

## FIRST DIVISION

**[ G.R. No. 114944, June 19, 2001 ]**

**MANUEL C. ROXAS AND AHMED S. NACPIL, PETITIONERS, VS.  
HON. CONRADO M. VASQUEZ, OMBUDSMAN AND JOSE DE  
FERRER, DEPUTY SPECIAL PROSECUTOR, AND THE HONORABLE  
SANDIGANBAYAN, RESPONDENTS.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

The instant petition for certiorari and prohibition seeks to set aside the Orders of the Ombudsman dated October 19, 1993<sup>[1]</sup> and February 10, 1994,<sup>[2]</sup> insofar as they found probable cause to charge petitioners Police General Manuel C. Roxas and Police Colonel Ahmed S. Nacpil for violation of Section 3 (e) of the Anti-Graft and Corrupt Practices Act; and to prohibit respondents from trying petitioners in Criminal Case No. 18956 before the Sandiganbayan.

Petitioners Roxas and Nacpil were Chairman and Member, respectively, of the Bids and Awards Committee of the PC-INP. The other Members of the Committee were:

F/Brig. Gen. Mario C. Tanchanco  
F/Brig. Gen. Diosdado B. Codoy  
P/Lt. Col. Juhan A. Kairan  
P/Lt. Col. Concordio Apolonio  
P/Maj. Reynold E. Osia

Sometime in September 1990, the PC-INP invited bids for the supply purchase of sixty five (65) units of fire trucks. Accordingly, the public bidding was held on September 14, 1990, where the following suppliers submitted their respective bids, to wit:

	Supplier	Bid Price
1.	Aeolus Phil.	P 1,218,240.00
2.	V.G. Roxas Enterprises	1,720,764.00
3.	CISC	1,943,549.64
4.	Tahei Co., Ltd.	2,292,784.00
5.	Viceroy Const. Comm'l Corp.	2,385,775.00
6.	Sumitomo Corp.	2,521,730.00
7.	Worldtrade Inter NW	2,700,000.00
8.	Accumetrix	2,844,844.20
9.	Comm'l Mfr. Corp.	2,985,000.00
10.	Asianet Tech	3,012,606.00
11.	Philipps Associate	

3,016,348.30<sup>[3]</sup>

The lowest bidder, Aeolus Philippines, was disqualified since its fire trucks had a water tank capacity of only 1,800 liters, far below the required 3,785 liter capacity.

After the opening of the bids, Director General Cesar Nazareno created a Technical Evaluation Committee composed of four members, headed by Gen. Mario C. Tanchanco, to conduct ocular inspections of the overseas plant facilities and equipment of the five qualified lowest bidders. On December 4, 1990, the Technical Committee submitted its report to General Nazareno, rating the quality of the inspected fire trucks based on the ranking of their respective companies from the lowest to the highest bidder as follows:

1. Toyota Morita
2. Ssangyong
3. Nikki-Hino
4. Morita-Isuzu

On December 18, 1990, the Bids and Awards Committee came up with its own listing of lowest bidders whose offered fire trucks met with the agency's minimum requirements, as follows:

1. V.G. Roxas Enterprises (Kanglim)
2. CISC (Ssangyong)
3. Taihei Corp. (Nikki/Hino)
4. Sumitomo Corp. (Isuzu Morita)

On December 20, 1990, Gen. Tanchanco submitted his Inspection Findings<sup>[4]</sup> to Gen. Nazareno, recommending only two fire trucks, namely Morita Isuzu and Nikki-Hino.

On the other hand, on December 28, 1990, the Bids and Awards Committee voted to award the contract in favor of the Korean company CISC, which offered Ssangyong fire trucks.<sup>[5]</sup> On January 2, 1991, it submitted its recommendation to Gen. Nazareno for the procurement of Ssangyong fire trucks.<sup>[6]</sup>

Gen. Nazareno, however, as approving authority, refused to act on the recommendation and, instead, created a Review Committee with Gen. Flores as Chairman. Gen. Tanchanco also submitted his Inspection Findings to this Review Committee, reiterating his recommendation of the Morita Isuzu and Nikki-Hino fire trucks.

On March 21, 1991, Gen. Flores submitted his Memorandum to Gen. Nazareno, stating that the action of the Bids and Awards Committee resulted in a failure to bid.<sup>[7]</sup> Accordingly, Gen. Nazareno ordered the Bids and Awards Committee to review its recommendations and consider the findings of the Review Committee.

