



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

LYNNA G. CHUNG,  
Petitioner,

G.R. No. 239871

Present:

-versus-

PERALTA, C.J., Chairperson,  
CAGUIOA,  
CARANDANG,  
ZALAMEDA,  
GAERLAN, JJ.

OFFICE OF THE OMBUDSMAN  
AND OFFICE OF THE  
OMBUDSMAN-FIELD  
INVESTIGATION OFFICE,  
Respondents.

Promulgated:

MAR 18 2021

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DECISION

CAGUIOA, J.:

This is a Petition for *Certiorari*<sup>1</sup> (Petition) under Rule 65 of the 1997 Rules of Civil Procedure, with an application for a temporary restraining order and a writ of preliminary injunction, assailing the: (1) Joint Resolution<sup>2</sup> dated March 14, 2018 of the Office of the Ombudsman (Ombudsman) in OMB-C-C-16-0055 and OMB-C-A-16-0046; and (2) its Order<sup>3</sup> dated May 8, 2018 denying petitioner Lynna G. Chung's (petitioner) motion for partial reconsideration.

The assailed Joint Resolution and Order found probable cause to indict petitioner, former Manager of the Administrative and Finance Department of the Philippine National Railways (PNR), along with five other PNR officials, for violation of Section 3(e)<sup>4</sup> of Republic Act No. (RA)

<sup>1</sup> *Rollo*, Vol. I, pp. 3-52.

<sup>2</sup> *Id.* at 53-111. Penned by Graft Investigation and Prosecution Officer II John Paul P. Galang and approved by Ombudsman Conchita Carpio Morales.

<sup>3</sup> *Id.* at 113-119.

<sup>4</sup> 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

3019<sup>5</sup> in connection with the PNR's procurement of rail fastenings, clips and insulators from Pandrol Korea Limited (Pandrol Korea).

## FACTS

The PNR-Bids and Awards Committee (BAC) passed Resolution No. 04-2009 (BAC Resolution) recommending Direct Contracting with Pandrol Korea in the procurement of 170,000 sets of rail fastenings at a unit cost of US\$44.58 per set or an aggregate price of US\$7,624,500.00 and 50,000 pieces of clips and insulators at a unit cost of US\$3.90 per piece or an aggregate price of US\$195,000.00 for the repair of rail tracks and replacement of parts in the Quezon Province and in the Bicol Region. In justifying the recommended mode of procurement, the PNR-BAC relied on Section 50<sup>6</sup> of the Implementing Rules and Regulations Part A (IRR-A) of RA 9184,<sup>7</sup> as well as on the fact that Pandrol Korea owns the patents of the certain types of rail fastenings needed and that it does not have a sub-dealer in the Philippines. The prices indicated in the BAC Resolution were based on the quotation from K.B. Hong of Pandrol Korea that former PNR General Manager Manuel D. Andal (Andal) had requested.<sup>8</sup>

Petitioner was among the members of the PNR-BAC.<sup>9</sup> She, however, inhibited from the PNR-BAC proceedings of the subject procurement because she is the adoptive mother of Jaewoo Chung, the Manila Liaison Officer of Pandrol Korea.<sup>10</sup>

Andal endorsed the BAC Resolution to the PNR Board of Directors, which approved the same via another resolution. It was also through Andal

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(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.

<sup>5</sup> ANTI-GRAFT AND CORRUPT PRACTICES ACT.

<sup>6</sup> SECTION 50. *Direct Contracting.* —

*Direct Contracting* or single source procurement is a method of *procurement of goods* that does not require elaborate bidding documents. The supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale. The offer may be accepted immediately or after some negotiations. Direct contracting may be resorted to by concerned procuring entities under any of the following conditions:

- a) Procurement of items of proprietary nature which can be obtained only from the proprietary source, *i.e.* when patents, trade secrets and copyrights prohibit others from manufacturing the same item;
- b) When the procurement of critical plant components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of its contract; or
- c) Those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.

<sup>7</sup> AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES, otherwise known as the "GOVERNMENT PROCUREMENT REFORM ACT."

<sup>8</sup> *Rollo*, Vol. I, pp. 55-56, 92.

<sup>9</sup> *Id.* at 55.

<sup>10</sup> *Id.* at 92.

that the PNR entered into a contract with Pandrol Korea for the supply of 170,000 sets of rail fastening system at US\$38.50 per piece or an aggregate price of US\$6,545,000.00; 50,000 pieces of rail clips at US\$3.50 per piece or an aggregate price of US\$175,000.00; and 50,000 pieces of rail nylon insulators at US\$1.00 apiece or an aggregate price of US\$50,000.00. The contract stipulated that the PNR had to open an irrevocable letter of credit (LC) in favor of and acceptable to Pandrol Korea for the amount of the items to be delivered.<sup>11</sup> The contract also stipulated for a delivery and payment schedule, to wit:

[(A) Item No. 1: e-AT20123 Concrete Sleeper Fastening Assembly

- (1) Delivery No. 1: 30,000 sets, in the total price of US\$1,155,000.00; deadline of delivery is 16 weeks after opening of LC;
- (2) Delivery No. 2: 60,000 sets, in the total price of US\$2,310,000.00; deadline of delivery is 16 weeks after opening of LC;
- (3) Delivery No. 3: 50,000 sets, in the total price of US\$1,925,000.00; deadline of delivery is 16 weeks after opening of LC; and
- (4) Delivery No. 4: 30,000 sets, in the total price of US\$1,155,000.00; deadline of delivery is 16 weeks after opening of LC.

