

FIRST DIVISION

[G.R. No. 184785, July 09, 2014]

**RUBY P. LAGOC, PETITIONER, VS. MARIA ELENA MALAGA,
OFFICE OF THE OMBUDSMAN AND THE OFFICE OF THE DEPUTY
OMBUDSMAN (VISAYAS), RESPONDENTS.**

[G.R. NO. 184890]

**LIMUEL P. SALES, PETITIONER, VS. MARIA ELENA MALAGA,
OFFICE OF THE OMBUDSMAN AND THE OFFICE OF THE DEPUTY
OMBUDSMAN (VISAYAS), RESPONDENTS.**

D E C I S I O N

VILLARAMA, JR., J.:

Before the Court are the consolidated petitions for review filed by Ruby P. Lagoc (Lagoc) and Limuel P. Sales (Sales) which seek to reverse and set aside the Decision^[1] dated January 24, 2008 of the Court of Appeals (CA) - Cebu City in CA-G.R. SP No. 00837 affirming the Decision^[2] dated September 18, 2002 of respondent Deputy Ombudsman for the Visayas in OMB-VIS-ADM-2001-0408, and Resolution^[3] dated September 8, 2008 denying their motion for reconsideration.

The present controversy stemmed from the implementation of two projects undertaken by the Department of Public Works and Highways (DPWH) through the Iloilo City District Engineering Office: (1) Construction of Skywalk/Overpass from Iloilo Supermart to Mercury Drugstore, Valeria St., Iloilo City in the amount of P2,000,000.00; and (2) Construction of Skywalk/Overpass from SM Shoemart to Mercury Drugstore, Delgado St., Iloilo City in the amount of P3,500,000.00. The funds for the said project were provided under Republic Act (R.A.) No. 8760 otherwise known as the "General Appropriations Act, FY 2000," and was released under SARO No. BMB-A-00-0420.

On July 20, 2001, private respondent Maria Elena Malaga filed a Complaint-Affidavit^[4] before the Office of the Ombudsman-Visayas (OMB-Visayas) against Wilfredo Agustino (Regional Director), Vicente M. Tingson, Jr. (OIC District Engineer), Reynold Soldevilla (Bids and Awards Committee [BAC] Chairman), Assistant District Engineer Sales (BAC Chairman for materials and equipment), Rodney Gustilo (BAC Member), Elizabeth H. Gardose (BAC Member), Project Engineer Ruby P. Lagoc (BAC Member), Fema G. Guadalupe (Supply Officer) and Blanca O. Pagal (Accountant III).

Malaga accused the above-named officials and employees of violating established rules and regulations, making it appear that there was open, public and competitive bidding for the materials and equipment needed for the skywalk construction projects to ensure that their favored contractor, Helen Edith Tan of IBC Int'l. Builders

Corp. (IBC) got the projects. This was evident from the following: (1) the Invitation to Bid for the supply of materials and lease of equipment was not actually published or advertised; (2) said invitation to bid and the three sets of bid tenders (IBC, PKG and VN Grande) were prepared with prior knowledge that the award will go to IBC; (3) the unit bid prices for each and every article and the rental rate for each and every equipment quoted by IBC were *exactly the same* as the unit prices appearing in the Program of Work or Approved/Calculated Agency Estimate (AAE), thus indicating collusion with the other two bidders whose bid offers were all slightly higher than that of IBC; the submission of bids identical to AAE/Program of Work manifestly indicates rigging and is a ground for the blacklisting of contractors under the Construction Industry Authority of the Philippines guidelines; (4) the winning bidder, IBC, is a licensed contractor classified as Large B in Roads and Bridges, and hence it is no longer allowed to undertake roads and bridges projects with an appropriation of P3 million and below; if the project was implemented by straight contract, IBC would not be pre-qualified, a fact known to Tingson and his accomplices, and the only way for the project to be "given" to IBC was by resorting to the "by administration" scheme; (5) the "pakyaw" laborers hired for the projects were not independent contractors but actually just dummies for Helen Edith Tan who actually pays for their wages; (6) Tingson and his accomplices had agreed that no actual publication would be done to eliminate the possibility of other contractors seeing the invitation to bid, in collusion with the publishers who were officially paid for services not rendered and who even received additional payments from the favored contractor; such illegal act constitutes swindling or estafa under Article 315 of the Revised Penal Code, as amended; and (7) Tingson entered into a fictitious contract with the publishers which was manifestly and grossly disadvantageous to the Government, in violation of Section 3(g) of the Anti-Graft and Corrupt Practices Act.

