

FIRST DIVISION

[G.R. NO. 167048, April 07, 2006]

MARIETTA T. CAUGMA, AMIANA ABELLA AND ROSAURO MARTINEZ, PETITIONERS, VS. THE PEOPLE OF THE PHILIPPINES AND THE SANDIGANBAYAN, RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

Before us is a Petition for Review on *Certiorari* of the Decision^[1] of the Sandiganbayan in Criminal Case No. 17001 convicting the four accused therein of violating Section 3(e) of Republic Act No. 3019, as well as its Resolution^[2] denying the motion for reconsideration thereof.

Under Executive Order (E.O.) No. 888 dated March 18, 1983, ministers and heads of government agencies were authorized to dispose of their unserviceable equipment and disposable property through the creation of a Disposal Committee (Committee) composed of a representative of the owning ministry or agency as chairperson, and, as members, representatives of the Bureau of Supply Coordination and the Commission on Audit (COA). The committee had the following functions:

- (1) Inspect or authorize the field officer to inspect the unserviceable equipment and property to verify justification for disposal;
- (2) Set the final appraised value of all disposable property considering obsolescence, market demand, physical condition and result of previous biddings for similar property;
- (3) Recommend to the Minister or Head of Ministry/Agency for approval the manner of disposal taking into consideration the pertinent provisions of the Revised Administrative Code and the National Auditing Code;
- (4) Conduct public biddings for the sale or disposable property on an "AS IS," "WHERE IS" basis and to recommend the corresponding award;
- (5) The representatives of the Commission on Audit and the Bureau of Supply Coordination together with the COA Technical Staff specifically assigned to the Disposal Committee, shall be clothed with full authority to make final decisions in behalf of their respective offices in the various committee deliberations;
- (6) In the case of agencies attached to certain Ministries, recommendations of the Disposal Committee is subject to the final approval of the Minister concerned.^[3]

E.O. No. 888 also provided that the unserviceable equipment may be disposed of by sale through public bidding and that their appraised value (as determined by the Committee) shall be the minimum selling price. Should the sale through public bidding be unsuccessful, the Committee was authorized to dispose of the property in any manner deemed advantageous to the government, including through barter or negotiated sale at no less than the Committee's appraised value.

Pursuant to E.O. No. 888, the Bureau of Fisheries and Aquatic Resources (BFAR) created its own committee under Office Order No. 65 dated May 8, 1983. Among the committee members were Marietta T. Caugma, Chief of the Finance Division as chairperson; Amiana M. Abella, vice-chairperson; Rosauro M. Martinez, BFAR Representative as member; Villa J. Bernaldo, COA Auditor/Representative as member; and Meynardo Geralde, Jr., Supply Coordination Office representative, as member.

Way back in December 1959, the BFAR had acquired eight vessels from Japan under the RP-Japan Reparation Commission Agreement, among them the "*M/V Malasugui*." In 1974 to 1980, the deteriorating vessel was dry-docked for extensive repairs, and thereafter was no longer utilized for test fishing activities.^[4]

Thus, in a Comment Slip^[5] dated April 18, 1984, Arsenio S. De Jesus, Chief of the Technological Services Division, informed BFAR Director Felix R. Gonzales that it was time to "condemn the vessel due to old age (27 years)."

On July 18, 1984, the vessel sustained leaks on her forward hull while docked at Pier 4, Fishing Port, Navotas, Metro Manila, flooding the engine room, fish holder and gear locker rooms. The BFAR engaged the services of V/L Shipyard Corporation (Corporation) to tow the vessel from the Navotas pier.

The Corporation billed the BFAR for berthing fees at P110.90 a day from September 11, 1984 to December 31, 1984 in the total amount of P12,420.00,^[6] and for security services, tonnage, electrical power for water supply, gasoline and other vessel services in the amount of P21,037.00, or the total amount of P33,457.80 via Bill No. 1529^[7] dated January 3, 1985. Gonzales approved the claim and Caugma certified the availability of funds for the disbursement via Disbursement Voucher^[8] dated January 28, 1985, subject to release of funds from the Ministry of Budget and Management.

