugan, Laila P. Manlucob and Estefa R. Mata, and Cesar B. Ner, authorized representative of RDAK Transport Equipment Inc. (RDAK), (collectively referred to as respondents *a quo*). In an Order dated November 23, 2015, petitioner and his co-respondents *a quo* were directed to submit their respective counteraffidavits, to which they complied.

Petitioner and his co-respondents *a quo* argued that the City Government of Bislig requested for an inspection of RDAK's hydraulic excavator from COA State Auditor III Cipriano C. Sumabat. In the Inspection Report for Equipment and Facilities dated March 7, 2012, State Auditors Santiago O. Burdeos and Celso U. Reyes and Chief Technical Audit Specialist Junrey E. Labatos stated that RDAK's hydraulic excavator conformed to the specifications provided in the approved purchase order. Thus, petitioner and his co-respondents were surprised that the COA made a conflicting report which was the basis for its issuance of the Notice of Disallowance. They then filed a Petition for Review with the COA to challenge said conflicting audit reports.<sup>[5]</sup>

In a Resolution dated March 20, 2017, the Ombudsman found probable cause for violation of Section 3(e) of R.A. No. 3019 in relation to the procurement of RDAK's hydraulic excavator against petitioner and his co-respondents *a quo*. The Ombudsman, however, dismissed the charges for violation of Section 3(g) of R.A. No. 3019 and for malversation of public funds. The Ombudsman held that RDAK did not comply with Section 25 of the Revised Implementing Rules and Regulations (IRRs) of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act which requires bidders to submit, among others, the technical specifications of the product they are offering. But despite this non-compliance, the BAC passed RDAK's bid and included it in the post-qualification.

Petitioner and his co-respondents filed their Joint Motion for Partial Reconsideration<sup>[6]</sup> but the same was denied in a Joint Order dated October 13, 2017.

Hence, the instant petition for *certiorari* filed by petitioner ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Ombudsman in finding probable cause for violation of Section 3(e) of R.A. No. 3019.

### **Our Ruling**

The petition is meritorious.

Sections 12 and 13, Article XI of the 1987 Constitution provide:

SEC. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and results thereof.

SEC. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

x x x x

Meanwhile, Section 15 of the Ombudsman Act of 1989 states:

SEC. 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of government, the investigation of such cases[.]

x x x x

It is clear from the foregoing legal provisions that the Ombudsman is given a wide latitude and discretion to act on criminal complaints against public officials and government employees.<sup>[7]</sup> It has the constitutional and statutory mandate to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and to decide whether or not to file the corresponding information with the appropriate court.<sup>[8]</sup> Thus, the Court has consistently refrained from interfering with the Ombudsman's determination of the existence of a probable cause. We have repeatedly explained:

[T]his Court's consistent policy has been to maintain noninterference in the determination of the Ombudsman of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. This observed policy is based not only on respect for the investigators and prosecutors powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the Court will be seriously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped with cases if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.<sup>[9]</sup> (Underscoring and citation omitted)

It is only when the finding of probable cause, or the lack of it, is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction can the Court step in and substitute our judgment for that of the Ombudsman. Conversely, absent a clear showing of grave abuse of discretion, the court cannot review and set aside the finding of the presence or absence of probable cause which is a task that properly belongs to the Ombudsman alone.

Petitioner stands charged for violation of Section 3(e) of R.A. No. 3019. The law 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:

x x x x

(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.

The elements of the offense are: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.<sup>[10]</sup>

The offense under Section 3(e) may be committed in three ways. There is "**manifest partiality**" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are."<sup>[11]</sup> **Evident bad faith**, on the other hand, pertains to bad judgment as well as palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse or ill will.<sup>[12]</sup> **Gross inexcusable negligence** is that negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.<sup>[13]</sup>

The March 20, 2017 Resolution of the Ombudsman failed to sufficiently show that, more likely than not, petitioner in his capacity as BAC member acted with manifest partiality, evident bad faith or gross inexcusable negligence in recommending the award of the procurement contract to RDAK.

The Ombudsman declared:

It is worthy to note that respondent Ner of RDAK did not indicate in his bid the specifications unique to the Komatsu unit he was offering. He merely copied the procuring entity's product specifications as reflected in its Purchase Request (PR) and Request for Quotation (RFQ). For example, instead of stating the unit's exact operating weight of 19,500 kgs., RDAK merely stated "with an operating weight of no less than 19,000 kg." RDAK thus did not comply with Section 25 of the Revised Implementing Rules and Regulations of R.A. No. 9184 which clearly requires bidders to submit, among others, the technical specifications of the product they are offering. Despite this non-compliance, however, the BAC passed RDAK's bid and included it in the post qualification.