

## SECOND DIVISION

**[ G.R. NO. 155419, March 04, 2005 ]**

**HON. ANIANO A. DESIERTO, AS OMBUDSMAN, AND HON. GREGORIO R. VIGILAR, AS THE SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, PETITIONERS, VS. OLIVO C. OCAMPO, RESPONDENT.**

### D E C I S I O N

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

This is a petition for review on certiorari of the Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 58397, which reversed and set aside the decision of the Ombudsman in OMB-ADM-0-94-0841 ordering the suspension of respondent Olivo C. Ocampo for one year for dishonesty and conduct prejudicial to the best interest of the service.

The antecedents are as follows:

After the eruption of Mount Pinatubo, the Department of Public Works and Highways (DPWH) undertook relief and rehabilitation work in the affected areas, including the regravelling projects in Barangay Bahay Pare, Pulong Gubat and Paligui in Candaba, Pampanga. At that time, the Pre-Qualification, Bids and Awards Committee (PBAC) in the 1st Engineering District of the DPWH was composed of the following members: Fernando Nuqui, Jr., Assistant District Engineer, as Chairman; Hipolito Tolentino, Administrative Officer, as Secretary; and Joaquin Guinto, Engineer III, and Olivo Ocampo, Engineer III, as members. The PBAC caused the publication of the invitation to bid for the regravelling projects in the said places on the January 22 and 29, 1992 and February 5, 1992 issues of *Mabuhay*, a local newspaper.

The bidders, namely, PRT Construction, Carwin Construction and Ed-Mar's Construction, submitted their respective bid documents to the PBAC and participated in the bidding scheduled on February 14, 1992. When the PBAC opened the first envelope of each of the bidders, it noted defects in the bid documents of Carwin Construction,<sup>[2]</sup> as well as the bid documents submitted by Ed-Mar's Construction.<sup>[3]</sup> Nevertheless, the PBAC considered the defects as merely formal ones and decided not to conduct another sealed bidding. It then proceeded to open the second envelope for each bidder and evaluate their respective bids for the project, thus:

<u>Participant</u>	<u>Amount</u>
PRT Construction	P454,064.00
Carwin Construction	P463,881.60
Ed-Mar's Construction	P474,006.00

Although PRT Construction was the lowest bidder, the PBAC awarded the project to it. On February 17, 1992, the PBAC issued Resolution of Award No. 92-02-09 in favor of PRT Construction for the amount of its bid. The contract for the project was prepared for the signatures of the parties.

On March 26, 1992, a letter of advice of allotment was issued, and later, per Obligation Allotment No. 162, the allotment for the project to the winning contract was issued on April 7, 1992. Subsequently, a contract for the regravelling project was entered into by and between the DPWH and PRT Construction. The regravelling project, thereafter, commenced in earnest.

Sometime in September 1992, then Congressman Emigdio Bondoc of the 4th District of Pampanga, which included the Candaba Area, received letter-complaints from Barangay Chairman Rosalino Mangulabnan of Barangay Bahay Pare, Barangay Chairman Oscar dela Cruz of Barangay Pulong Gubat and Barangay Chairman Felix Manalili of Barangay Paligui. The complainants alleged that there were irregularities and anomalies in the awards of regravelling projects in their respective barangays. Ombudsman Conrado Vasquez referred the matter to the Fact-Finding and Intelligence Bureau (FFIB) of the Office of the Ombudsman for investigation.

Notwithstanding the complaint, the project was completed on April 6, 1994 and was accepted by District Engineer Rogelio N. Fernando.

The FFIB found sufficient cause to file criminal and administrative actions against the members of the PBAC, including respondent Ocampo, as well as the other officers who approved the contract and released the funds for the Bahay Pare Regravelling Project. The FFIB pointed to the following as grounds therefor: (a) the contract entered into by the DPWH and PRT Construction was void because it was entered into on February 19, 1992, before the issuance of the certificate of availability of funds and the letter of advice of allotment were issued; (b) while the bid documents of PRT Construction appear complete and in order, those of Carwin Construction and Ed-Mar's Construction were defective and incomplete; (c) the bidding for the Bahay Pare Regravelling Project was rigged or simulated; (d) the suppliers of materials therein had not yet been paid despite the release of funds; and (e) there was a long delay in the completion of the project.