In her Counter-Affidavit,^[5] Lagoc stated that as a matter of practice in their office, a project engineer automatically becomes a provisional member of the BAC and hence she merely acted as such provisional BAC member. She said that her main job was to prepare the program of works of the subject projects and upon completion forward copies thereof to the Assistant District Engineer and District Engineer for approval. After approval, she furnishes a copy each to the Resident Auditor, Supply Officer and Accountant. She thus claimed that "any activity relative to the bidding process is beyond [her] job" and that she really wondered why she was included in the complaint.

On his part, Sales together with Gardose, contended that the decision to implement the skywalk projects by administration was made after evaluation of the provision of the law (R.A. No. 8760) where the funds therefor were provided, and also to generate savings with the elimination of "contractor's profit" in the preparation of the program of work. He likewise averred that the invitation to bid was duly published in *The Visayan Tribune* and *The Visayas Examiner* on March 5-11, March 12-18, 2001 and February 19 and 26, 2001, respectively, attaching photocopies of these publications to his counter-affidavit. The fact of publication was supported by Publisher's Affidavit, contrary to Malaga's insinuations. He further claimed that when the bids were opened, IBC's tendered offer was below the AAE; IBC passed the post-evaluation/qualification made by the BAC; and it is not unusual that the bid of the winning bidder may jibe with the AAE because the cost reflected therein is based on the rental rates prescribed by the Association of Carriers and Equipment Lessor (ACEL) in relation/compliance with Department Order No. 58, Series of 1999 issued

by the DPWH Secretary. He stressed that Malaga filed her complaint in retaliation against Tingson who filed a criminal complaint for falsification of public documents against her.^[6]

During the preliminary conference held on May 9, 2002, the parties through their respective counsel, agreed to submit the case for decision on the basis of the evidence on record and position papers/memoranda.

In a Decision dated September 18, 2002, the public respondent Deputy Ombudsman for Visayas Primo C. Miro found substantial evidence of Misconduct against Tingson, Sales, Gardose and Lagoc, and accordingly recommended that the penalty of one year suspension without pay be imposed on them. On the other hand, the complaint against Agustino, Soldevilla and Gustilo were recommended to be dismissed for lack of sufficient evidence. Then Ombudsman Simeon V. Marcelo approved the recommendation but modified the offense and penalty to Grave Misconduct and dismissal from the service for Tingson, Sales, Gardose and Lagoc.

Petitioners along with Gardose appealed to the CA which affirmed the Ombudsman's findings of fact and conclusions. The CA held that the Ombudsman correctly concluded that petitioners committed grave misconduct when they conducted the bid process of and awarded the subject contracts without compliance with the mandatory twin-publication requirement. It likewise disagreed with petitioners' claim that the Ombudsman failed to consider their evidence as they could have presented whatever evidence they had during the preliminary conference or attach it to their memorandum.

Their motion for reconsideration having been denied by the CA, petitioners filed their respective petitions before this Court.

As condensed from petitioners' arguments, the main issues to be resolved are (1) whether the Ombudsman's finding of irregularities in the bidding for the equipment and materials for the skywalk projects was based on substantial evidence, and (2) whether the Ombudsman correctly concluded that petitioners conspired to rig the bidding in favor of IBC, the winning bidder.

We deny both petitions.

By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition. Another self-evident purpose of public bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.^[7]

Presidential Decree (PD) No. 1594^[8] established a set of rules and regulations to ensure competitive public bidding for construction projects. The Implementing Rules and Regulations^[9] (IRR) of said law mandates the publication of the invitation to pre-qualify/bid, viz:

IB 3 - INVITATION TO PREQUALIFY/APPLY FOR ELIGIBILITY AND TO BID

1. For locally funded contracts, contractors shall be invited to apply for eligibility and to bid through:
 - a. for contracts to be bid costing P5,000,000 and below or for contracts authorized to be bid by the regional/district offices involving costs as may be delegated by the head of office/agency/corporation, **the invitation to bid shall be advertised at least two (2) times within two (2) weeks in a newspaper of general local circulation in the region where the contract to be bid is located**, which newspaper has been regularly published for at least six (6) months before the date of issue of the advertisement. During the same period that the advertisement is posted in the newspaper or for a longer period determined by the head of the office/agency/corporation concerned, the same advertisement shall be posted in the website of the office/agency/corporation concerned and at the place reserved for this purpose in the premises of the office/agency/corporation concerned. In addition to the foregoing, the invitation may also be advertised through other forms of media such as radio and television, provided that based on the agency's short list of contractors or referral within the Philippine contractors accreditation board, there are at least four contractors indigenous to the region duly classified and registered to undertake such contracts. The advertisement may likewise be made in a newspaper of general nationwide circulation as defined in the foregoing when there is evident lack of interest to participate among the region-based contractors. (Emphasis supplied.)

