

## FIRST DIVISION

[ **G.R. Nos. 168951 & 169000, November 27, 2013**  
]

**DR. ROGER R. POSADAS AND DR. ROLANDO P. DAYCO,  
PETITIONERS, VS. SANDIGANBAYAN AND PEOPLE OF THE  
PHILIPPINES, RESPONDENTS.**

### R E S O L U T I O N

**ABAD, J.:**

This resolves the separate Motions for Reconsideration of petitioners, Dr. Roger R. Posadas and Dr. Rolando P. Dayco of the Court's Decision dated July 17, 2013.

#### **The Facts and the Case**

To recall the facts culled from the decision of the Sandiganbayan, Dr. Posadas was Chancellor of the University of the Philippines (UP) Diliman when on September 19, 1994 he formed a *Task Force on Science and Technology Assessment, Management and Policy*. The Task Force was to prepare the needed curricula for masteral and doctoral programs in "technology management, innovation studies, science and technology and related areas." On June 6, 1995, acting on the Task Force's proposal, UP established the *UP Technology Management Center* (UP TMC) the members of which nominated Dr. Posadas for the post of Center Director. He declined the nomination, however, resulting in the designation of Professor Jose B. Tabbada as acting UP TMC Director.

Shortly after, Dr. Posadas worked for the funding of the ten new graduate courses of UP TMC. With the help of the Philippine Institute of Development Studies/Policy, Training and Technical Assistance Facility and the National Economic Development Authority, there came into being the *Institutionalization of Management and Technology in the University of the Philippines in Diliman* (the TMC Project), funded at Dr. Posadas' initiative by the Canadian International Development Agency.

Meantime, on October 5, 1995 Malacanang granted Dr. Posadas and fifteen other UP Diliman officials authority to attend the foundation day of the state university in Fujian, China, from October 30 to November 6, 1995. Before he left, Dr. Posadas formally designated Dr. Dayco, then UP Diliman Vice-Chancellor for Administration, as Officer-in-Charge (OIC) in his absence.

On November 7, 1995, his last day as OIC Chancellor, Dr. Dayco appointed Dr. Posadas as "Project Director of the TMC Project from September 18, 1995 to September 17, 1996." In an undated letter, Dr. Dayco also appointed Dr. Posadas consultant to the project. The appointments were to retroact to September 18, 1995 when the project began.

About a year later or on August 22, 1996 the Commission on Audit (COA) Resident Auditor issued a Notice of Suspension of payments made to UP TMC personnel, including the second payment to Dr. Posadas of P36,000.00 for his services as TMC Project's Local Consultant. On August 23 the Resident Auditor further suspended payment of P30,000.00 honorarium per month to Dr. Posadas as Project Director from September 18 to October 17, 1995.

On September 16, 1996, however, the UP Diliman Legal Office issued a Memorandum to the COA Resident Auditor, pointing out that the amounts paid the TMC Project personnel "were legal, being in the nature of consultancy fees." The legal office also "confirmed the authority of Dr. Dayco, while he was OIC Chancellor, to appoint Dr. Posadas as project director and consultant of the TMC Project." Finding this explanation "acceptable," the COA Resident Auditor lifted his previous notices of suspension.

Notwithstanding the lifting of the suspension, UP President Javier constituted an *Administrative Disciplinary Tribunal* to hear and decide the administrative complaint that he himself filed against Dr. Posadas and Dr. Dayco for grave misconduct and abuse of authority. On August 18, 1998 the Tribunal recommended the dismissal of the two from the service. The UP Board of Regents modified the penalty, however, to "forced resignation" with right to reapply after one year provided they publicly apologize. Still, the UP General-Counsel filed with the Sandiganbayan the present criminal cases.

On June 28, 2005 the Sandiganbayan found both Dr. Posadas and Dr. Dayco guilty of violation of Section 3(e) of Republic Act 3019 and imposed on them an indeterminate penalty of imprisonment for 9 years and one day as minimum and 12 years as maximum, with the accessory penalty of perpetual disqualification from public office. The court also found them guilty of violation of Section 7(b) of Republic Act 6713 and imposed on them the penalty of imprisonment for 5 years with the same disqualification. They were further ordered to indemnify the government in the sum of P336,000.00.<sup>[1]</sup>

In its decision of July 17, 2013, the Court affirmed the decisions of the Sandiganbayan in the two cases.

## **Discussion**

### **1. The appointments were in good faith**

The bad faith that Section 3(e) of Republic 3019 requires, said this Court, does not simply connote bad judgment or negligence. It imputes a dishonest purpose, some moral obliquity, and a conscious doing of a wrong. Indeed, it partakes of the nature of fraud.<sup>[2]</sup>

Here, admittedly, Dr. Dayco appears to have taken advantage of his brief designation as OIC Chancellor to appoint the absent Chancellor, Dr. Posadas, as Director and consultant of the TMC Project. But it cannot be said that Dr. Dayco made those appointments and Dr. Posadas accepted them, fraudulently, knowing fully well that Dr. Dayco did not have that authority as OIC Chancellor.

All indications are that they acted in good faith. They were scientists, not lawyers, hence unfamiliar with Civil Service rules and regulations. The world of the academe is usually preoccupied with studies, researches, and lectures. Thus, those appointments appear to have been taken for granted at UP. It did not invite any immediate protest from those who could have had an interest in the positions. It was only after about a year that the COA Resident Auditor issued a notice of suspension covering payments out of the Project to all UP personnel involved, including Dr. Posadas.

Still, in response to this notice, the UP Diliman Legal Office itself rendered a legal opinion that “confirmed the authority of Dr. Dayco, while he was OIC Chancellor, to appoint Dr. Posadas as project director and consultant of the TMC Project.” Not only this, the COA Resident Auditor, who at first thought that the OIC Chancellor had no power to make the designations, later accepted the Legal Office’s opinion and withdrew the Notices of Suspension of payment that he issued. All these indicate a need for the Court to reexamine its position that Dr. Dayco and Dr. Posadas acted in bad faith in the matter of those appointments.

## **2. Dr. Dayco chose the most qualified for the project**

The next question is whether Dr. Dayco, believing in good faith that he had the authority to make the questioned designations, acted with “manifest partiality” in choosing Dr. Posadas among all possible candidates as TMC Director and Consultant. The answer is no.

There is “manifest partiality” when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.<sup>[3]</sup> Here, the prosecution presented no evidence whatsoever that others, more qualified than Dr. Posadas, deserve the two related appointments. The fact is that he was the best qualified for the work:

First, Dr. Posadas originated the idea for the project and so he had every reason to want it to succeed.

Second, he worked hard to convince the relevant government offices to arrange funding for the project, proof that he was familiar with the financial side of it as well.

Third, the members of the *Task Force on Science and Technology Assessment, Management and Policy*—his own peers—nominated Dr. Posadas as Director of the UP Technology Management Center.

Fourth. The work fell within his area of expertise—technical management—ensuring professionalism in the execution of the project.

In the world of the academe, that project was the equivalent of Dr. Posadas’ thesis. Thus, since he was a natural choice to head the same, it beats the mind that such choice could be regarded as one prompted by “manifest partiality.”

## **3. The misstep was essentially of the administrative kind**