

## EN BANC

[ G.R. No. 176172, November 20, 2012 ]

**EFREN G. AMIT, PETITIONER, VS. COMMISSION ON AUDIT,  
REGIONAL OFFICE NO. VI, OFFICE OF THE OMBUDSMAN  
(VISAYAS), AND THE SECRETARY OF AGRICULTURE,  
RESPONDENTS.**

### D E C I S I O N

**BRION, J.:**

Before us is a petition for review on *certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court assailing the decision<sup>[2]</sup> dated July 18, 2006 and the resolution<sup>[3]</sup> dated December 21, 2006 of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 01398, which affirmed the decision<sup>[4]</sup> dated July 9, 2004 of the Office of the Ombudsman (Visayas) (*Ombudsman*) in OMB-VIS-ADM-2001-0137. The Ombudsman found petitioner Efren G. Amit guilty of five counts of grave misconduct and gross dishonesty for which he was dismissed from the service, with forfeiture of benefits and disqualification from holding public office.<sup>[5]</sup>

#### The Facts

The special audit results, conducted by the respondent Commission on Audit (COA) on the Multi-Purpose Drying Pavement (MPDP) projects, under the Grains Production Enhancement Program of the Department of Agriculture Regional Field Unit No. (DA RFU) 6, are as follows:

1. **Nineteen (19) mPDP projects** in the Province of Iloilo **do not exist**, resulting to the loss of **P1,130,000.00** on the part of the government.
2. **The construction of 101 MPDP projects in the Province of Iloilo falls short of the standard measurement of 420 square meters** as per approved plan and specifications of DA RFU 6, Iloilo City, resulting in an estimated loss of P879,301.00 on the part of the government.
3. **The checks** representing the reimbursement for the cost of materials for the construction of the MPDP projects **were released to persons other than the payee, without authority from the recipient, MCPI**, in violation of COA Circular 92-386 and Article 1240 (*sic*) of the Revised Penal Code.
4. **The supplies and materials for the construction of the MPDP projects were procured by DA RFU 6**, in violation of the Memorandum of Agreement.

<sup>[6]</sup>

For these irregularities, eleven (11) government employees (including Amit) – allegedly responsible for the ghost projects and the misappropriation – were administratively charged before the Ombudsman.

Amit was a Senior Agriculturist of DA RFU 6, designated to hold the concurrent positions of Chief of the Regional Agricultural Engineering Group, Iloilo City, and DA Provincial Coordinator of the Province of Antique for Infrastructure Projects.<sup>[7]</sup> **He approved five issue slips of materials for the construction of MPDP units** in: 1) Poblacion Batad, Iloilo; 2) Barangay Ginomay, Alimodian, Iloilo; 3) Barangay Lapayon, Leganes, Iloilo; 4) Barangay Cayos, Dumangas, Iloilo; and 5) Barangay San Diego, Lemery, Iloilo; and signed the disbursement voucher for the MPDP project in Barangay Ginomay, Alimodian, Iloilo.

#### *The MPDP Project Processes and Procedure*

The decision of the Ombudsman summarizes the MPDP project processes and procedures as follows:

In [MPDP] projects, the DA-6 and the beneficiary [MCPI] are required to enter into a Memorandum of Agreement with the following terms:

The DA Regional Field Office shall:

- 1) Administer, manage and disburse the FUND in accordance with government accounting and auditing rules and regulations;
- 2) Maintain separate books of account and record all transactions related to the FUND'S utilization under trust fund, 200-07, and maintain a separate subsidiary ledger for each grantee;
- 3) Reimburse through full payment the actual expenses incurred by the recipient for supplies and materials relative to the construction of the pavement in the amount not exceeding P60,000.00, and payment shall be released only upon recipient's submission of official receipt/s for actual expenses incurred for supplies and materials;
- 4) Prepare a monthly report of disbursement attested to by its resident auditor and submit the same to the DA Central Office together with duplicate copies of the disbursement vouchers and complete supporting documents, as liquidation of funds utilized for the implementation of the project covered by the budget;
- 5) Furnish the Regional Auditor a copy of the Agreement and other pertinent documents;
- 6) Conduct periodic inspections to ascertain progress of work, proper fund utilization and the recipient's compliance with the specifications of the MPDP.

The recipient shall:

- 1) Acknowledge acceptance of payment upon receipt of the fund in the form prescribed by the DA regional office;
- 2) Provide labor for the clearing and preparation of the area and the construction of the MPDP;
- 3) Conduct a canvass of at least three (3) reputable suppliers in the area who can offer the most beneficial terms for the supply of the materials required in the construction of the MPDP;
- 4) Advance the initial expenses for the supplies and materials relative to the project and finish the construction of the MPDP in strict conformity with the project's purpose and specifications and, save for justifiable causes, within thirty (30) days from the signing of the Agreement;
- 5) Make available project records and related documents to the DA Regional Office's representative for inspection;
- 6) Ensure that the MPDP is at all times properly identified and labeled as a DA Multi-Purpose Drying Pavement;
- 7) Whenever feasible and without, in any way, detracting from the grant's major purpose and the recipient's priority of usage, allow the pavement's use for the immediate community's social and other activities. To this end, the recipient shall promulgate rules relative to the pavement's usage, copy furnished the DA Regional Office and the community's Barangay Captain;
- 8) Assume/shoulder the cost of the required supplies and materials in excess of P60,000.00;
- 9) Desist/refrain from the introduction of any modification or the construction of any building or structure on the MPDP which will defeat the grant's purpose;
- 10) Refund/return to the DA Regional Office the total amount received from the DA in cases of a) commission of fraud and/or misrepresentation thereof; b) Non-compliance with the project's specifications; and c) any other violation of the Agreement.<sup>[8]</sup> (emphases ours)

