

## FIRST DIVISION

**[ G.R. NO. 169029, August 22, 2006 ]**

**OFFICE OF THE OMBUDSMAN, VS. ROGELIO Q. TONGSON, SANNY BOY O. OROPEL, JAIME S.J. JAVELLANA, JOSE C. MARAVILLA, AND COURT OF APPEALS-CEBU (FORMER EIGHTEENTH DIVISION), RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

Assailed before the Court in this Petition for Review is the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 84694, reversing the March 8, 2004 Decision and May 7, 2004 Order of the Office of the Ombudsman (Visayas), as well as the Resolution denying the motion for reconsideration thereof.

The Republic of the Philippines, through the Department of Public Works and Highways (DPWH), had decided to concrete the Bacolod City-Murcia-D.S. Benedicto-San Carlos City National Road, Murcia Section, from the Sum-ag Bridge extending beyond the Caliban Bridge. The Office of the District Engineer, 18<sup>th</sup> Engineering District, issued an Invitation to Prequalify and Bid for the project described as "Concreting of Bacolod City-Murcia-D.S. Benedicto-San Carlos City Road, Murcia Section, Murcia" at the cost of P14,582,000.00.<sup>[2]</sup>

On May 15, 2000, respondent Rogelio Q. Tongson, DPWH District Engineer, 1st Negros Occidental Engineering District, issued a notice of award<sup>[3]</sup> to Korona Construction ("Korona" for brevity) for the concreting of the said Bacolod City-Murcia-D.S. Benedicto-San Carlos City National Road, Murcia Section, Murcia, Negros Occidental for the price of P13,457,350.00. Ciro Y. King, the sole proprietor of Korona, conformed to the award on June 7, 2000.<sup>[4]</sup> A contract was forged on the same day between the Republic of the Philippines, represented by Sanny Boy Oropel, Officer-in-Charge of the Office of the DPWH Assistant District Engineer, 1st Negros Occidental Engineering District, and Korona, represented by King. Respondent Jaime S.J. Javellana, Engineer III, Office of the District Engineer and PBAC Chairman, signed the contract.<sup>[5]</sup> Respondent Jose C. Maravilla, Engineer IV of the Engineering District was assigned as Project Engineer.

Under the contract, Korona had to complete the project in 297 calendar days from receipt of notice to commence work, as follows:

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL
105	Subgrade preparation	Sq.m.	24,912.36	11.61	P289,232.50
202	Crushed Aggregate	Cu.m.	5,862.00	292.20	1,712,876.40

	Base Course				
311	Portland Cement Concrete Pavement	Sq.m.	19,566.36	562.01	10,996,489.98
Spl. Item	Roadway	Cu.m.	1,447.00	316.96	458,641.12
<b>TOTAL</b>					<b>P 13,457,240.00</b>

To guarantee faithful compliance with the terms and conditions of the contract, King obliged himself to post a performance bond, 10% of the contract price, and a security bond from the GSIS equivalent to 10% of the contract cost immediately after the project shall have been 100% completed. These bonds would answer for any defects that may arise out of the project within the period of one year.<sup>[6]</sup> The plans and specifications, as well as the general and special conditions and Certificate of Site Inspection were deemed to be part of the contract.<sup>[7]</sup> The performance bond was thereafter posted.

On May 24, 2000, the Office of the District Engineer issued a notice<sup>[8]</sup> to commence work which King received on June 7, 2000. According to the contract, the project was supposed to be completed by April 2001. On July 19, 2000, King received from the government P2,018,586.00 or 15% of the contract price as mobilization.<sup>[9]</sup> Per Accomplishment Report dated October 24, 2000 signed by Maravilla and Javellana and approved by Tongson, the project was by then 55% complete.<sup>[10]</sup> On October 31, 2000, or barely a week thereafter, Maravilla and Javellana certified that King had completed 88% of the project. Per Inspection Report and Accomplishment Report of Maravilla and Javellana dated December 15, 2000, King had already completed 95% of the work.<sup>[11]</sup> King had been paid the net amount of P1,844,253.58.<sup>[12]</sup>

On April 3, 2001, Maravilla and Javellana signed an Accomplishment Report<sup>[13]</sup> stating that 95% of the project had been accomplished. On the same day, a certificate of inspection,<sup>[14]</sup> signed by Maravilla and Javellana, was issued by the Office of the District Engineer. It was stated therein that the project had been inspected, and per approved plans and specification of Program of Works, was found 100% complete. Tongson approved the recommendation of Maravilla and Javellana,<sup>[15]</sup> which was thereafter approved by Oropel.