(B) Item No. 2: Rail Clips and Insulators

- (1) Rail Clips: 50,000 pieces in the total price of US\$175,000.00; deadline of delivery is 16 weeks after opening of LC;
- (2) Rail Insulators: 50,000 pieces, in the total price of US\$50,000.00; deadline of delivery is 16 weeks after opening of LC.]

x x x x

5. Payment Schedule

The payment shall be made to the Supplier as herein mentioned:

- a) In general, the PURCHASER will pay the SUPPLIER the corresponding value of the number of sets of concrete sleeper fastening assembly (consisting of rail clips, rail insulators, rail pads and shoulders) to be delivered in accordance with the Delivery Schedule indicated in Item 6 below. The PURCHASER shall submit a Purchase Order for each delivery indicated in the Delivery Schedule. The Purchase Order will indicate the expected date of delivery of the GOODS.
- b) For each scheduled payment, an advance payment equivalent to fifteen percent (15%) of the Price of the delivery shall be

<sup>11</sup> Id. at 56-57.



paid to the SUPPLIER within ten (10) calendar days from receipt of the SUPPLIER of a Purchase Order from the PURCHASER, subject to the provision of Item 5(c) below.

- c) Before the advance payment is made, the SUPPLIER shall submit to the PURCHASER a Letter of Guarantee covering the advance payment issued by a reputable local or foreign bank acceptable to the PURCHASER. This Letter of Guarantee shall be released upon presentation to the PURCHASER of the original Bill of Lading and related documents of the particular shipment of the GOODS.
- d) The payment of the remaining eighty-five percent (85%) of the amount for each delivery shall be paid to the SUPPLIER upon presentation to the advisory bank of the following shipment documents:
  - (1) Packing List;
  - (2) Bill of Lading;
  - (3) Inspection Certificate;
  - (4) Commercial Invoice;
  - (5) Authenticated Export Declaration;
  - (6) Marine Insurance Policy: at least one hundred ten percent (110%) of the total contract value of shipment and shall cease thirty (30) days after arrival of GOODS at the warehouse designated by the PURCHASER.<sup>12</sup>

Thereafter, Andal issued a Memorandum to petitioner as the Department Manager of Administrative and Finance, directing her to effect the payment of the peso equivalent of US\$1,155,000.00 to be charged to the Philippine Veterans Bank (PVB) Current Account No. 00501-00593-3 to cover the payment to Pandrol Korea for the importation of Pandrol rail fastening assembly. In compliance, petitioner sent a letter to the manager of PVB, Galangin Branch, Tondo, Manila, with the exact tenor.<sup>13</sup> Later, she also sent another letter to the manager of PVB requesting that the amount of ₱345,352.96 be debited from PVB Current Account No. 00501-00593-3 for payment of additional charges for the importation of the rail fastening assembly. In another letter, petitioner requested PVB to debit from the same account the amount of ₱1,561,293.26 to cover payment of customs duties and taxes.<sup>14</sup>

Subsequently, Andal issued another Memorandum to petitioner, directing her to effect the payment of 110% of US\$225,000.00 upon opening an LC to cover payment to Pandrol Korea for the purchase of 50,000 rail clips and 50,000 nylon insulators. It was to be charged against Philippine National Bank (PNB) Savings Account No. 41-648-8300001-5. Once again, in compliance, petitioner sent a letter to the manager of the PNB, Tutuban Branch, Tondo, Manila with the exact tenor of the directive in Andal's Memorandum.<sup>15</sup>

<sup>12</sup> Id. at 57-58.

<sup>13</sup> Id. at 132, 295-296.

<sup>14</sup> Id. at 133, 300, 302.

<sup>15</sup> Id. at 136, 310-311.



On January 12, 2016, the OMB-Field Investigation Office (FIO) filed a Complaint<sup>16</sup> against the members of the PNR-BAC, the PNR Board of Directors, and Jaewoo Chung for violation of Section 3(e), (g),<sup>17</sup> (h),<sup>18</sup> and (i)<sup>19</sup> of RA 3019 and Section 7(a)<sup>20</sup> of RA 6713.<sup>21</sup> The Complaint, insofar as petitioner is concerned, alleged that she and Andal were responsible for the unusually hasty payments to Pandrol Korea. All payments to Pandrol Korea were made in full without adhering to the 15% and 85% schedule of payments and even before Pandrol Korea issued the Letter of Guarantee, Commercial Invoice, Packing List, Bill of Lading, Inspection Certificate, Authenticated Export Declaration, and Marine Insurance Policy.<sup>22</sup> The Complaint also noted that the importation documents for the 30,000 sets of concrete sleeper fastening assembly showed a delivery shortage of 70,000 rail clips.<sup>23</sup>