In a Memorandum^[9] dated July 20, 1984, Officer-in-Charge Eriberto A. Macatangay of the Fishing Boat Operations Section recommended to the Bureau Director that the vessel should be disposed of considering that it could no longer serve its purpose due to "old age and deteriorating superstructure." In a Memorandum^[10] dated November 13, 1984, the captain of the vessel also recommended that the vessel be disposed/condemned to save funds which would have to be spent for repair and berthing fees. An Inventory and Inspection Report of Unserviceable Property^[11] was prepared, declaring that the vessel was obsolete, "junk or scrap," and that to maintain it was no longer economical. The report was signed by the Bureau Director, a COA representative and Arsenio S. De Jesus, Chief, Technological Services Division. The report was transmitted to the Director of the Supply Coordination Office of the General Services Administration (GSA) for appropriate action.^[12]

In a Memorandum^[13] dated April 29, 1985 signed by De Jesus, COA representative Jaoquin C. Lim and Supply Coordination Office representative Meynardo L. Garalde, Jr. it was reported to the GSA that the fishing vessel was obsolete, unserviceable and beyond economical repair, and that spare parts were no longer available. The appraised value of the vessel was declared at P86,917.60. It was recommended that the vessel be sold through public bidding for not lower than P86,000.00; that in addition, the awardee/buyer shall pay all the charges in connection with the sale of the property; and that the vessel be disposed immediately to avoid further depreciation in value, "considering that it [was] berthed/docked in a private firm."

Meanwhile, on November 8, 1985, the Corporation billed the BFAR for berthing fees at P110.90 a day from January 1, 1985 to October 31, 1985 totaling P33,457.80; and for security services, electrical power, shifting of vessel with the use of a tugboat, fresh water supply and gasoline, and other services amounting to P25,940.00. The total charges amounted to P69,653.60.^[14]

On November 11, 1985, the Disposal Committee submitted its Report^[15] on the appraisal of the vessel, recommending that it be sold at public auction at the appraised value of P86,917.60, including the charges of the sale. The Committee also prepared the Procedural Guidelines^[16] to be followed relative to the sale. These were transmitted to Bureau Director Gonzales on November 11, 1985.^[17]

On November 12, 1985, Gonzales issued an Invitation to Bid^[18] which also contained the conditions of the sale of the vessel. He revised the proposed procedural guidelines of the Committee (Condition No. 8 of the Invitation to Bid) to provide that the "**bidder agrees to pay, in addition to the award price, taxes, duties and other costs such as berthing fees, cost of publication of the bid, etc. and levies which may be imposed by law.**"^[19] Prospective bidders were required to submit their sealed bids not later than 10:00 a.m. on November 21, 1985, at which time the bids would be opened publicly as required by Presidential Decree (P.D.) No. 1445. The bid offer was also required to be accompanied by cash or manager's check in an amount equivalent to 10% percent of the offer to guarantee the bid, and compliance with the terms and conditions of the sale, and later converted as downpayment in case of a winning bidder. Bids which did not meet the full consideration or requirements of the BFAR would be considered defective, and only those deemed advantageous to the government would be accepted. The sale of the vessel would be awarded to the highest bidder who would pay the bid price within 10 days from notice of the award.

The invitation to bid was published in the Times Journal for three consecutive days from November 14 to 15, 1985.^[20] The publisher billed the BFAR P2,400.00 as publication fee on November 16, 1985.^[21]

The public bidding was held on November 21, 1985.^[22] There were four bidders but only two participated: Dr. Enrique Peras, Jr. for the All Point Trading and General Services Corporation, and Eddie S. Galler, Jr., General Manager of the Corporation. Galler, Jr. submitted the bid, as well as copies of Invoice Nos. 1529 and 1589 showing that the Corporation had billed the Bureau the total amount of P103,111.40 for various services rendered on the vessel. Dr. Peras, Jr. inquired what were

included as "berthing fees" under Condition No. 8 in the invitation to bid, and Caugma replied that the fees included those due after the publication of the invitation to bid up to the final award of the sale of the vessel.^[23] Galler, Jr. asked if the P103,111.40 under Bill Nos. 1529 and 1589 issued by the Corporation would be included in the bid price, and Caugma replied that the Committee would study the matter.^[24] At that time, the Committee had no knowledge of the berthing fees and other charges incurred from November 1, 1985 up to the final award.^[25]

The Committee, however, agreed that the bid for the vessel should be stated separately from berthing and publication fees which should be broken down.^[26] Galler, Jr. withdrew the bid of the Corporation. The Committee resolved to reset the opening of the bids at 10:00 a.m. of November 28, 1985. Upon the suggestion of Bernaldo, the notice of public bidding was posted in public places.^[27]

On November 28, 1985, the Committee met for the re-scheduled public bidding. Bernaldo was substituted by Marlene Nacua of the COA. There were five registered bidders but only two appeared. The Corporation submitted its sealed bid - P13,890.00 or 10% of its bid price as required by the invitation to bid. The other registered bidders left without submitting any bid.