There must also be a stipulation that in case of fraud or misappropriation of the fund granted to the beneficiary, the latter, represented by its board of directors and officers, shall be subject to administrative and penal sanctions.<sup>[9]</sup>

Under DA Special Order No. 165, issued on December 6, 1996, **the following must be submitted by the beneficiary Multi-Purpose Cooperative, Inc. for the reimbursement of funds** used in the construction of an MPDP:

- 1) Requisition and issue voucher;
- 2) Canvass papers;
- 3) Abstract of canvass;
- 4) Purchase order;
- 5) CAF (COA);
- 6) COA Circular No. 76-34;
- 7) COA Memo. No. 83-333;
- 8) Charge invoice/bill of collection;
- 9) Inspection report by a DA and COA representative;
- 10) Inspection report by the LGU committee;
- 11) Memorandum of Agreement;
- 12) Two (2) copies of pictures (of the MPDP);
- 13) Deed of donation/usufruct;
- 14) Certificate of registration; and
- 15) Resolution.<sup>[10]</sup> (emphasis ours)

For the expenses and cost of materials related to the 1998 MPDP projects to be reimbursed to the farmers' organizations, the following must be submitted:

- 1) Project proposal;
- 2) Resolution;
- 3) Memorandum of agreement;
- 4) Approved plans and specifications;
- 5) Notices to commence;
- 6) Delivery/official receipts;
- 7) Request for inspection of supplies and materials from the beneficiary farmers['] organizations;
- 8) Inspection report of all specified materials procured and delivered;
- 9) Certificate of final completion to be signed by the chairman of the farmers' organization[s] or his duly authorized representatives;
- 10) Request from the beneficiary farmers' organization[s] for inspection of completed projects addressed to the DA-6 Inspection Committee and the COA;
- 11) Report of inspection by the DA-6 with a COA representative (a written manifestation is to be made by the COA in the absence of its representative);
- 12) Two (2) copies of MPDP pictures with the farmers' organization Chairman and marketing (sic) label – "MPDP-DA-FO Project";
- 13) Certificate of acceptance from the farmers' organization[s], noted by the Municipal Agriculture Officer.<sup>[11]</sup> (emphasis ours)

### **The Findings of the Ombudsman**

The Ombudsman found all the officials so charged **guilty of grave misconduct and dishonesty for conspiring in the falsification of documents to facilitate the disbursement and misappropriation of the funds intended for the MPDP**

**projects.** It imposed on all of the officials the penalty of dismissal from the public service, with forfeiture of benefits and disqualification from holding public office.<sup>[12]</sup> This conclusion was based on the following findings:

When the Audit Team, however, examined the vouchers covering the claims for reimbursements of supplies and materials used for the MPDP's, **only the following documents were attached thereto:**

- 1) Memoranda of Agreement;
- 2) Requests for obligation of allotment;
- 3) Certificates as to availability of fund;
- 4) Requisition Issue Vouchers;
- 5) Canvass of prices;
- 6) Abstracts of Canvass;
- 7) Purchase orders;
- 8) Reports of inspection of delivery of materials;
- 9) Reports of acceptance of delivery;
- 10) Request issue slips;
- 11) Supplier's official receipts;
- 12) Duplicate copies of checks issued;
- 13) Acknowledgment receipts; [and]
- 14) RAEG's Inspection reports as to 100% completion of projects.

**Respondent Legaspi, himself, admits that the requirements he enumerated were not complied with.**

In some vouchers, **the signatures of the [MCPI] Chairmen and officers in the Memoranda of Agreement greatly differ from the signatures attributed to them** in the documents attached to the vouchers, such as the:

- 1) Canvass papers;
- 2) Abstracts of canvass;
- 3) Reports of inspection;
- 4) Certificates of acceptance;
- 5) Acknowledgment receipts; and
- 6) Requisition and issue voucher.

According to the Chairmen and officers of some beneficiary cooperatives, **they were given sets of documents** – MOA, canvass papers, abstracts of canvass, acknowledgment receipts, inspection reports as to the delivery of materials, and certificates of acceptance of items delivered, by DA personnel, Provincial and/or municipal agriculturists – **for them to sign. All those documents, except the MOA, were in blank.**

A canvass was required to be made by the recipients of at least three (3) reputable suppliers in the area who can offer the most beneficial terms in the purchase of materials necessary for the construction of an MPDP. **It is apparent, however, that no canvass were made by the**