After preliminary investigation, the Ombudsman issued the assailed Joint Resolution finding petitioner and five other PNR officials liable for violation of Section 3(e) of RA 3019, the dispositive portion of which reads:

**WHEREFORE**, this Office finds probable cause to indict respondent **Manuel D. Andal** for two (2) counts of violation of Section 3 (e) of Republic Act No. 3019, and respondents **Rafael G. Mosura, Jr., Edgardo R. Remonte, Jose P. Marayag, Constantino [R]. Dominguez,** and **Lynna G. Chung** for one (1) count of violation of Section 3 (e) of Republic Act No. 3019. Let the corresponding Information be filed against them before the proper court.

<sup>16</sup> Id. at 120-171.

<sup>17</sup> SEC. 3. *Corrupt practices of public officers.* – x x x

x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

<sup>18</sup> SEC. 3. *Corrupt practices of public officers.* – x x x

x x x x

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

<sup>19</sup> SEC. 3. *Corrupt practices of public officers.* – x x x

x x x x

(i) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

<sup>20</sup> SECTION 7. *Prohibited Acts and Transactions.* — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

(a) *Financial and material interest.* — Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.

x x x x

<sup>21</sup> AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES, otherwise known as the “CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES.”

<sup>22</sup> *Rollo*, Vol. I, p. 159.

<sup>23</sup> Id. at 165.

The charge against respondents **Michael T. Defensor, Dolores C. Aserre, Gerard L. Rabonza, Teodoro B. Cruz, Jr., Feroisa T. Concordia, Ernesto A. Nieva, Jaewoo Chung, and Andronica T. Roma** for violation of Section 3 (e) of Republic Act No. 3019 is **DISMISSED**.

The charges against **ALL** respondents for violation of Section 7 (a) of Republic Act No. 6713 and Section 3 (g), (h), and (i) of Republic Act No. 3019 are **DISMISSED**.

The administrative charge for Grave Misconduct against respondents **Dolores C. Aserre** and **Feroisa T. Concordia** is **DISMISSED**.

**SO ORDERED.**<sup>24</sup>

The Ombudsman held petitioner liable for violation of Section 3(e) of RA 3019 as Manager of the PNR's Administrative and Finance Department for irregularities in the payments to Pandrol Korea. Her failure to ensure that the payments were made in accordance with the terms of the contract, coupled by the fact that she is the adoptive mother of Jaewoo Chung who negotiated for Pandrol Korea, was purportedly indicative of bad faith, manifest partiality and gross inexcusable negligence in the discharge of her functions that resulted in unwarranted benefits, advantage or preference to Pandrol Korea.<sup>25</sup>

Petitioner filed a motion for partial reconsideration of the Joint Resolution, but the same was denied. Hence, this present Petition.

**PETITION BEFORE THE COURT**

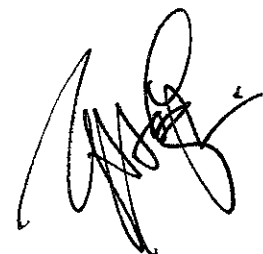
In her Petition, petitioner avers that she did not act with manifest partiality, evident bad faith or inexcusable negligence and that she did not cause any undue injury to any party, including the government, or give any private party unwarranted benefits, advantage or preference. She argues further that there were no irregularities in the payments to Pandrol Korea, stressing that the mere opening of an LC did not amount to payment. Petitioner also points out that the absence of a notice of disallowance by the Commission on Audit against the payments made to Pandrol Korea indicates that the payments were, in fact, regular, necessary and lawful.

In their Comment,<sup>26</sup> respondents counter that the Petition is not the plain, speedy and adequate remedy in the ordinary course of law and that there is no compelling reason to deviate from the long-standing policy of non-interference with the Ombudsman's exercise of its constitutionally mandated investigatory and prosecutory powers. Respondents further argue that there is no manifest bad faith or grave abuse of discretion attendant in the filing of the indictment against petitioner before the Sandiganbayan.

<sup>24</sup> Id. at 110-111.

<sup>25</sup> Id. at 108-109.

<sup>26</sup> *Rollo*, Vol. II, pp. 1103-1120.



Neither was the preliminary investigation conducted a sham as would merit the issuance of the extraordinary writ of *certiorari* to nullify the proceedings.

Petitioner filed her Reply<sup>27</sup> which essentially repleads her arguments in her Petition.

### ISSUE

The sole issue to be resolved here is whether the Ombudsman gravely abused its discretion in finding probable cause against petitioner for violation of Section 3(e) of RA 3019.

### RULING OF THE COURT

The Petition is meritorious.

At the very outset, it is important to distinguish this case from the other on-going criminal proceedings related to PNR's procurement of rail fastenings, clips and insulators from Pandrol Korea and Nikka Trading through Direct Contracting.

