

## SECOND DIVISION

[ G.R. No. 165927, April 24, 2009 ]

**ERNESTO Z. GIDUQUIO, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**TINGA, J.:**

Petitioner Ernesto Z. Giduquio together with one Antonio T. Corpuz were charged with violation of Section 3 (e) of Republic Act No. 3019, as amended, in Criminal Case No. 23720 in an Information that reads as follows:

That in or about the year 1992, and for sometime subsequent thereto, at Cebu City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, public officers, being the Vice-President and Manager of the Small Island Grid, respectively, National Power Corporation (NPC)-Visayas, Cebu City, in such capacity, were in-charge of the management, direction, monitoring and control of the operation of the various diesel plants of cooperatives in the Island Grid, while in the performance of their official functions and taking advantage of their public positions, conniving and confederating together and mutually helping with (sic) each other, with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously: split or cause the splitting into twelve (12) schedules/phases of works the pakiao contracts and job orders, making it appear that the cost of each, does not exceed P100,000.00; award or cause to be awarded to one and single contractor the 12 schedules of the construction project; execute or by executing the said contract despite the fact that it was outside their scope; inflate the cost estimate to over 369.71%; award or cause the awarding of the contract to a contractor without the benefit of a public bidding; have the project inspected by the SIG people to the exclusion of the OPO Engineers and or cause the payment of the contracts despite several deficiencies in the construction works, thus accused, in the discharge of their official functions had given unwarranted benefits, advantage or preference to themselves and the contractor, to the damage and prejudice of the government.

CONTRARY TO LAW.<sup>[1]</sup>

The information charged the accused of having committed the following distinct acts through manifest partiality and evident bad faith:

1. split or cause the splitting into twelve (12) schedules/phases of works the pakiao contracts and job orders, making it appear that the cost of each, does not exceed P100,000.00;

2. awarded or caused to be awarded to one and single contractor the 12 schedules of the construction project;
3. executed the said contract despite the fact that it was outside their scope;
4. inflated the cost estimate to over 369.71%;
5. awarded or caused the awarding of the contract to a contractor without the benefit of a public bidding;
6. had the project inspected by SIG people to the exclusion of the OPO Engineers; and/or
7. caused the payment of the contracts despite several deficiencies in the construction work.

Following the arraignment and pre-trial, trial on the merits ensued.

The prosecution presented Alexander Tan, Engr. Danilo Maglasang and Engr. Loubain Monterola as witnesses.

The prosecution established that in 1993, the Regional Director of the Commission on Audit (COA) of Cebu ordered a fact-finding inquiry on the alleged irregularities committed by certain officials of the NPC in the construction of power plants in the three islands of Cebu, namely, Olango, Guintarcan and Doong. After a review of the job orders, canvass papers, canvass of bids, *pakiao* labor contracts, NPC existing relevant policies and other pertinent documents, Alexander Tan, resident auditor of NPC, Visayas Regional Center and a member of the fact-finding team, prepared and submitted to the Cebu City COA Regional Director a report embodying the following findings:

- a) there were splitting of contracts in which violated NPC Circular No. 92-34 which mandated that one project should be covered by one contract;
- b) the Abstract of Canvass revealed that there were three other groups of workers who were interested hence, public bidding should have been conducted;
- c) the person who conducted the spot canvass was under accused Giduquio;
- d) NPC policies prohibited the construction of a structure under the *pakiao* system;
- e) the cost estimates were inflated;
- f) Giduquio approved the Certificates of Inspection and Acceptance and certified that the projects had been satisfactorily completed. Full payment to the contractors were made on the basis of his certifications;
- g) Giduquio also certified that the expenses were necessary, lawful, and

incurred under his direct supervision, the prices were reasonable and were not in excess of current rates in the locality, and that it was only after this certification that payment for the three projects were processed; and,

h) the required 10% retention was not implemented.<sup>[2]</sup>

NPC Vice-president Antonio Corpuz likewise created a task force to inspect the three power plants. The task force found that there were indeed deficiencies in the three projects. Loubain Monterola, a mechanical engineer of NPC-Cebu Regional Office, and the designated team leader of the task force, testified that after due inspection of the construction of the power plants, he and his team had observed some deficiencies in the actual construction of the projects. He, however, said that the deficiencies were minor ones and in a follow-up inspection in 1995, saw that they had been corrected.<sup>[3]</sup>

After the prosecution rested its case, both the accused demurred to the prosecution's evidence.

On 30 October 2001, the Sandiganbayan granted the demurrer to evidence filed by Corpuz but denied that of petitioner's, leaving the latter as the lone accused in the case. In the same decision, the Sandiganbayan declared petitioner innocent of the first, second, third and sixth acts alleged in the Information. However, it found sufficient evidence against petitioner with respect to the other three remaining acts. Consequently, petitioner was required to present evidence to negate his presumptive guilt in respect to the three remaining charges.<sup>[4]</sup>

For his defense, petitioner and Thomas Agtarap were presented as witnesses.