Forthwith, Maravilla and Javellana issued a certificate of project completion.<sup>[16]</sup> On April 4, 2001, King filed with the Office of the District Engineer a Progress Billing for the balance of the project price of P672,862.00.<sup>[17]</sup> Oropel, Maravilla, Javellana and Tongson approved King's Disbursement Voucher<sup>[18]</sup> for the full payment of the uncollected contract price. With the authority of Oropel and Tongson, King was paid the balance of the contract price, less value-added tax and withholding tax in the amount of P608,634.27.<sup>[19]</sup> *However, it turned out that, as of April 3, 2001, only 95% of the project had been completed.*

On March 27, 2002, Jose Lindy Chan, Jr., a dismissed senior inspector of the Philippine National Police, discovered that the concreting project was far from complete. He reported the matter to the Bacolod Graftwatch on April 8, 2002.<sup>[20]</sup> He

took photos<sup>[21]</sup> and video footages of the unfinished road area. The matter was published in the April 12, 2002 issue of the Philippine Daily Inquirer and broadcasted extensively in the Bacolod Super Radio.

In a letter<sup>[22]</sup> dated April 12, 2002 addressed to Graftwatch, Oropel, in behalf of Tongson, declared that while the contractor had accomplished only 95% of the project, full payment had been released since the project was considered substantially completed. Moreover, the 10% retention was more than sufficient to answer for the 5% deficiency in the project. He assured that the contractor was fast tracking the completion of the remaining portion of the contract. Since processing of contractor's claim for final billing of cash allocations for infrastructure projects was usually delayed, the certificate of turn-over and acceptance was signed by Mayor Coscocuella of the Municipality of Murcia just to facilitate the same and after assurances from the Engineering District that the government would not suffer any loss.<sup>[23]</sup>

On November 7, 2002, Chan executed an Affidavit-Complaint<sup>[24]</sup> charging Tongson, Oropel, Javellana and Maravilla with "possible violation of (our) anti-graft law, falsification of official document, unethical conduct of public officers, dishonesty, and grave misconduct by taking advantage of their official functions and conspiring and confederating with each other in an attempt to defraud the government in the implementation of government projects, were it not for the timely discovery of the anomaly."<sup>[25]</sup> The complaint was then filed before the Office of the Ombudsman (Visayas). Chan asserted that the respondent engineers had made untruthful statements in their accomplishment reports, reports of inspection and certificates of project completion, which led to the premature full payment of the contract price. Chan claimed that Tongson instructed Oropel to resume construction and fast track the completion of the project only after the controversy had been reported to the media.

Chan also asserted that there was no legal reason why the respondents should not be charged and found guilty of violating Section 3(e), Republic Act No. 3019, considering Oropel's admission in his letter to the Graftwatch that the full payment was released for a project which was not yet completed. Thus, respondents committed falsification of public documents when they caused Mayor Coscocuella to sign the certificate of turn-over and acceptance of the project of the city. Chan, likewise, sent a letter<sup>[26]</sup> dated November 25, 2002 to the Secretary of Public Works and Highways and made the same complaint against the respondents.

The Office of the Ombudsman considered the Affidavit-Complaint as charges against the respondents for violation of Section 3(e), Rep. Act No. 3019, and Malversation under Article 217 of the Revised Penal Code. The case was docketed as OMB-V-C-02-0710-K. The complaint was also considered an administrative complaint for dishonesty arising from the criminal complaint, docketed as OMB-V-A-02-0614-K.

In his Counter-Affidavit, Tongson averred that the case had been mooted by the completion of the project. He admitted that when he approved the accomplishment report on April 3, 2001, the project was not yet 100% complete. However, he discovered the mistake when King tried to collect the 10% retention money and directed Maravilla and Javellana to reassess the accomplishment of the contractor and whether the terms and conditions of the contract had been followed. After a

joint resurvey, Javellana and Maravilla discovered that the construction of the project fell short by 1,341.75 square meters; that is, one kilometer of roadwork from the Caliban Bridge had not been completed. The discrepancy was caused by the belief of the Engineer's Office that the road section covered by the project was only from the Sum-ag Bridge to the Caliban Bridge. King agreed to complete the project by reblocking the damaged old-paved road at the Lopez Jaena Section, about one km. away from the Caliban Bridge. Tongson further claimed that he acted in good faith when he approved the Certification of Maravilla and Javellana that the project was 100% complete and when he allowed full payment to the contractor. He asserted that he honestly believed that the coverage of the project was only from the Sum-ag Bridge to the Caliban Bridge. He pointed out that the government did not suffer any loss or injury due to such oversight since the contractor's 10% retention money, more than the cost of the unfinished work, was not released until after the project was completed.

Tongson asserted that the complaint against him and the others was filed by Chan because the latter, not being a duly licensed or accredited contractor/supplier, had not been awarded any project by the Office of the District Engineer. Chan had also violated the rule on forum-shopping because he had likewise filed a complaint<sup>[27]</sup> in November 2002 against the respondents with the Secretary of the DPWH based on the same facts. The DPWH Fact-Finding Team, however, recommended that the complaint be dismissed and the case terminated on January 27, 2003.<sup>[28]</sup> Tongson attached the June 25, 2002 and the January 22, 2003 affidavits<sup>[29]</sup> of Arturo King.