To reiterate, there are four members of the PNR-BAC who were charged for recommending that the PNR undergo Direct Contracting with Pandrol Korea without following the requirements set forth under RA 9184, its IRR, and the General Procurement Manual.<sup>28</sup> Moreover, Andal was charged with two (2) counts of violation of Section 3(e) of RA 3019 in connection with the contracts with Pandrol Korea and Nikka Trading. The assailed Joint Resolution identified Andal to have been the one negotiating with Pandrol Korea from the start, and faulted him for having failed to secure a certification from the Secretary of the Department of Transportation and Communication as required under Executive Order No. 423 and the PNR Board Resolution. It also found probable cause against him in view of his authorization and approval of the irregular payments to Pandrol Korea.<sup>29</sup>

The charge against petitioner, on the other hand, is **solely** on the basis of her having authorized full payments and charging the cost of the opening of an LC to the account of PNR alleged to be in violation of the payment schedule<sup>30</sup> in the contract and Section 42.5<sup>31</sup> of the IRR-A of RA 9184.

<sup>27</sup> Id. at 1126-1159.

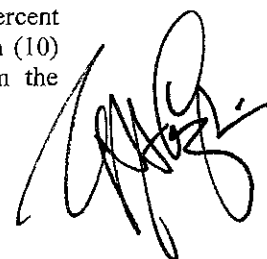
<sup>28</sup> See *rollo*, Vol. 1, p. 108.

<sup>29</sup> Id. at 109.

<sup>30</sup> The payment shall be made to the Supplier as herein mentioned:

x x x x

- b) For each scheduled payment, an advance payment equivalent to fifteen percent (15%) of the Price of the delivery shall be paid to the SUPPLIER within ten (10) calendar days from receipts of the SUPPLIER of a Purchase Order from the PURCHASER, subject to the provision of Item 5(c) below.



Evidently, while it may appear that the acts of all the defendants in this case are connected in that they sprang from the same transactions, the act taken against petitioner is distinct and severable from the acts of her co-defendants. It should hold no sway, therefore, whether the case of petitioner before the Sandiganbayan has been consolidated with the other cases involving the PNR-BAC members, or that those against Andal have recently been decided by the anti-graft court with a finding of his guilt.<sup>32</sup>

In point of fact, petitioner was categorically excluded by the assailed Joint Resolution insofar as the resort to the mode of procurement was concerned. The pertinent portion of the assailed Joint Resolution reads:

For recommending the Direct Contracting to Pandrol Korea, respondent-PNR-BAC members **Mosura, Jr., Remonte, Marayag, and Dominguez** should be charged for violation of Section 3 (e) of R.A. No. 3019. They gave unwarranted benefits, advantage or preference to Pand[r]ol Korea in the discharge of their functions as PNR-BAC members through gross inexcusable negligence. As BAC members, they are expected to be knowledgeable of the procurement laws and should be judicious and meticulous in performing their functions; yet they failed to deliver on these expectations when they resorted to Direct Contracting with Pand[r]ol Korea without following the requirements set therefor under R.A. No. 9184, its IRR-A, and the GPM Volume 2 as discussed above. Respondent **Lynna Chung** cannot be charged for the offense as a member of the PNR-BAC since she had no participation in the decision to recommend the resort to Direct Contracting.<sup>33</sup> (Emphasis and italics in the original; underscoring supplied)

x x x x

d) The payment of the remaining eighty-five percent (85%) of the amount for each delivery shall be paid to the SUPPLIER upon presentation to the advisory bank of the following shipment documents:

- (1) Packing List;
- (2) Bill of Lading;
- (3) Inspection Certificate;
- (4) Commercial Invoice;
- (5) Authenticated Export Declaration;
- (6) Marine Insurance Policy x x x

<sup>31</sup> SECTION 42. *Contract Implementation and Termination*

x x x x

42.5. Procuring entities may issue a letter of credit in favor of a local or foreign supplier; *Provided, that*, no payment on the letter of credit shall be made until delivery and acceptance of the goods as certified to by the procuring entity in accordance with the delivery schedule provided for in the contract; *Provided further*, that, the cost for the opening of letter of credit shall be for the account of the local or foreign supplier and shall be so stated in the bidding documents.

<sup>32</sup> In a Decision dated January 22, 2021 in SB-18-CRM-0511 and SB-18-CRM-0513, the Sandiganbayan found Andal guilty beyond reasonable doubt of two counts of violation of Section 3(e) of RA 3019. The threshold issue resolved by the Sandiganbayan in said cases was whether Andal was guilty of violation of Section 3(e) of RA 3019 for entering into contracts with Pandrol Korea and Nikka Trading through Direct Contracting. **The Sandiganbayan neither discussed nor ruled on the authority given by Andal on the alleged irregular payments made to Pandrol Korea;** accessed at [https://sb.judiciary.gov.ph/DECISIONS/2021/A\\_Crim\\_SB-18-CRM-0511%20and%200513\\_People%20vs%20Andal\\_01\\_22\\_2021.pdf](https://sb.judiciary.gov.ph/DECISIONS/2021/A_Crim_SB-18-CRM-0511%20and%200513_People%20vs%20Andal_01_22_2021.pdf).

