



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

JOSE M. ROY III,

Petitioner,

G.R. No. 225718

Present:

- versus -

A. REYES, JR.,*
Acting Chairman
HERNANDO,
LAZARO-JAVIER**
INTING, and
DELOS SANTOS, JJ.

THE HONORABLE
OMBUDSMAN, CONCHITA
CARPIO MORALES and
FIELD INVESTIGATION
OFFICE, OFFICE OF THE
OMBUDSMAN as
represented by LUISITO S.
SUAREZ,

Respondents.

Promulgated:

04 MAR 2020

X-----X

DECISION

A. REYES, JR., J.:

In this Special Civil Action for *Certiorari*¹ under Rule 65 of the Rules of Court filed on August 2, 2016, petitioner seeks that a Temporary Restraining Order or a Writ of Preliminary Injunction be issued, restraining the filing of an information against him and that the Resolution² of the Ombudsman dated November 9, 2015 and the Joint Order³ dated April 29, 2016 be reversed and set aside for being issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

* Acting Chair Person per Special Order No. 2775, dated February 27, 2020.

** Designated additional Member per Raffle dated February 19, 2020.

¹ *Rollo*, pp. 3-28.

² *Id.* at. 33-49.

³ *Id.* at 50-56.

Reyes

The Factual Antecedents

In January 2006, Domingo B. Nuñez (Dean Nuñez), the former dean of the Pamantasan ng Lungsod ng Maynila (PLM), requested the purchase of a vehicle intended for the use of the PLM-Open University Distance Learning Program with the following specifications:

Vehicle, 10-seater, equipped with D4BH 2476 cc diesel engine turbo intercooler; maximum power 145 @ 2500 rpm; GVW 2512 kg; 5-speed manual transmission; power/tilt steering, windows, side mirrors; glass antenna; door locks; premium stereo with 6-speakers; dual aircon/heater; driver side airbag; keyless entry with alarm; automatic lights; digital odometer; 2-tone paint with side garnish; rear spoiler with break light; back-up warning sensor; rear wiper/washer; rotating seat (2nd row) with arm rests; ABS with 4 wheel disc brakes; 205 wide tires with aluminum 15" wheels.

| Dimensions of: | Exterior: | Interior: |
|----------------|-----------|----------------------|
| Overall length | 4695 mm | 2835 mm |
| Overall width | 1820 mm | 1605 mm |
| Overall height | 1685 mm | 1240 mm ⁴ |

On January 19, 2006, then PLM President Benjamin G. Tayabas (President Tayabas) approved the request.⁵

Supply Officer Alfredo C. Ferrer (Ferrer), Jr., on February 13, 2006, told President Tayabas that only a Hyundai Starex van had the requirement of the requested vehicle and therefore suggested buying the same. Dean Nuñez subsequently prepared the Purchase Application, which was accepted by President Tayabas. Angelita G. Solis (Solis), Vice President for Finance and Planning, certified that the funds were available. A favorable recommendation was given by Atty. Lawrence Villanueva on the application and directed the Bids and Awards Committee (BAC) to determine the applicability of an alternative method of procurement.⁶

Nevertheless, as early as February 10, 2006, the sum of the equivalent cash price of a Hyundai Starex or ₱1,168,000.00 was already allocated, as shown in the Budget Utilization Slip (BUS) before the BAC, by means of pre-procurement conference, wherein the budget for the purchase of the vehicle was calculated and approved.⁷

⁴ Id. at 149.

⁵ Id.

⁶ Id. at 149-150.

⁷ Id. at 107.

