

EN BANC

[G.R. No. 148944, February 05, 2003]

MAYOR ALVIN B. GARCIA, PETITIONER, VS. HONORABLE PRIMO C. MIRO, IN HIS CAPACITY AS DEPUTY OMBUDSMAN FOR THE VISAYAS, VIRGINIA PALANCA-SANTIAGO, IN HER CAPACITY AS DIRECTOR, OFFICE OF THE OMBUDSMAN (VISAYAS), ALAN FRANCISCO S. GARCIANO, IN HIS CAPACITY AS GRAFT INVESTIGATION OFFICER 1, OFFICE OF THE OMBUDSMAN (VISAYAS), RESPONDENTS.

DECISION

AZCUNA, J.:

A special civil action for certiorari, prohibition, and mandamus is before us.

The facts are fairly simple.

Petitioner Alvin B. Garcia, as then mayor of Cebu City, signed a contract with F.E. Zuellig on May 7, 1998. F.E. Zuellig is the Philippine distributor of Bitumex, a brand name of an asphalt product. The contract essentially provided that F.E. Zuellig shall be the exclusive supplier of asphalt for the city's asphalt batching plant for a period of three years, from 1998 to 2001, with the initial delivery of asphalt in September, 1998.

Subsequently, petitioner was elected to a new term as mayor. The respondent Deputy Ombudsman for the Visayas thereafter sought to hold him administratively liable on the aforesaid contract and ordered him preventively suspended for six months. Petitioner came to us in an earlier petition alleging grave abuse of discretion.

In *Garcia v. Mojica*,^[1] we held for petitioner, stating that the six-month suspension period was no longer necessary, as respondent had sufficient time to gather evidence without petitioner's intervention during his nearly one-month suspension. Furthermore, we ruled that as pronounced in *Salalima v. Guingona*,^[2] an official's reelection expresses the sovereign will of the electorate to forgive or condone any act or omission constituting a ground for administrative discipline committed during the previous term.

Newspaper accounts of the alleged anomalies on the subject contract started to surface in the local media in March of 1999. Respondent Deputy Ombudsman, in a letter dated March 30, 1999, required the Director of the Commission on Audit (COA) of Region VII to conduct a special audit. On the same day, it likewise requested the City Administrator of the Office of the Mayor to submit documents pertaining to the asphalt supply of the city and a copy of the subject contract.

Special Prosecution Officer Jesus Rodrigo T. Tagaan of the Office of the Ombudsman was assigned to conduct the inquiry docketed as INQ-VIS-99-0132. In his report,^[3] Special Prosecution Officer Tagaan recommended that a criminal and an administrative complaint be filed against petitioner Garcia and several others. On June 21, 1999, Tagaan filed an affidavit^[4] with the Graft Investigation Office against petitioner Garcia and others for violation of Section 3(g) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act.

On August 16, 1999, the Office of the City Auditor filed with the Deputy Ombudsman its report which was prepared by State Auditors Hilario S. Cabreros and Sulpicio C. Quejada, Jr. The COA Special Audit Report concluded:

x x x

IN SUM, the propriety of the foregoing transactions is highly questionable in view of the fact that payment[s] were made even if the items were not yet delivered which is a clear case of ADVANCE PAYMENT in violation of existing law, rules and regulations.^[5]

x x x

State Auditors Cabreros and Quejada thereafter submitted a joint affidavit dated September 29, 1999 on their findings. The relevant portions of the joint affidavit are as follows:

x x x

- c. That by virtue of SP Resolution No. 3167 and adopting the Committee on Awards Resolution series of 1997, a three (3) year contract was made and executed by and between the City of Cebu represented by Hon. Alvin B. Garcia hereinafter referred to as the "buyer" and F.E. Zuellig Inc. represented by its General Manager, Michel Miloda hereinafter referred to as the "Seller";
- d. That said three (3) year contract was VOID since there was no available appropriation/ funds to cover the proposed expenditures at the time of the execution of the contract in violation of Section 85 and 86 of PD 1445 otherwise known as the State Audit [C]ode of the Philippines. Consequently, the officers entering into the contract shall be liable to the government as provided for in Section 87 of the same code. Moreover, the execution by the City Mayor of a three (3) year contract exceeded the authority granted to him by the Sangguniang Panlungsod per SP Resolution No. 3167;

x x x

- g. That the City of Cebu is obligated to pay F.E. Zuellig Inc. a fixed amount in dollar (\$443.18) per metric ton but payable in Philippine Peso which situation is disadvantageous to the City in view of the fluctuating valuation of the Philippine Peso vis a vis the US Dollar. As a result, the City will get only the equivalent quantity of Bitumen depending upon the prevailing rate of Philippine Peso at the time of

payment. And besides, Sections 45 and 47 of COA Circular No. 92-386 provide: that the price must be certain and definite in amount and must be in Philippine Currency specially so that the contracting party is a firm operating in the Philippines;

