

SECOND DIVISION

[G.R. No. 193983, March 14, 2012]

VICTORY M. FERNANDEZ, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, FORMER GOVERNOR OF THE PROVINCE OF AKLAN FLORENCIO T. MIRAFLORES, INCUMBENT GOVERNOR CARLITO MARQUEZ, AND SECRETARY OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT RONALDO V. PUNO, RESPONDENTS.

DECISION

CARPIO, J.:

The Case

Before the Court is a petition^[1] for review on certiorari with application for the issuance of a temporary restraining order and writ of preliminary injunction assailing the Decision^[2] dated 9 July 2010 and Resolution^[3] dated 30 September 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 112515.

The Facts

On 25 November 1994, the Province of Aklan, represented by then provincial governor Corazon L. Cabagnot (Gov. Cabagnot), entered into a contract with Jireh Construction and Supply (Jireh Construction), represented by Delia Legaspi. The contract pertained to the construction of the Alibagon-Baybay Bridge (Phase II) situated in Makato, Aklan for a total contract price of P933,335.90 (AB Bridge Project). The contract also provided for the completion of the AB Bridge Project within 90 calendar days or on 25 February 1995. On 28 November 1994, Jireh Construction started the AB Bridge Project.

On 15 February 1995, petitioner Victory M. Fernandez (Fernandez), in his capacity as Provincial Engineer of the Province of Aklan, endorsed^[4] to Gov. Cabagnot for her approval, a letter^[5] dated 14 February 1995 from Jireh Construction. Jireh Construction requested for a contract time extension of 30 calendar days to complete the AB Bridge Project since the original contract period did not take into account the work stoppage caused by tide variations of the river. Basically, work on the substructure of the bridge stops temporarily when high tide comes and operations only resume after the water recedes.

On 16 February 1995, Gov. Cabagnot approved^[6] the requested 30-day extension and directed Jireh Construction to exert utmost effort to complete the AB Bridge Project not later than the revised expiry date.

Meanwhile, the provincial government of Aklan launched four government infrastructure projects: (1) Alibagon-Baybay Bridge (Phase III); (2) Buruanga

Fishing Port; (3) Irrigation Canal Access Road, Buruanga; and (4) Navitas Barangay Health Center, collectively known as the Four Projects.

Public bidding for the Four Projects was conducted sometime in the months of February and March 1995. Three contractors participated in the public bidding: (1) Jireh Construction, (2) Geovan Marketing, and (3) Interior Construction. After the submission and evaluation of the bids, the Pre-Qualification Bids and Awards Committee (PBAC) awarded the construction of the Four Projects to Jireh Construction, as the best qualified bidder with the bid most advantageous to the government. The details of the public bidding are as follows:

Name of Project	Date of bidding	Date of award	Contract Cost (P)
Alibagon-Baybay Bridge (Phase III)	24 February 1995	24 February 1995	975,151.38
Buruanga Fishing Port	28 February 1995	1 March 1995	965,420.49
Irrigation Canal Access Road, Buruanga	7 March 1995	8 March 1995	956,733.92
Navitas Barangay Health Center	15 March 1995	16 March 1995	294,469.45

After the 1995 local elections, respondent Governor Florencio T. Miraflores (Gov. Miraflores) replaced Gov. Cabagnot. Gov. Miraflores issued Memorandum No. 004^[7] dated 5 July 1995 addressed to Fernandez:

Having just assumed office as chief executive of the Province, it is imperative that the undersigned should take an inventory of the financial condition of the provincial government. This includes, among others, being oriented and apprised of the status of all infrastructure projects being implemented by the province through that department.

In view hereof, you are hereby directed to temporarily suspend the implementation of all infrastructure projects under your department's supervision and control, until such time when their status shall have been appropriately assessed by the undersigned, and an order to resume work to such projects shall have been issued by this office.

For strict compliance.

The implementation of the AB Bridge Project and the Four Projects awarded to Jireh Construction was suspended as a result of the Memorandum issued by Gov. Miraflores.