Consequently, a criminal complaint for violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, was filed against the members of the PBAC and the other officers who approved the contract and released the funds for the regravelling project. The complaint, docketed as OMB-ADM-94-0841, was later dismissed by the Ombudsman. However, an administrative complaint for dishonesty and conduct prejudicial to the best interest of the service was also filed against the PBAC members and officers, including Ocampo.

On August 19, 1999, the respondents in OMB-ADM-94-0841 were required to submit their counter-affidavits. Ocampo failed to submit any counter-affidavit. The preliminary conference was held on November 25, 1999, after which the parties agreed to submit the case for resolution upon the filing of their joint memorandum.

On January 13, 2000, the Office of the Ombudsman rendered a decision, the dispositive portion of which is herein quoted:

**Foregoing premises considered**, respondent **OLIVO C. OCAMPO** is hereby found guilty of conduct Prejudicial to the Best Interest of the Service and is meted the penalty of ONE (1) YEAR SUSPENSION effective upon receipt hereof.

Respondents **CYNTHIA D. ENRIQUEZ** and **HORACIO A. OIDA** are hereby **ADMONISHED** to be more careful and cautious in the examination of documents and to fill-up and/or correct important entries thereon with a stern warning that a repetition of the same shall be dealt with more severely.

The administrative charge against respondents **HIPOLITO N. TOLENTINO, FERNANDO D. NUQUI, Sr. [sic], RAFAEL S. PONIO, JOAQUIN C. GUINTO** and **MARIANO S. NICDAO** is hereby dismissed for being moot and academic.

The administrative charge against respondents **EDELMAR SANCHEZ** and **ROSBE DIZON** is hereby dismissed for lack of substantial evidence.

The Honorable Secretary, Department of Public Works and Highways (DPWH), Port Area, Manila for **OLIVO C. OCAMPO**, Engineer III, is hereby directed to implement this Decision in accordance with law reporting to this Office its compliance after ten (10) days from receipt hereof. [4]

The Ombudsman declared that Carwin Construction, Ed-Mar's Construction and PRT Construction, and the chairman and members of the PBAC, conspired to rig the bidding to insure that PRT Construction would win the same. According to the Ombudsman, this was obtained through the submission of defective or deficient bid documents. Moreover, the Ombudsman found that the PBAC ignored such defects or deficiencies; instead of declaring a failure of bidding and conducting a rebidding, it awarded the project to PRT Construction, to the gross prejudice of the public service.

As regards the alleged nullity of the contract, the Office of the Ombudsman found and declared that the contract was entered into by the DPWH and PRT Construction in April of 1992, and that February 19, 1992 referred to the date when the contract was prepared. According to the Ombudsman, such mistake was only due to a clerical error for which admonition was the appropriate penalty. It further declared that the complaint for the nullification of the contract was unsubstantiated. As to the alleged failure to pay the suppliers of materials, it appeared that the materials delivered were ordered by Chairman Mangulabnan from J.R. Santos Trading in his personal capacity, without authorization from PRT Construction.

Anent the alleged long delay of the completion, the Office of the Ombudsman noted that the project had already been completed on April 6, 1994.

Aggrieved, Ocampo filed a motion for reconsideration of the decision, contending that the defects or deficiencies adverted to by the Ombudsman were merely formal defects that did not necessitate the declaration of failure of bidding and, therefore, did not sustain the allegation that the bidding was rigged or simulated. He asserted that if there was, indeed, an intention to rig the bidding, the PBAC should not have

caused the publication of the invitation to bid; or it could have just rejected the bids of Carwin Construction and Ed-Mar's Construction pursuant to Section 561(a) of the Government Accounting and Auditing Manual (GAAM), thereby leaving PRT Construction as the lone bidder for evaluation, per Section 561(b.1) of the GAAM. Ocampo argued that had the PBAC declared a failure of bidding, the PRT Construction could have charged it of rigging the bidding and giving preferential treatment to the other bidders. Besides, he asserted, it was extremely difficult to rig or simulate the bidding because the PBAC is a collegial body. Lastly, Ocampo asserted that he did not have any hand in the waiver of the defects or deficiencies as he was only concerned with the technical aspect of the bids. The Ombudsman denied the motion on July 3, 2000.

Ocampo filed a petition for review under Rule 43 of the Rules of Court with the CA against the Ombudsman, the Secretary of Public Works and Highways, as well as the private complainants, for the reversal of the decision and resolution of the Ombudsman.