- h. That the price offered by F.E. Zuellig Inc. to sell its product in Bitucontainers was at P17, 727.20 per metric ton which purportedly it (sic) included the technology but the very same product could be purchased at a lower price in the local market at P8,975.00 per metric ton. As a consequence, the City Government had to pay the amount of P19,417,918.00 just for the use of Bitucontainers alone. The reasonableness therefore of the price paid is HIGHLY DOUBTFUL;
- i. That before the execution by the City Mayor of a three (3) year contract, the City Government had already purchased Asphalt 85/100 Penetration Grade Bulk from F.E. Zuellig Inc. per Purchase Order Nos. 3164, 1453, and 1948;
- j. That the transactions mentioned in the immediately preceding paragraph were HIGHLY QUESTIONABLE in view of the fact that full payments were made even if the items were not yet delivered, whereas PO No. 695 subject of the inquiry (under contract) calls for the delivery of 600 metric tons of Asphalt 85/100 at P17,727.20 or a total amount of P10,636,320.00 [and these] were not delivered at all in spite of full payment made all of which [are] in violation of Section 338 of RA 7160 and Section 88 of PD1445;^[6]

x x x

The State Auditors later filed a supplemental joint affidavit dated April 18, 2000, wherein they disclosed other details such as the alleged ghost deliveries of asphalt.^[7]

Special Prosecution Officer Tagaan resigned from office in January, 2000 and his name was subsequently dropped as complainant. Hence, during the joint clarificatory hearing and preliminary conference before the Deputy Ombudsman on September 12, 2000, the counsel of respondents therein averred that the dropping of the name of Special Prosecution Officer Tagaan as complainant in the case deprived them of the right to confront their accusers.^[8] On October 3, 2000, the Deputy Ombudsman issued an Order requiring petitioner Garcia to submit his counter-affidavit pursuant to the conduct of a preliminary investigation, thus:

x x x x x x x x x

WHEREFORE, and pursuant to Sec. 4, Paragraph B, Rule II and Section 5, Paragraph A, Rule III of Administrative Order No. 7 issued by the Office of the Ombudsman, you are hereby ordered to file your counter-affidavit to the herein attached fact-finding inquiry report of the Complainant, COMMISSION ON AUDIT-Region VII, Cebu City, together with the Joint Statement of State Auditors Hilario Cabreros and Sulpicio Quejada, Jr., as well as their Supplemental Joint Affidavit to the said COA report, within

TEN (10) DAYS from receipt hereof with proof of service thereof to the complainant/s who may file his/her/their reply-affidavit within TEN (10) DAYS from receipt of such counter-affidavit. Your failure to file your counter-affidavit and other controverting evidence/s will mean a waiver on your part to refute the charges against you and the case will be resolved on the evidence/s on record.^[9]

X X X X X X X X X

Petitioner Garcia did not comply with the said Order and instead filed, on November 22, 2000, a Motion to be Furnished a Copy of the Complaint-Affidavit and Motion to Suspend Implementation of the Order dated October 3, 2000. In a second Order dated December 26, 2000, respondent Deputy Ombudsman denied the Motion and gave petitioner Garcia another period of ten days within which to file his counter-affidavit. Petitioner again refused to comply and filed a Motion for Reconsideration dated January 17, 2001 and a Supplemental Manifestation with a Motion to Dismiss on the Ground of Lack of Jurisdiction dated February 1, 2001.

On June 18, 2001, the Deputy Ombudsman issued a third Order stating in part that:

X X X

To avoid further delay in the resolution of this case, which may prejudice other respondents who have timely filed their counter-affidavits, this Office resolves to consider the Motions, Manifestations and Supplemental Motions of respondent Garcia which now formed part of the records of the case as his ANSWER to the complaint pursuant to Section 4(c), Rule II of Administrative Order No. 7 of the Office of the Ombudsman.

WHEREFORE, premises considered, the preliminary investigation of this case is now considered TERMINATED and this Office will now proceed to resolve the same on the basis of the evidence on record.^[10]

X X X

Seeking now to dismiss the criminal investigation before the Ombudsman, docketed as OMB-VIS-CRIM-99-0546, and to restrain respondents from proceeding with the preliminary investigation on the matter, petitioner has filed the present case.

Petitioner raises the following questions:

I.

DOES THE COA SPECIAL AUDIT REPORT CONSTITUTE A VALID COMPLAINT THAT IS SUFFICIENT TO SUPPORT A CRIMINAL PROCEEDING?

II.

DID RESPONDENTS ACT WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BY UNILATERALLY CONVERTING A MERE COA FACT-FINDING REPORT INTO A COMPLAINT