On 8 and 10 November 1995, the Commission on Audit (COA) conducted an audit and ocular inspection of Aklan's pending government projects. The COA auditors found that Jireh Construction had abandoned the construction of the AB Bridge Project and the Four Projects. All five projects were incomplete and could not be used for their designated purpose at their current state of completion. The details^[8]

are as follows:

Name of Project	Number of Days to be Completed	Date Started	Expected Date of Completion	Accomplishment as of	Percentage of Completion
Alibagon-Baybay Bridge (Phase II)	90	11/28/94	02/25/95	12/19/94	22.89
Alibagon-Baybay Bridge (Phase III)	90	05/12/95	06/13/95	11/08/95	0
Buruanga Fishing Port	75	03/02/95	05/15/95	03/14/95	58.09
Irrigation Canal Access Road, Buruanga	90	03/10/95	06/07/95	04/25/95	81.70
Navitas Barangay Health Center	45	03/17/95	04/30/95	03/23/95	45.27

The Summary of Actual Accomplishment and Costing^[9] as of 30 June 1995 submitted and certified by Fernandez showed that the AB Bridge Project was already almost halfway completed with an accomplishment rating of 48.57%. However, the COA auditors found the AB Bridge Project to be only 22.89%^[10] completed based on the Statement of Time Elapsed and Percentage Accomplishment dated 20 December 1994. The auditors stated that about nine months after the AB Bridge Project was supposed to have been completed on 25 February 1995, the project: (1) had an unaccomplished portion of 77.11%, and (2) no further work was made after 19 December 1994. The auditors added that despite the unsatisfactory performance of Jireh Construction on the AB Bridge Project, the PBAC still recommended the awarding of the Four Projects to the same contractor.

Moreover, the COA auditors found that the provincial government did not take any action against Jireh Construction. The COA stated that the officers in charge of the AB Bridge Project and the Four Projects failed to: (1) make an inventory of the project accomplishments; (2) take over the construction and complete the unfinished portion to preserve the accomplishments already made; (3) forfeit the performance bonds; and (4) serve notices of rescission or termination of the contracts awarded to Jireh Construction.

At the time of the COA audit, the Province of Aklan had already paid P1,624,255.61^[11] to Jireh Construction for the five projects. The COA auditors recommended the filing of a case for neglect of duty against: (1) the PBAC officers who awarded the Four Projects to Jireh Construction despite their knowledge that Jireh Construction had already abandoned the construction of the AB Bridge Project; and (2) other responsible government officers who were remiss in their duties to report the matter of abandonment of all five projects and to take any action against Jireh Construction.

On 10 November 2003, Gov. Miraflores, in his capacity as then provincial governor of Aklan and relying on the findings of the COA auditors, filed with the Office of the Ombusman (Visayas) an administrative complaint^[12] for gross neglect of duty

against Evan L. Timtiman (Timtiman), as Provincial Treasurer and regular member of the PBAC. In the Complaint, Gov. Miraflores stated that Timtiman's acts: (1) of awarding the Four Projects to a contractor who had abandoned the AB Bridge Project; and (2) of participating in the payment of government funds amounting to P1,624,255.61 to the same contractor for the five projects, caused undue injury to the provincial government. Gov. Miraflores stated that such acts are punishable under Section 3(e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act.^[13]

Aside from Timtiman, the Office of the Ombudsman impleaded in the criminal case^[14] six other persons working under the provincial government: (1) Liberato R. Ibadlit, PBAC member and former Vice-Governor; (2) Aniceto A. Fernandez, PBAC member and former *Sangguniang Panlalawigan* member; (3) Victory M. Fernandez, Provincial Engineer; (4) Felicisimo Y. Tanumtanjung, Jr., Engineer IV; (5) Reynaldo B. Dionisio, Engineer II and Project Engineer handling the construction of the Buruanga Fishing Port and Irrigation Canal Access Road; and (6) Jose Amboboyong, Project Engineer handling the construction of the Alibagon-Baybay Bridge (Phases II and III).