<sup>33</sup> *Rollo*, Vol. I, p. 108.



The indictment against petitioner centers on her participation in the payments to Pandrol Korea. The Ombudsman affirmed the allegation in the Complaint that together with Andal, petitioner facilitated the irregular release of payments to Pandrol Korea. It noted the documents on record which supposedly show them authorizing the full payment without regard to the payment schedule and prerequisite submission of importation documents. For petitioner, in particular, among these documents was her letter addressed to the manager of the PVB to debit the peso equivalent of US\$1,155,000.00 against a checking account to cover payment to Pandrol Korea for the importation of rail fastening assembly.<sup>34</sup> The Ombudsman found petitioner remiss in her duty in ensuring that all payments of the PNR were supported by valid and original documents and were made according to the terms of the applicable contract.<sup>35</sup> As such, the Ombudsman concluded that this failure on the part of petitioner, coupled by the fact that she is the adoptive mother of Jaewoo Chung who negotiated for Pandrol Korea, is indicative of bad faith, manifest partiality and gross inexcusable negligence in the discharge of her functions that resulted in unwarranted benefits, advantage or preference to Pandrol Korea.<sup>36</sup>

The Court holds otherwise.

While, indeed, the Court has consistently recognized and generally deferred to the plenary investigative and prosecutorial powers of the Ombudsman, the Court has, at the same time, been quick to step in when the conduct of the Ombudsman of the preliminary investigation was attended with grave abuse of discretion.<sup>37</sup> The Court, sitting *en banc*, had the occasion to once again uphold this exception in the very recent case of *Non v. Office of the Ombudsman*<sup>38</sup> (*Non*). The Court held therein that it will not shirk from its duty to intervene upon proof of commission of grave abuse of discretion by the Ombudsman as it is not precluded from reviewing the Ombudsman's action when there is a grave abuse of discretion, in which case the *certiorari* jurisdiction of the Court may be invoked pursuant to Section 1, Article VIII of the Constitution.<sup>39</sup> This squarely applies here.

Even at the probable cause stage, it is already evident that not every element of Section 3(e) of RA 3019 is present in this case. In particular, there is no showing that the act of petitioner was done through manifest partiality, evident bad faith, or gross inexcusable negligence, or that she

<sup>34</sup> *Rollo*, Vol. II, pp. 1135-1136. It may as well be also pointed out that petitioner sent a similar letter to the manager of the PNB to debit the peso equivalent of \$225,000.00 against a savings account upon opening of the LC in favor of Pandrol Korea for the purchase of 50,000 rail clips and 50,000 nylon insulators. See *id.* at 1138-1139.

<sup>35</sup> *Rollo*, Vol. I, p. 104.

<sup>36</sup> *Id.* at 108-109.

<sup>37</sup> See *Reyes v. Office of the Ombudsman*, G.R. No. 208243, June 5, 2017, 825 SCRA 436, 446-448 and *Morales, Jr. v. Carpio-Morales*, G.R. No. 208086, July 27, 2016, 798 SCRA 609, 623-624.

<sup>38</sup> G.R. No. 239168, September 15, 2020.

<sup>39</sup> *Id.* at 8.

gave any unwarranted benefit, advantage or preference to another, or that undue injury was caused to the government.

By the very language of Section 3, paragraph (e)<sup>40</sup> of RA 3019, which defines “corrupt practices of public officers,” the elements of manifest partiality, evident bad faith, and gross inexcusable negligence and of giving unwarranted benefit, advantage or preference to another **must go hand in hand** with a showing of fraudulent intent and corrupt motives.

Evident bad faith “does not simply connote bad judgment or negligence” but of having a “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 affirmatively operating with **furtive design or with some motive or self-interest or ill will or for ulterior purposes.**”<sup>41</sup>

Manifest partiality, on the other hand, is defined as **a clear, notorious, or plain inclination or predilection to favor one side or person rather than another,**<sup>42</sup> while gross inexcusable negligence is defined as negligence characterized by the want of even the slightest care. It presupposes acting or omitting to act in a situation where there is a duty to act, **not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.**<sup>43</sup>

Here, the pieces of evidence against petitioner relied upon by the Ombudsman for the alleged irregularities in facilitating payments to Pandrol Korea consist of the: (1) memorandum Andal had sent to petitioner directing her to effect the payment of the peso equivalent of US\$1,155,000.00 to be charged to PNR’s PVB Checking Account; (2) letter petitioner had sent to the PVB in compliance with the memorandum of Andal; and (3) two debit advices by the PNB to the PNR that its account had been debited on given dates (December 2009 and March 2010).<sup>44</sup> Petitioner correctly points out in her Reply that among these four pieces of documents, the only one that she signed was her letter to the manager of PVB in compliance with the directive of Andal.<sup>45</sup> Apart from this letter, petitioner admitted signing a similar one addressed to PNB.<sup>46</sup> These letters purportedly authorized the full debit of the peso equivalent of the dollar sums representing the contract price which was allegedly not in accord with the schedule of payment. But as petitioner clearly explains, she made the letters upon the instructions of Andal and that

<sup>40</sup> See note 4.