Mejia

The vehicle's procurement was not reported nor advertised as per Republic Act (R.A.) No. 9184. Alternatively, Ferrer demanded and obtained their cost quotes for the requested vehicle from a few car dealers. Several suppliers or dealers then submitted their quotations and during the meeting of the BAC, composed of Solis, Felix F. Aspiras, Albert S. Dela Cruz, and Eloisa M. Macalinao, Ferrer, reiterated that only Hyundai Starex van had qualified and suggested that the procurement be done through direct contracting instead of public bidding.⁸

On February 24, 2006, petitioner was appointed as the Acting President of PLM with full exercise of all rights, powers, functions, and authority thereunto appertaining.⁹ Thereafter, on May 10, 2006, the members of the BAC met to evaluate the quotations submitted to them and they decided to purchase the van from Hyundai Otis.¹⁰ In Resolution No. 09-G-06, dated May 17, 2006, the BAC recommended direct contracting as an alternative mode of procurement in lieu of public bidding which was signed by petitioner, who was then the acting president of PLM.¹¹

The petitioner, on May 18, 2006, signed the Purchase Order of the purchase of the Starex van at Hyundai Quezon Avenue, Quezon City.¹² Eventually, the vehicle was purchased from Hyundai Quezon Avenue as provided in the Disbursement Voucher, and Check No. 890045, both dated June 6, 2006.¹³

The Commission on Audit (COA) issued a Notice of Suspension of the purchase of the Starex van by the PLM on March 29, 2010, the document contained the following:

- (a) The Board of Regents (BOR) as Head of the Procuring Entity (HOPE) of the PLM did not approve any (i) contract, (ii) authority of the award of the contract to Hyundai Otis, (iii) Annual Procurement Plan (APP) pursuant to Section 7, RA 9184, and (iv) authority to resort to alternative modes of procurement (direct contracting) *in lieu* public bidding, as required under Section 48 of R.A. No. 9184;
- (b) The conditions stated under BAC Resolution No. 09-G-06 for direct contracting is not in accordance with Section 50, RA 9184, considering that "Hyundai Otis is not an exclusive dealer or manufacturer of the motor vehicle that was purchased [and] there are other Hyundai dealers in the market"; and

⁸ Id.

⁹ Id. at 4.

¹⁰ Id. at 108, 150.

¹¹ Id.

¹² Id. at 109.

¹³ Id.



- (c) Although the recommendation for the purchase of the motor vehicle per BAC Resolution No. 09-G-06 was Hyundai Otis, premised on its accessibility to PLM and as a goodwill gesture for being a favored taxpayer in Manila, documents showed that the purchase was made at Hyundai Quezon Avenue, Inc., Quezon City¹⁴

The Field Investigation Office (FIO) of the Office of the Ombudsman, on August 7, 2013, instituted a complaint against the petitioner and other PLM officials to hold them criminally and administratively liable for grave misconduct, conduct prejudicial to the best interest of the service, gross neglect of duty, inefficiency, and incompetence, as well as violation of R.A. No. 9184¹⁵ and Section 3(e) of R.A. No. 3019.¹⁶

The FIO argued that the vehicle should have undergone public bidding because Hyundai Otis was not an exclusive dealer or manufacturer of the Hyundai Starex and it was done without getting authorization from the Board of Regents. Furthermore, it noted that the COA also issued a Notice of Suspension dated March 29, 2010, which specified that there might have been irregularities committed in the procurement of the vehicle. It also discovered that there was no Annual Procurement Plan prepared for 2006.¹⁷

The other PLM officials, except the petitioner, submitted their counter-affidavits and argued that the procurement of the vehicle was in accordance with the Government Procurement Reform Act (GPRA).¹⁸

On November 9, 2015, the Ombudsman issued a Resolution finding probable cause to indict petitioner and his co-respondents for violation of Section 3(e) of R.A. No. 3019. The dispositive portion of the assailed Resolution reads:

FOREGOING CONSIDERED, this Office finds probable cause to indict respondents **BENJAMIN G. TAYABAS, DOMINGO B. NUÑEZ, ANGELITA G. SOLIS, JOSE M. ROY III, ELOISA M. MACALINAO, ALFREDO C. FERRER, JR., CECILIA L. CALMA, ANGELES C. RAMOS, LAWRENCE VILLANUEVA, FELIX F. ASPIRAS, ALBERT S. DELA CRUZ, JUSTINA A. BONTUYAN,** and **VIRGINIA N. SANTOS** for violation of Sec. 3(e) of R.A. 3019. Accordingly, let the corresponding Information be filed with the appropriate court.

x x x x

¹⁴ Id. at 109-110.