In compliance with the directive, the Bids and Awards Committee limited its choice to the two brands recommended by Gen. Tanchanco and, by majority vote, elected Nikki-Hino of the Tahei Co., Ltd. as the lower bidder. Thus, the Bids and Awards Committee submitted its Memorandum to Gen. Nazareno dated May 9, 1991, embodying the aforesaid recommendation.<sup>[8]</sup>

Thereafter, the Contract of Purchase and Sale of sixty-five units of Nikki-Hino fire trucks was executed between Gen. Nazareno, on behalf of the PC-INP, and Tahei Company, Ltd. The corresponding Purchase Order was then prepared with the following signatories:

1. Col. Nicasio Custodio, Chief, PNP Logistics Support Command
2. Major Obedio Espeña, Acting Chief, PNP Procurement Center
3. General Cesar Nazareno, Director General, PNP
4. Luis Santos, Secretary, DILG

Pursuant to a disbursement voucher signed by Custodio, Espeña and Gen. Nazareno, together with the PNP Chief Accountant, Generosa Ramirez, the PNP paid Tahei Co., Ltd. the amount of P167,335,177.24, representing marginal deposit for the sixty-five units of fire truck. The Disbursement Voucher showed that, while the bid price of Tahei Co., Ltd. was only P2,292,784.00 per unit, the price appearing on the Purchase Order was P2,585,562.00 per unit. Hence, there was a discrepancy of P292,778.00 per unit of fire truck, or a total of P19,030,570.00 for all the sixty-five fire trucks.

The Commission on Audit discovered the irregularities in the bidding, awarding and purchase of the sixty five fire trucks, thus prompting then DILG Secretary Rafael Alunan III to file a complaint on February 12, 1993 for violation of Section 3 (e) of Republic Act No. 3019 before the Ombudsman, against the following:

1. Dir. Gen. Cesar Nazareno, PNP
2. Dep. Dir. Manuel Roxas, PNP
3. Fire Marshal Mario Tanchanco
4. Fire B/Gen. Diosdado Godoy (Ret.)
5. P/Sr. Supt. Ahmed Nacpil, PNP
6. P/Supt. Juhan Kairan, PNP
7. CInsp. Reynaldo Osea, PNP
8. Dep. Dir. Gen. Gerardo Flores, PNP
9. Dir. Nicasio Custodio, PNP
10. Supt. Obedio Espeña, PNP
11. Former DILG Secretary Luis Santos
12. Ms. Generosa Ramirez

The Deputy Ombudsman for the Military conducted a preliminary investigation where respondents submitted their respective counter-affidavits. On March 19, 1993, it recommended the indictment of all respondents, except Generosa Ramirez.

<sup>[9]</sup>

On review, the Office of the Special Prosecutor Review Committee recommended the

dismissal of the complaints against Manuel Roxas, Ahmed Nacpil, Diosdado Codoy, Juhan Kairan and Generosa Ramirez.<sup>[10]</sup> This latter recommendation was approved by the Special Prosecutor and the Ombudsman in a Memorandum dated April 15, 1993.

Accordingly, the appropriate Information was filed by the Ombudsman before the Sandiganbayan, where it was docketed as Criminal Case No. 18956, against Cesar Nazareno, Gerardo Flores, Mario Tanchanco, Nicasio Custodio, Reynold Osia, Obedeo Espena and Luis Santos.<sup>[11]</sup> Roxas, Nacpil, Codoy, Kairan and Ramirez were not included among the accused.

However, upon motion of Generals Flores and Tanchanco, a reinvestigation was conducted by the Office of the Special Prosecutor. On October 19, 1993, without any notice to or participation of petitioners, the Office of the Special Prosecutor issued the first assailed Order, dismissing the charges against Flores and Tanchanco, and recommending that Gen. Manuel Roxas, P/Lt. Col. Ahmed Nacpil, P/Lt. Col. Julian Kairan be likewise indicted. Deputy Special Prosecutor Jose de Ferrer voted for the approval of the recommendation, while Special Prosecutor Aniano A. Desierto dissented. Ombudsman Conrado M. Vasquez approved the recommendation.

Petitioners Roxas and Nacpil, together with Kairan, filed a Motion for Reconsideration. The Review Committee of the Office of the Special Prosecutor recommended that the Motion be granted and the charge against the movants be dismissed. However, Deputy Special Prosecutor de Ferrer and Ombudsman Vasquez disapproved the recommendation in the second assailed Order dated February 10, 1994.

Thus, on March 27, 1994, the Office of the Ombudsman filed an Amended Information with respondent Sandiganbayan,<sup>[12]</sup> impleading petitioners as additional accused.

Hence, the instant petition anchored upon the following grounds:

RESPONDENTS OMBUDSMAN VASQUEZ AND DSP DE FERRER ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING, ON REINVESTIGATION, PETITIONERS LIABLE FOR ALLEGED CRIMINAL VIOLATION OF SECTION 3 (E) OF THE ANTI-GRAFT & CORRUPT PRACTICES ACT CONSIDERING THAT:

A. THE ORDERS, ANNEXES "A" AND "A-1" FATALLY SUFFER FROM PROCEDURAL INFIRMITIES IN THAT:

1. THE ORDER DATED 15 APRIL 1993 DISMISSING THE CHARGE AGAINST PETITIONERS HAD LONG BECOME FINAL. HENCE, IT COULD NO LONGER BE RE-OPENED ON REINVESTIGATION SOUGHT BY GENERALS FLORES, TANCHANCO AND THE OTHER ACCUSED.