Petitioner testified, among others, that a bidding was not necessary for a *pakiao* contract. Moreover, he alleged that there was no competition in the construction of the three projects. He also stated that he had merely dispatched Senior Engineer Villacarlos to conduct a spot canvass and that the latter had asked from among the local residents if they could perform the job. He also averred that the persons listed in the spot canvass had not made any offer.

Petitioner, however, admitted that he had recommended the full payment of the workers despite the fact that the construction had not been fully completed as the NPC had incurred delay in the delivery of the construction supplies. Petitioner stated that the projects had been only less than 1% incomplete and would have taken only three days to complete. He also asserted that he had taken the following measures before recommending the full payment of the workers, to wit: (1) he had evaluated the projects and found that 99% had already been accomplished; (2) the five group leaders had signed a Letter of Guarantee that they would resume work once the materials have been delivered; (3) he had indicated in the Certificate of Inspection and Partial Acceptance that the contractor would be responsible to complete the work (and in fact, said deficiencies had been completed).<sup>[5]</sup>

Agtarap, then the Vice-President of NPC-Engineering Department, testified that he had certified all the spot canvasses prepared by petitioner; that the engineering committee had evaluated all documents forwarded by petitioner and that the

petitioner did not participate in the splitting, preparation and award of the contract to a particular contractor as all contracts had been made in the head office on the basis of the recommendations of the engineering committee.<sup>[6]</sup> Agtarap also explained that a formal public bidding was dispensed with because of the absence of competition and the urgency of the matter.<sup>[7]</sup>

After trial, the Sandiganbayan held that there was reasonable doubt that petitioner committed the fourth act, i.e., that of inflating the cost estimates.<sup>[8]</sup> The Sandiganbayan, though, found petitioner guilty of having committed the fifth and seventh acts, i.e., awarding the contracts without public bidding and causing the payment of the contracts despite several deficiencies, respectively. It disposed as follows:

WHEREFORE, the Court finds accused **ERNESTO Z. GIDUQUIO** GUILTY, beyond reasonable doubt, for violation of Section 3(e) of R.A. No. 3019. Pursuant to Section 9 thereof, he is hereby sentenced to suffer the penalty of:

(A) Imprisonment of, after applying the Indeterminate Sentence Law, six (6) years and one (1) month as minimum, up to ten (10) years and one (1) month as maximum; and,

(B) Perpetual Disqualification from Public Office.

No civil liability is adjudged in view of the failure of the prosecution to present evidence on this matter and the fact that the projects were already completed.

SO ORDERED.<sup>[9]</sup>

With the denial of his motion for reconsideration, per the graft court's resolution of 10 November 2004, petitioner is now before us via the instant recourse.

In his Memorandum<sup>[10]</sup> dated 2 September 2005, petitioner asserts that there was no need for a public bidding in the award of the contracts and that in any event, he had no participation in the award thereof. He also maintains that he was justified in causing the payment of the contracts despite the non-completion of the construction work.<sup>[11]</sup>

There is merit in the petition.

The law violated is R. A. No. 3019, Section 3(e). It provides as follows:

*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

(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 following elements need to be proven in order to constitute a violation of Section 3(e) of Republic Act 3019, *viz*:

1. The accused is a public officer discharging administrative or official functions or private persons charged in conspiracy with them;
2. The public officer committed the prohibited act during the performance of his official duty or in relation to his public position;
3. The public officer acted with manifest partiality, evident bad faith or gross, inexcusable negligence; and
4. His action caused undue injury to the Government or any private party, or gave any party any unwarranted benefit, advantage or preference to such parties.<sup>[12]</sup>

There are two ways of violating Section 3(e), Republic Act No. 3019, to wit: (a) by causing any undue injury to any party, including the Government; (b) by giving any private party unwarranted benefit, advantage or preference. The accused may be charged under either mode or under both.

The court *a quo* held that petitioner violated the above-quoted law by awarding or causing the award of the *pakiao* contracts without public bidding and causing their payment despite deficiencies in the construction works. We hold otherwise.

For one, the Court believes that the public bidding was reasonably dispensed with due to the urgency of the matter. Agtarap, petitioner's superior, pertinently stated that:

CHAIRMAN: So notwithstanding the fact that under the circular, if there are two or more pakyaw contractors who are offering their certain bids, you have to conduct a bidding, you disregard that condition because according to you this is an urgent matter which, under the law, you are authorized to disregard that particular provision in that circular?

T. AGTARAP: In that sense...

CHAIRMAN: That is what you are telling us, right, because of the urgency of the project?

T. AGTARAP: Yes, your Honor.<sup>[13]</sup>

It is well to recall that in the early 1990's, the country suffered from a crippling power crisis.<sup>[14]</sup> Power outages lasted 8-12 hours daily and power generation was badly needed. Addressing the problem, the NPC sought to attract investors in power plant operations by providing them with incentives, one of which was through NPC's