¹⁵ An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes.

¹⁶ Anti-Graft and Corrupt Practices Act.

¹⁷ *Rollo*, pp. 151.

¹⁸ Id. at 151-152.

Reyes

SO ORDERED.¹⁹ (Emphasis in the original)

On November 23, 2015, COA issued a Notice of Settlement of Suspension/Disallowance/Charge (NSSDC), which pronounced as settled the earlier suspension of PLM's purchase of the Starex van. Petitioner, armed with the NSSDC as newly discovered evidence, filed motions for reconsideration/reinvestigation of the assailed Resolution and the Decision. However, the Ombudsman, subsequently denied it through a Joint Order dated April 29, 2015.

The present petition seeks to annul the Resolution dated November 9, 2015 and Joint Order dated April 29, 2016 of the Ombudsman in the criminal case.

Acting on the Court's Resolution,²⁰ dated August 15, 2016, the Office of the Solicitor General (OSG) filed its Manifestation and Motion (In Lieu of Comment).²¹ Therein, the OSG recommended that the Court grant the instant Petition and that the criminal case against the petitioner be dismissed for want of probable cause.²² The Court noted the OSG's manifestation and ordered the petitioner to file a Reply.²³

The petitioner filed his Comment (to the Manifestation of the Office of the Solicitor General)²⁴ on July 24, 2018, praying that the Court adopts the Manifestation of the OSG and for the Court to issue a writ of *certiorari* setting aside and terminating any proceedings before the Sandiganbayan relative to OMB-C-C-13-0235.²⁵

The Issue

WHETHER THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING PROBABLE CAUSE TO INDICT PETITIONER FOR VIOLATION OF SECTION 3(E) OF R.A. NO. 3019²⁶

The Court's Ruling

We grant the petition.

¹⁹ Id. at 47.
²⁰ Id. at 78-79.
²¹ Id. at 105-133.
²² Id. at 170.
²³ Id. at 105-133.
²⁴ Id. at 175-185.
²⁵ Id. at 182-183.
²⁶ Id. at 6.

Meyer

*The second and third elements of
Section 3(e) of
R.A. No. 3019 are lacking.*

Section 3(e) of R.A. No. 3019 provides:

Sec. 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the government, or giving any private party any unwarranted benefits, advantage, or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

In *Garcia, et al. v. Sandiganbayan, et al.*,²⁷ the Court ruled that the elements of the above offense are as follows: (a) the accused must be a public officer discharging administrative, judicial, or official function; (b) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and (c) his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.²⁸

Here, it is indisputable that the first element is present, petitioner being the acting president of PLM. However, the second and third element are lacking. The second element refers to the three modes by which the offense may be committed, by: (a) manifest partiality (b) evident bad faith, or (c) gross inexcusable negligence. In *Coloma, Jr. v. Sandiganbayan et al.*,²⁹ the Court defined the foregoing terms as follows:

Partiality "is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but

²⁷ 730 Phil. 521 (2014).

²⁸ Id. at 534.

²⁹ 744 Phil. 214 (2014).

willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.³⁰ (Citation omitted)

Otherwise stated, "manifest partiality" is present when there is a clear, notorious, or plain inclination or predilection to support one side or person rather than another. On the other hand, "evident bad faith" means not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind favorably operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.³¹

After a careful perusal of the records of the case, the Court finds that the acts of the petitioner do not manifest partiality. First, the contents of BAC Resolution No. 09-G-06 already contained a list of selected dealers. Petitioner himself did not have any participation in the procurement proceedings nor in the actual selection of said dealers. His participation was limited to the approval of the recommendation of the PLM BAC.