Oropel submitted his Counter-Affidavit<sup>[30]</sup> where he adopted the claims of respondent Tongson. He added, however, that it is a common practice in the construction industry to consider a project that is 95% complete as substantially completed; a list containing the remaining work is thereafter prepared, indicating the time of completion, among others. He reiterated then that it is not unusual to process the full payment of the contractor. He emphasized further that the contractor was paid because of his honest belief that the project was to end at Caliban Bridge.

Javellana and Maravilla, in their Joint Counter-Affidavit,<sup>[31]</sup> asserted, among others, that they did not make untruthful statements in their April 3, 2001 Report of Inspection and Certificate of Completion. At the time the said documents were made, the concreting from the Sum-ag Bridge to the Caliban Bridge was indeed 100% complete according to previous survey and computation. The shortfall of the finished work, vis-à-vis the quantity or items of work, was about 1,341.75 sq. m. corresponding to the reblocking of the damaged paved roads at the Lopez Jaena Section, more than one km. away from the Caliban Bridge. They discovered the shortfall when they made a reassessment of the project. They cannot, thus, be held liable for falsification of public documents as they made the statements in good faith and in the honest belief that the same were true. Javellana and Maravilla, likewise, adopted the contents of the counter-affidavits of Tongson and Oropel.

In his Affidavit, King declared that when the respondents released the 10% retention money, he was informed that the project had not yet been completed because the length of the project was short of what was stipulated in the contract. He and some DPWH officers conducted a resurvey and found that the road length fell short by 1,341.72 sq m. Hence, it was decided that a portion of the Lopez Jaena

Section located more than one km. away from the bridge, the terminal of the project, would be concreted. He immediately commenced the work and completed it in May 2002.

Meantime, on January 27, 2003, the DPWH Regional Director approved the report-recommendation of the DPWH Fact-Finding Team dismissing the letter-complaint against respondents, but that they be sternly warned to be more careful and circumspect in their assigned tasks.<sup>[32]</sup> The Fact-Finding Team declared that the error or discrepancy was caused or occasioned by the contractor's belief and the project engineers that the subject project starts at the Sum-ag Bridge and will end at the Caliban Bridge. The Panel noted that the *project did not specify the station limits but merely reflected the area covered in square meters*. It concluded that such error was due to an honest oversight, which was immediately corrected upon discovery. Besides, the government did not incur any loss or additional cost for such oversight because the contractor thereof implemented the remaining works. It was pointed out that when the error was discovered, the contractor's retention money had not been released yet. In consonance with the well-settled Commission on Audit (COA) principle of "no loss-no injury on the part of the government," the Panel believed that the respondents should not be administratively sanctioned.<sup>[33]</sup>

On May 6, 2003, Oropel requested the COA to conduct a post-audit examination of the project. In a letter dated May 9, 2003, the COA informed Tongson that, upon actual inspection, the project was found to be 100% complete with the deficiencies noted by its inspector already corrected.

On March 8, 2004, Graft Investigation and Prosecution Officer I Gaudioso J. Melendez of the Ombudsman submitted a Resolution<sup>[34]</sup> in OMB-V-C-02-0710-K recommending the dismissal of the criminal complaint for insufficiency of evidence. However, in OMB-V-A-02-0614-K, he adjudged respondents administratively liable for conduct prejudicial to the best interest of the service and ordered their suspension from office for six (6) months without pay.

In his decision, the Ombudsman approved the recommendation of the Prosecution Officer, declaring that evidently, respondent Engr. Jose C. Maravilla and Engr. Jaime S.J. Javellana, on orders of their supervisors District Engineer Rogelio Q. Tongson and Asst. District Engineer Sanny Boy Oropel, inspected the work accomplishments of King and reported that the project had been completed, but it turned out that the project was still 20% deficient. They admitted that there was an error in the computation of the area coverage of the project from the Sum-ag Bridge up to the Caliban Bridge, resulting in the work deficit and premature disbursement of public funds. The error could have been avoided had the respondents prudently inspected and assessed the work accomplishment of King as against the project specifications. The failure to thoroughly assess the project delayed the actual completion, and consequently, the use thereof by the public. The irregularity drew the attention of the media and the public, casting a bad image on public service. The Ombudsman further held that respondents cannot be exculpated by their claim that they acted in good faith; being seasoned DPWH engineers in possession of the bid documents, they could have discovered the irregularity earlier, and the fiasco could have been avoided. Such neglect of duty on the part of the respondents proved to be detrimental and prejudicial to their agency. The fact that they have remedied the work deficiency will not exculpate them from administrative liability, but such