<sup>41</sup> See *J. Caguioa*, Concurring Opinion in *Villarosa v. People*, G.R. Nos. 233155-63, June 23, 2020, p. 6. Emphasis and underscoring in the original.

<sup>42</sup> *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009, 580 SCRA 279, 290.

<sup>43</sup> *Sanchez v. People*, G.R. No. 187340, August 14, 2013, 703 SCRA 586, 593.

<sup>44</sup> *Rollo*, Vol. II, pp. 1135-1138.

<sup>45</sup> *Id.* at 1138.

<sup>46</sup> *Id.* at 1138-1139.

they merely authorized the opening of an LC, which was in accordance with the stipulation in the contract.

The assailed Joint Resolution brushed aside the explanation of petitioner concerning her compliance with the instructions of Andal as flimsy, but it never addressed nor contested her other explanation with regard to the opening of the LCs. Petitioner explains that the *actual disbursement of the funds* would still depend on fulfillment of the terms of said LCs and the contract, specifically on submission of documents, between PNR and Pandrol Korea. In other words, payments were *not* effected by the mere authorization to open said LCs.

This explanation of petitioner is, as it should have been, well-taken in her favor.

In *PNB v. Sandiganbayan*,<sup>47</sup> the Court already made it clear that the mere opening of an LC does not involve a specific appropriation of a sum of money in favor of the beneficiary. It only signifies that the beneficiary *may* be able to draw funds upon the LC up to the designated amount specified therein. It does not even convey the notion that a particular sum of money has been specifically reserved or has been held in trust.

In this case, aside from the letters petitioner sent to the banks, there is no other documentary proof mentioned in the Joint Resolution to show that payments were actually made to Pandrol Korea upon her mere execution of the authorization to open the LC.<sup>48</sup> In her Petition, petitioner had emphasized on this, pointing out that the LC for the US\$1,155,000.00 contract, for instance, was issued on June 19, 2009, or more than a week after she had sent the subject June 8, 2009 letter to the PVB which the Ombudsman wrongly interpreted to have already authorized the full payment to Pandrol Korea. It was only from June 25-October 3, 2009, when Pandrol Korea availed itself of the LC to secure payment of its deliveries to PNR. From this period, the sums released to Pandrol Korea were apparently in installments and not for the full amount of US\$1,155,000.00.<sup>49</sup>

Furthermore, and more importantly, even proceeding from the view that the act charged under Section 3(e) of RA 3019 must have been done maliciously or with corrupt motives, the Ombudsman miserably failed to demonstrate such fact beyond its mere say so in its Joint Resolution. It should not suffice that there was a mere violation of a law — or in this case, a contract — however clear or elementary it might be. Simply put, the failure to observe the schedule of payment in the contract is not indicative

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<sup>47</sup> G.R. No. 180264, September 25, 2019 (Unsigned Resolution). Rendered by the First Division, composed of Chief Justice Lucas P. Bersamin (on official leave) and Associate Justices Estela M. Perlas-Bernabe, Francis H. Jardeleza, Rosmari D. Carandang, and Rodil V. Zalameda (designated additional Member vice Associate Justice Alexander G. Gesmundo who took no part.

<sup>48</sup> See *rollo*, Vol. I, p. 4.

<sup>49</sup> *Id.* at 13-14.

*per se* of evident bad faith, manifest partiality or gross inexcusable negligence, of causing undue injury to any party, or of giving unwarranted benefit, advantage or preference to another. Thus, in *Sistoza v. Desierto*,<sup>50</sup> the Court went on to rule in this wise:

x x x To establish a *prima facie* case against petitioner for violation of Sec. 3, par. (e), *RA 3019*, the prosecution must show not only the defects in the bidding procedure, a circumstance which we need not presently determine, but also the alleged evident bad faith, gross inexcusable negligence or manifest partiality of petitioner in affixing his signature on the purchase order and repeatedly endorsing the award earlier made by his subordinates despite his knowledge that the winning bidder did not offer the lowest price. Absent a well-grounded and reasonable belief that petitioner perpetrated these acts in the criminal manner he is accused of, there is no basis for declaring the existence of probable cause.

x x x x

The instant case brings to the fore the importance of clearly differentiating between acts simply negligent and deeds grossly and inexcusably negligent punishable under Sec. 3, par. (e), of the *Anti-Graft and Corrupt Practices Act*. While we do not excuse petitioner's manner of reviewing the award of the supply of tomato paste in favor of Elias General Merchandising, whereby he *cursorily* perused the purchase order and readily affixed his signature upon it, since he could have checked the supporting documents more lengthily, it is our considered opinion that his actions were not of such nature and degree as to be considered brazen, flagrant and palpable to merit a criminal prosecution for violation of Sec. 3, par. (e), of *RA 3019*. To paraphrase *Magsuci v. Sandiganbayan*, petitioner might have indeed been lax and administratively remiss in placing too much reliance on the official documents and assessments of his subordinates, but for conspiracy of silence and inaction to exist it is essential that there must be patent and conscious criminal design, not merely inadvertence, under circumstances that would have pricked curiosity and prompted inquiries into the transaction because of obvious and definite defects in its execution and substance. To stress, there were no such patent and established flaws in the award made to Elias General Merchandising that would have made his silence tantamount to tacit approval of the irregularity.<sup>51</sup>