In *Sistoza v. Desierto*,³² the Court discussed at length how misguided it would be to ascribe fraudulent and corrupt intent, solely on the basis of a signature on a purchase order. It categorically rejected the contention that the mere act of affixing one's signature, even if coupled with repeated endorsement of the award to the bidder who did not offer the lowest price, is a clear sign of evident bad faith, *to wit*:

We disagree with the conclusions of the Office of the Ombudsman. We have meticulously analyzed the arguments raised by the parties in the various pleadings and motions, together with their documentary evidence, which all formed the basis for the issuance of the questioned resolutions, and we are convinced that no probable cause exists to warrant the filing of charges against petitioner Sistoza for violation of Sec. 3, par. (e), *RA 3019*.

x x x x

Simply alleging each or all of these methods is not enough to establish probable cause, for it is well settled that allegation does not amount to proof. Nor can we deduce any or all of the modes from mere speculation or hypothesis since good faith on the part of petitioner as with any other person is presumed. The facts themselves must demonstrate *evident* bad faith which connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.

³⁰ Id. at 229.

³¹ *Uriarte v. People*, 540 Phil. 474, 494 (2006).

³² 437 Phil. 117 (2002).

Mayer

X X X X

Since petitioner had no reason to doubt the validity of the bidding process and given the urgency of the situation since the tomato paste had by then been delivered and consumed by the inmates of the New Bilibid Prison, **we certainly cannot infer malice, evident bad faith or gross inexcusable negligence from his signing of the purchase order and endorsing the same to the Department of Justice.** Considering that his duties as Director of the Bureau of Corrections entailed a lot of responsibility not only on the management side but also in the rehabilitation and execution of convicted prisoners, public relations and other court-imposed duties, it is unreasonable to require him to accomplish direct and personal examination of every single detail in the purchase of a month-long supply of tomato paste and to carry out an in-depth investigation of the motives of every public officer involved in the transaction before affixing his signature on the *pro-forma* documents as endorsing authority.³³ (Citations omitted, italics in the original and emphasis supplied)

Thus, despite petitioner's signature on the BAC Resolution and the Purchase Order, the Court cannot automatically infer malice or fraudulent intent on the former's part.

Third, as to the alleged gross inexcusable negligence. It is important to point out that it was PLM who purchased the Starex van according to the price and technical specifications set by the PLM BAC. The money which was allotted for its purchase was used according to its purpose. It is undisputed that petitioner did not partake in the discussion of the procurement of the requested vehicle.

Anent the third and last element, there are two ways by which a public official commits a violation of Section 3(e), thus: (a) by causing undue injury to any party, including the government; or (b) by giving any private party any unwarranted benefit.

Assuming arguendo that petitioner was negligent by relying on the acts of the PLM BAC, which had the expertise over procurement processes, any omissions committed by the petitioner along the way were due only to either mere inadvertence, or simple over-eagerness to proceed with the purchase of the vehicle, or placing too much confidence in the declarations of his subordinates. His omissions would result, at worst, only to gross negligence, which is want or absence of reasonable care and skill.

Similarly, the Court in *Arias v. Sandiganbayan*,³⁴ ruled that:

³³ Id. at 131-132, 137.

³⁴ 259 Phil. 794 (1989).



We would be setting a bad precedent if a head of office plagued by all too common problems-dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence — is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing, his signature as the final approving authority.

x x x x

We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. x xxIt is doubtful if any auditor for a fairly sized office could *personally* do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. **All heads of offices have to rely to a reasonable extent 'on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations.** If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served and otherwise *personally* look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of document, letters and supporting paper that routinely pass through his hands. The number in bigger offices or departments is even more appalling.

There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction.³⁵
(Emphasis supplied)

That being said, there can be no probable cause in filing an information in court if there is no manifest partiality, evident bad faith, or gross inexcusable negligence.³⁶

The burden of proof in the administrative case was not met

In the present case, the CA found no substantial evidence to hold the petitioner liable for grave misconduct as it was shown that the petitioner did not conspire with the other respondents. The CA ruled that:

Here, we find no substantial evidence to prove the elements constitutive of grave misconduct. The Ombudsman's finding of grave misconduct against

³⁵ Id. at 801-802.

³⁶ *Catindig v. People*, 616 Phil 718, 734 (2009).