The PBAC members as well as the other government officers were impleaded as respondents for (1) awarding the Four Projects to Jireh Construction despite their knowledge that Jireh Construction poorly performed and had abandoned the AB Bridge Project, and (2) not taking any action against Jireh Construction and not compelling it to continue and complete the projects.

The COA submitted the following documentary evidence: (1) certified true copy of SAO Report No. 95-45 dated 23 June 1997, the complete report on the results of the audit of the Province of Aklan; (2) copy of the Joint Affidavit of the COA Auditors who conducted the audit attesting to the audit findings embodied in SAO Report No. 95-45; and (3) certified true copies of disbursement vouchers for all five projects.

In a Decision dated 31 March 2006, the Office of the Ombudsman (Visayas) found Fernandez and his co-respondents administratively liable. The Ombudsman stated that the complaint was premised on the respondents' act of awarding government projects to an incompetent contractor, who at the time of the bidding had an unsatisfactory performance on another project with the same local government and had abandoned such project. This act amounted to manifest partiality or gross inexcusable negligence, or both.

The Ombudsman also found that Fernandez was the one who presented documents to the PBAC showing that Jireh Construction did not have any abandoned project at the time of the bidding for the Four Projects. Thus, the Ombudsman held Fernandez equally liable with the members of the PBAC for gross neglect of duty. Further, the Ombudsman stated that Fernandez and his fellow engineers did not bring to the attention of the provincial governor that Jireh Construction had already abandoned the construction of the five projects. The Ombudsman added that they were duty-bound not only to implement the projects assigned to them but also to protect the interest of the government. The dispositive portion of the decision states:

WHEREFORE, premises considered, respondents ANICETO A. FERNANDEZ, LIBERATO R. IBADLIT and EVAN L. TIMTIMAN, PBAC

members, VICTORY M. FERNANDEZ, Provincial Engineer, and JOSE AMBOBOYONG, Project Engineer (Construction of Alibagon-Baybay Bridge Phases II & III), all of the Provincial Government, Province of Aklan, are hereby found guilty of GROSS NEGLECT OF DUTY and meted the penalty of DISMISSAL FROM SERVICE with all the accessory penalties attached thereto.

Respondents FELICISIMO Y. TANUMTANUM, Engineer IV and REYNALDO B. DIONISIO, Project Engineer (Construction of Irrigation Canal Access Road and Construction of Buruanga Fishing Port), of the same office, are found guilty of SIMPLE NEGLECT OF DUTY and meted the penalty of ONE (1) MONTH SUSPENSION WITHOUT PAY.

Considering, however, that respondents LIBERATO R. IBADLIT, FELICISIMO Y. TANUMTANUM and JOSE AMBOBOYONG (deceased), as records reveal, are no longer connected with the government service, the penalty of Dismissal from Service shall be considered as already implemented. Respondent Ibadlit's term as Vice-Governor of the Province of Aklan ended in the year 1995. Respondent Tanumtanum retired from the government service on September 30, 1995. While the orders/notices addressed to respondent Amboboyong were returned to this Office with a notation "Addressee Deceased." This notation was verified by Mr. Federico C. Peare, Jr., Postmaster, Kalibo, Aklan.

Let a copy of this Decision form part of the service record of the said respondents.

SO DECIDED.^[15]

Fernandez, Timtiman and Dionisio filed a Motion for Reconsideration^[16] dated 4 October 2007 with the Office of the Ombudsman (Visayas). In an Order dated 11 August 2008, the Office of the Ombudsman denied the motion.

Fernandez filed a petition^[17] for review under Rule 43 with the Court of Appeals (CA).

In a Decision dated 9 July 2010, the CA found no reversible error by the Office of the Ombudsman in finding Fernandez guilty of gross neglect of duty. The dispositive portion states:

WHEREFORE, premises considered, the instant petition for review is hereby DENIED and ordered DISMISSED.

SO ORDERED.^[18]

Fernandez filed a motion for reconsideration which the CA denied in a Resolution dated 30 September 2010.

Fernandez then filed a petition for review with this Court. In a Resolution^[19] dated