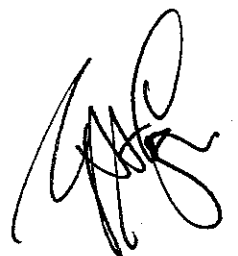
Also, in *Sabaldan, Jr. v. Office of the Ombudsman for Mindanao*,<sup>52</sup> the Court held that a violation of RA 9184 does not *ipso facto* result in a violation of RA 3019, to wit:

x x x [I]t must be emphasized that the instant case involves a finding of probable cause for a criminal case for violation of Section 3(e) of R.A. No. 3019, and not for violation of R.A. No. 9184. Hence, **even granting that there may be violations of the applicable procurement laws, the same does not mean that the elements of violation of Section 3(e) of R.A. No. 3019 are already present as a matter of course.** For

<sup>50</sup> G.R. No. 144784, September 3, 2002, 388 SCRA 307.

<sup>51</sup> Id. at 327-329.

<sup>52</sup> G.R. No. 238014, June 15, 2020.



there to be a violation under Section 3(e) of R.A. No. 3019 based on a breach of applicable procurement laws, one cannot solely rely on the mere fact that a violation of procurement laws has been committed. **It must be shown that (1) the violation of procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage or preference; and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.** x x x<sup>53</sup> (Emphasis supplied)

Again, in the most recent case of *Non*, the Court, sitting *en banc*, ruled that although the commissioners of the Energy Regulatory Commission acted with grave abuse of discretion in issuing Resolution No. 1 Series of 2016, their error in doing so should not be automatically deemed as criminal under Section 3(e) of RA 3019.<sup>54</sup> The ruling emphasized that mere blanket claims that Resolution No. 1 Series of 2016 was meant to favor Meralco were insufficient to support a claim for violation of Section 3(e) of RA 3019, absent a specific showing that the accused acted with fraudulent intent.

Hence, in this case, even on the assumption that the schedule of payment in the contract between PNR and Pandrol Korea was violated — which it was not — it still behooved the Ombudsman to show, to justify a probable cause finding, that said violation was attended with corrupt motives or fraudulent intent. All that its Joint Resolution relies upon as “indicative” of evident bad faith, manifest partiality, and gross inexcusable negligence in the discharge of her functions that resulted in unwarranted benefits, advantage or preference to Pandrol Korea<sup>55</sup> is the purported abandonment by petitioner of her duties to see to it that the schedule of payment was observed and her relationship with Jaewoo Chung. No strong and specific correlation, however, has been sufficiently established. As with *Non*, the Ombudsman in this case simply made blanket claims and conjectures. In other words, the assailed Joint Resolution totally fails in demonstrating how petitioner acted with evident bad faith, manifest partiality, or gross inexcusable negligence. As well, there is also no clear and positive showing how any injury was caused to the government, or how any unwarranted benefit, advantage or preference was given to another with the criminal or corrupt motives required by Section 3(e) of RA 3019.

Additionally, the inference sought to be drawn by the Ombudsman with petitioner’s relationship with Jaewoo Chung is even unavailing given its own finding, in the very same Joint Resolution, that there was no evidence that petitioner exerted any undue influence in awarding the contract to Pandrol Korea. Thus:

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<sup>53</sup> Id. at 7-8.

<sup>54</sup> *Supra* note 38, at 12.

<sup>55</sup> *Rollo*, Vol. I, pp. 108-109.



Respondent Lynna Chung and private respondent Jaewoo Chung's failure to disclose their relationship does not result in any liability since the subject procurement was not made through public bidding. Section 47 of R.A. No. 9184 requires that "all bids shall be accompanied by a sworn affidavit of the bidder that it is not related to the head of the procuring entity by consanguinity or affinity up to the third civil degree." This provision, which also covers such a relationship between a BAC member and an officer of a bidder-corporation, does not apply to procurements by Direct Contracting — as in the instant case, albeit wrongly resorted to since no bidding is involved therein. **Moreover, even if there appears to be a conflict of interest on the part of respondent Lynna Chung, it was not shown that she exerted influence in ensuring the award of the contract to Pandrol Korea, which her adopted son — private respondent Jaewoo Chung — represented as Manila Liaison Officer of Pandrol Limited.**<sup>56</sup> (Emphasis supplied)

There is absolutely no reason to extend the foregoing refusal of the Ombudsman to make an inference of undue influence against petitioner in connection with the awarding of the contract to Pandrol Korea to the matter of the alleged payments made under the contract, especially in light of its own determination to dismiss the criminal charges against Jaewoo Chung on the ground that complainant failed to allege a particular act or present any evidence that he connived with any of the respondents, including herein petitioner, to perpetuate the crime under Section 3(e) of RA 3019.<sup>57</sup>