Mejia

the petitioner is anchored on the finding that the petitioner merely relied on the recommendation of the BAC without scrutinizing the document submitted for approval. There is insufficient evidence from which it may be reasonably concluded that the petitioner's approval of Resolution No. 09-G-06 as well as the issuance of the purchase order were all done due to corruption, willful intent to violate the law or persistent disregard of well-known legal rules. There is likewise no finding that the petitioner unlawfully or wrongfully used his office to procure some benefit for himself or for another or that he intentionally violated the GPRA in committing the above mentioned acts.

Section 12 of the GPRA defines the functions of the BAC as follows:

Section 12. *Functions of the BAC.*- shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity of his duly authorized representative: Provided, That in the event the Head of the Procuring shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may necessary, including the creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.

In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided for in Article XVI hereof.

The BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the GPPB on a semestral basis. The contents and coverage of this report shall be provided in the IRR.³⁷
(Emphasis in the original)

The prosecution was not able to satisfy the burden of proof which is only substantial evidence. Hence, it is more difficult to prove the guilt of the petitioner in a criminal case against him involving the same set of facts and law being used. It is true that generally, decisions in administrative cases are not binding on criminal proceedings. The court has ruled in a number of cases that:

It is indeed a fundamental principle of administrative law that administrative cases are independent from criminal actions for the same act or omission. *Thus, an absolution from a criminal charge is not a bar to an*

³⁷ *Rollo*, p. 161.

Meyer

administrative prosecution, or vice versa. One thing is administrative liability; quite another thing is the criminal liability for the same act.

x x x x

Thus, considering the difference in the quantum of evidence, as well as the procedure followed and the sanctions imposed in criminal and administrative proceedings, the findings and conclusions in one should not necessarily be binding on the other. Notably, the evidence presented in the administrative case may not necessarily be the same evidence to be presented in the criminal cases.³⁸

The Court, as a general rule, does not interfere with the Ombudman's finding of an existence or absence of probable cause. However, certain exceptions must be made such as the case at bar. In the case of *Brocka v. Enrile*,³⁹ this Court enumerated several exceptions to the principle of interference, one of them is when there is no *prima facie* case against the respondent. In another case, specifically *Principio v. Barrientos*,⁴⁰ the case was ordered to be dismissed for want of probable cause. The Court held that:

Clearly, where the evidence patently demonstrates the innocence of the accused, as in this case, we find no reason to continue with his prosecution; otherwise, persecution amounting to grave and manifest injustice would be the inevitable result.⁴¹

Here, the elements of the offense in Section 3(e) of R.A. No. 3019 are absent. There is no evidence that petitioner acted with manifest partiality, evident bad faith, or gross inexcusable negligence in signing the BAC Resolution and Purchase Order. Furthermore, there is no showing that any party, especially the government, incurred actual injury in the purchase of the Starex van. In line with the current jurisprudence, there is no probable cause to prosecute the petitioner and his criminal case should be dismissed.

WHEREFORE, the Petition dated August 2, 2016 is hereby **GRANTED**. The Resolution dated November 9, 2015, and the Joint Order dated April 29, 2016 of the Office of the Ombudsman is hereby **REVERSED** and **SET ASIDE**. Accordingly, the criminal case against the Petitioner before the Sandiganbayan is **DISMISSED**.

³⁸ *Paredes v. Court of Appeals*, 555 Phil. 538, 549-550 (2007).

³⁹ 270 Phil. 271, 277 (1990).

⁴⁰ 514 Phil. 799 (2005).

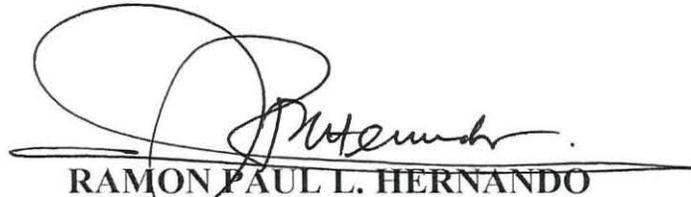
⁴¹ *Id.* at 813.

Meyer

SO ORDERED.

Reyes
ANDRES B. REYES, JR.
Associate Justice
Acting Chairperson

WE CONCUR:


RAMON PAUL L. HERNANDO
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Reyes
ANDRES B. REYES, JR.
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Acting Chief Justice