In this case, the Ombudsman found discrepancies in the evidence presented by the complainant (Malaga) and petitioners to prove compliance with the publication requirement. That petitioners submitted mere photocopies of the issues of *The Visayan Tribune* and *The Visayas Examiner* added credence to the Ombudsman's conclusion that petitioners were covering up for their omission as the invitation to bid for the materials and equipment was actually never published. We quote the Ombudsman's finding on this matter:

...there is strong evidence that the requisite Invitations to Pre-qualify and to Bid were not actually published in violation of existing rules and regulation, specifically the Implementing Rules and Regulations of E.O. No. 302. Contrary to herein respondents' assertions that such invitations were published in the March 5-11, 2001 and March 12-18, 2001 issues of *The Visayan Tribune* and the February 19 and 26, 2001 issues of *The Visayas Examiner*, the evidences on record tend to show otherwise. Not only that copies of said newspaper issues submitted in evidence by the complainant carried nothing about the said Invitation (Annexes "K", "L", "M" & "N", Complaint, supra), copies of same newspaper issues submitted in evidence by the respondents betrayed efforts of manipulation to make it appear that said invitations were therein

published, when in truth and in fact there really was no publication made (Annexes "A", "B", "C" & "D", Counter-Affidavit of Limuel P. Sales, et al., supra).

The March 5-11, 2001 issue of The Visayan Tribune submitted in evidence by herein respondents Engineer III Limuel P. Sales and Administrative Officer III Elizabeth H. Gardose, which is stamped "certified xerox copy", clearly shows that the subject Invitation to Bid was only added and superimposed the original news item entitled "Eminem, Robbie Williams win big British Pop Awards" (as shown by a copy of the same newspaper issue, page 4 thereof, submitted by the complainant), which apparently was purposely deleted. Unfortunately for the respondents, they failed to delete the continuation of that news item on page 5 thereof, which still carries the abbreviated sub-headline "Eminem, Robbie Williams..." , thus exposing the manipulation. With respect to the March 12-18, 2001 issue of The Visayan Tribune, there is good reason to believe the complainant's allegation, not only because she has in her position *[sic]* an original copy of said newspaper issue which did not carry the subject Invitation to Bid but also because the copy presented by the respondents is only a "xerox" copy and, therefore, highly susceptible to manipulation.

Copies of the February 19 and 26, 2001 issues of The Visayas Examiner, on the other hand, which were presented in evidence by said respondents Limuel P. Sales and Elizabeth Gardose, appear to carry in their Special Issues the subject Invitation to Bid. This, however, is highly suspicious because said Special Issues could be easily inserted, with the help of the Publisher (who is in fact a co-respondent in the criminal aspect of this case), to make it appear that the aforementioned Invitation was published on the dates mentioned. That a similar invitation to bid of DPWH, Capiz Engineering District was published in the regular page, i.e. page 9, of the said newspaper issues added more weight to the suspicion.

It is, therefore, the belief of this Office that no such publication actually happened of the subject Invitation to Bid for the purchase of construction materials and lease of equipment, contrary to the claims of herein respondents.^[10]

Sales suggests there could have been errors in the printing of the pages in the newspapers by the publisher which were beyond the control of petitioners and should not be blamed on petitioners. He contends that the fact that the publishers of *The Visayan Tribune* and *The Visayas Examiner* executed an affidavit of publication clearly established that the invitations to bid were indeed published. And assuming *arguendo* that petitioners presented mere photocopies of the said newspaper issues, he asserts that it is no proof that they had knowledge and participation in the manipulation of the publication of the Invitation to Bid. Sales maintains that as BAC Chairman, his authority is limited to recommending the Program of Work prepared by Lagoc and it was his ministerial duty to approve the award to the winning bidder (IBC) after the Technical Committee had submitted their recommendation.^[11]