On February 28, 2002, the CA rendered judgment granting the petition and setting aside the Ombudsman's ruling. The dispositive portion reads:

WHEREFORE, the instant petition is hereby **GRANTED** for being meritorious. Accordingly, the Order dated March 3, 2000 and the Decision dated January 13, 2000 issued by the OMB-AAB are hereby **REVERSED AND SET ASIDE** insofar as petitioner is concerned, who is hereby absolved from any administrative liability.<sup>[5]</sup>

The CA pointed out that there was no ground to declare a failure of bidding under Section 562(b); neither was there evidence to support collusion among the bidders. The defects adverted to by the Ombudsman were merely formal and not substantial, thus, per Section 561(a) of the GAAM, the PBAC had the right to waive such defects and proceed with the bidding, which was what it did. The project was 100% complete and had been accepted by the District Engineer, belying the finding that the PBAC, including Ocampo, committed acts or omissions prejudicial to the best interest of the service. The CA also ruled that the charge of collusion was not substantiated.

Aggrieved, the Ombudsman filed a motion for reconsideration, which the CA denied in a Resolution<sup>[6]</sup> dated September 5, 2002.

Dissatisfied, the Ombudsman and the Secretary of the DPWH filed this instant petition, alleging that:

THE NOTED DEFECTS IN THE BIDS TENDERED BY TWO (2) BIDDERS CANNOT BE BRUSHED ASIDE AS MERE MINOR OR FORMAL DEFECTS. THEY GO TO THE VERY ESSENCE OF THE BIDDING PROCESS.<sup>[7]</sup>

The petitioners aver that the defects or deficiencies in the bid documents submitted by the losing bidder were not merely formal, but went into the very essence of the bidding process. The PBAC should have exercised its option of rejecting the bids to declare a failure of bidding. According to the petitioners, if the PBAC had rejected the bids of the two bidders, there would have been no real competition to insure the minimum number of bidders, thus paving the way for the declaration of PRT

Construction as the winning bidder. In any event, the petitioners assert, the bidding was flawed and irregular. Furthermore, the CA should have refrained from interfering with the Ombudsman's exercise of investigative powers. It is also pointed out that the quantum of proof before administrative proceedings is merely substantial evidence, and not proof beyond reasonable doubt.

For his part, the respondent avers that the decision of the CA had become final and executory, pursuant to Sections 7 and 8, Rule II of Administrative Order No. 7. He argues that assuming that the decision absolving him had not yet become final and executory, he could not be held administratively liable, considering that: (a) there was no ground to declare a failure of bidding; (b) there was failure to prove collusion or conspiracy; (c) the defects pointed by the petitioners did not affect the bids of Carwin Construction and Ed-Mar's Construction as the same were merely formal and not material; and (d) the companion criminal case had already been dismissed. The respondent further argues:

Petitioners herein failed to prove collusion or conspiracy because none existed in the first place. The supposedly glaring defects in the respective bids of Carwin and Ed-Mar's alone cannot justify a finding of collusion between and among the bidders. Neither do they ensure that no competition will occur in the bidding. Sections 562(d) and 561(a) GAAM grant Government the right to waive formal defects. When herein respondent OCAMPO and the PBAC exercised this right, a bid price war erupted between PRT, CARWIN and ED-MAR's. That PRT submitted the lowest responsive bid was just incidental. Had the lowest responsive bid come from CARWIN or ED-MAR's, the project would have been awarded to them. At that point, OCAMPO and the PBAC could not – to favor PRT – reconsider, backtrack and reverse its decision to waive formal defects in the bids.

After careful deliberation, herein respondent OCAMPO and the PBAC honestly believed that the defects in CARWIN's and ED-MAR's bids were merely formalities that did not affect the validity of the same. Under various sections of the GAAM, the following material defects, among others, would have affected the validity of the bid:

1. When the bid is not accompanied by the required bid security; [Sec. 560(f)].
2. When the bid is higher than 120% or lower than 60% of the AAE; [Sec. 562(b)]
3. When the bid is higher than the Allowable Government Estimate or AGE of the Approved Agency Estimate or AAE, whichever is higher, or lower than 70% of the AGE; [Sec. 562(b)]
4. When the bid which is obviously unbalanced; [Sec. 562(d)]
5. When the information submitted for prequalification [is] suppressed or false. [Sec. 562(f)]

None of these material defects afflicted the bids of Carwin or Ed-Mar's and, as such, were still valid bids that could not – as they, in fact, were