Caugma asked the committee members if the lone bid of the Corporation could already be opened and they all agreed. Nacua did not interpose any objection because she believed in good faith that it was in accordance with COA rules and regulations. Caugma opened the bid and receipted the P13,890.00 representing 10% of the bid price of P138,900.00, broken down as follows:

a) PUBLICATION FEE	P 2,400.00
b) BERTHING FEE	103,111.40
c) BFAR	<u>33,388.60</u>
Total	P138,900.00 ^[28]

Believing that the bid price for the vessel was P138,900.00 and that this amount surpassed the appraised value of P86,917.60, the Committee members resolved to recommend to the Bureau Director that the sale of the vessel be awarded to the Corporation for final approval. The Committee transmitted its recommendation to the Bureau Director, including the minutes of the meeting. Upon the suggestion of Amiana Abella, the Committee sent a letter to the corporation confirming that its bill for costs and berthing fees would be the last it would receive.^[29]

Meanwhile, Gonzales approved Disbursement Voucher No. 101-85-12-19-9042^[30] dated December 5, 1985 amounting to P69,653.60 in favor the Corporation. Caugma certified that the amount was available for the purpose, but payment was held in abeyance pending the release of the final award to be made by the Ministry of Budget and Management.

On December 23, 1985, Gonzales transmitted a letter^[31] to the Minister of Agriculture and Food requesting for authority to award the sale of the "M/V *Malasugui*" to the Corporation. He stated that of the five registered bidders, only the Corporation had submitted its bid of P138,900.00, which included the cost of publication, berthing fees, and the appraised value of the vessel. He appended to

the letter the lone Minutes of the Public Bidding held on November 28, 1985 as well as the submitted bid. The Assistant Minister, Aurora B. Marcos, referred the matter to the Resident Auditor for study and recommendation.^[32] Then Ministry Auditor Reynaldo Ventura informed the Minister that he had no objection to award to the Corporation the sale of the fishing vessel, considering that the bid it submitted was higher than the appraised value.^[33] He required, however, that the proposed sale be given wide publication, and that the proceeds of the sale be accounted for as income and be remitted to the National Treasury.

In light of this favorable report, the Minister of Agriculture and Food, through Assistant Minister Marcos, authorized the Bureau Director to award and sell the vessel to the Corporation for P138,900.00, pursuant to Section 79 of P.D. No. 1445, and Section 3, paragraph 3 of E.O. No. 888.^[34]

Meanwhile, on January 6, 1986, the BFAR remitted to the Corporation the amount of P69,653.60 in payment of Bill No. 1589. Galler, Jr. issued Receipt No. 256 for the said amount.^[35]

On February 10, 1986, the BFAR, through Gonzales, awarded the sale of the "*M/V Malasugui*" to the Corporation and requested it to remit the amount of P138,900.00 in payment thereof.^[36] The BFAR delivered juridical possession of the vessel to the Corporation on February 27, 1986.^[37] On February 28, 1986, the Corporation remitted P138,900.00 as full payment of the vessel for which it was issued Official Receipt No. 2861007.^[38] The amount was deposited in the National Treasury on March 5, 1986.^[39] Thereafter, the BFAR released to the Corporation its bid bond of P13,890.00.

On April 25, 1986, Caugma approved the change of entry in the book of accounts of the BFAR and credited P138,900.00 to it.^[40]

However, on May 5, 1986, Antonio B. Baltazar, a former BFAR Chief Technologist who was separated from government service on September 19, 1975, filed a Complaint-Affidavit^[41] with the Ombudsman against Director Felix Gonzales for negligence under Article 365 of the Revised Penal Code on July 17, 1984 for the leaks of the vessel while berthed at Navotas, Metro Manila. Baltazar claimed, among others, that Gonzales had failed to file an insurance claim on the vessel from the Government Service Insurance System. The matter was referred to the COA.

Meanwhile, on May 12, 1986, the National Treasurer remitted P33,457.80 to the Corporation^[42] as full payment for berthing fees and other services per Invoice No. 1529 and Disbursement Voucher dated January 28, 1985.^[43]

On June 5, 1986, the Regional Director of the COA directed Villa Bernaldo (then BFAR Auditor) to conduct a discreet inquiry regarding Baltazar's complaint.^[44] Bernaldo submitted her report on June 18, 1986, where she declared that the Corporation submitted its P138,900.00 bid, broken down as follows: publication fee, P2,400.00; berthing fee, P103,111.40; charges on the BFAR, P33,388.60; or a total of P138,900.00.^[45] According to Bernaldo, the berthing fee represented the amount BFAR billed the Corporation for dry-docking costs, and that this expense was