Indeed, the relationship alone of petitioner with Jaewoo Chung should not be determinative of the liability of petitioner, absent any kind of showing that it was used improperly or with corrupt motives to the disadvantage of the government. The element of "unwarranted benefits" must be understood in the context of corruption. As its name implies, and as what can be gleaned from the deliberations of Congress, RA 3019 was crafted as an anti-graft and corruption measure. Senator Arturo M. Tolentino, one of the sponsors of the law, explained that "[w]hile we are trying to penalize, the main idea of the bill is graft and corrupt practices. x x x the idea of graft is the one emphasized."<sup>58</sup> At the heart of the acts punishable under RA 3019 is *corruption*. Graft entails the acquisition of gain in *dishonest* ways. Hence, in saying that a public officer gave "unwarranted benefits, advantage or preference," it is not enough that the benefits, advantage, or preference was obtained in transgression of laws, rules, and regulations. **Such benefits must have been given by the public officer to the private party with corrupt intent, a dishonest design, or some unethical interest.** This is in alignment with the spirit of RA 3019, which centers on the concept of graft.<sup>59</sup>

<sup>56</sup> Id. at 102.

<sup>57</sup> Id. at 110.

<sup>58</sup> See *J. Caguioa, Concurring Opinion in Villarosa v. People*, supra note 41, at 16. Underscoring in the original.

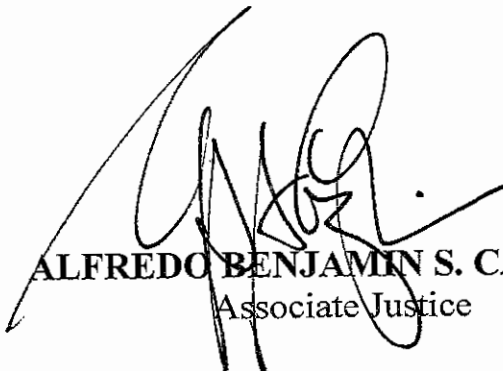
<sup>59</sup> Id. at 16-17.

Equally important, the assailed Joint Resolution likewise declared that there was no substantial evidence on the alleged shortage of delivery to PNR of Pandrol products.<sup>60</sup> This raises the question then that if all had been delivered to PNR, where is the undue injury to the government?

All told, while the Court has a policy of non-interference in the Ombudsman's exercise of its constitutionally mandated powers, this should be weighed against the purpose of a preliminary investigation, which is securing the innocent against hasty, malicious and oppressive prosecution, and protecting one from an open and public accusation of crime from the trouble, expense and anxiety of a public trial.<sup>61</sup> At the same time, the State must be protected as well from useless and expensive trials.<sup>62</sup> Hence, though a finding of probable cause is regarded as preliminary, this should not be enough reason to proceed with the trial of a case which, in every indication, stands on shaky grounds.

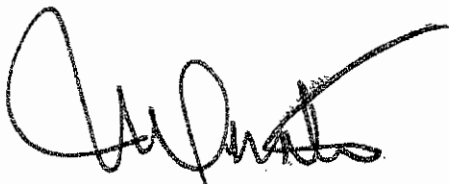
**WHEREFORE**, the Petition is **GRANTED**. The Joint Resolution dated March 14, 2018 of the Office of the Ombudsman in OMB-C-C-16-0055 and OMB-C-A-16-0046, and its Order dated May 8, 2018 in OMB-C-C-16-0055 are **REVERSED** and **SET ASIDE**.

**SO ORDERED.**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

WE CONCUR:

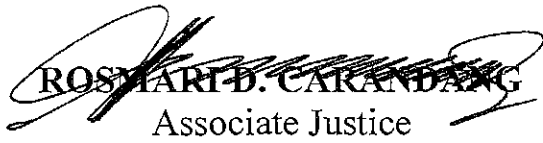


**DIOSDADO M. PERALTA**  
Chief Justice  
Chairperson

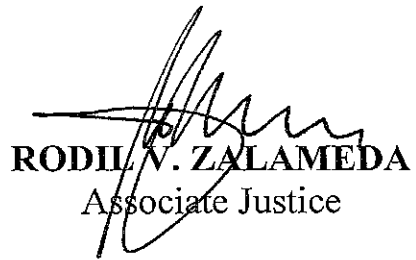
<sup>60</sup> *Rollo*, Vol. I, p. 104.

<sup>61</sup> See *Principio v. Barrientos*, G.R. No. 167025, December 19, 2005, 478 SCRA 639, 650-651.

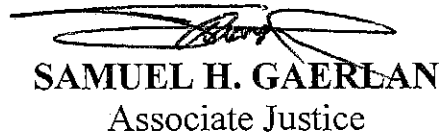
<sup>62</sup> *Id.* at 651.



**ROSMARI D. CARANDANG**  
Associate Justice



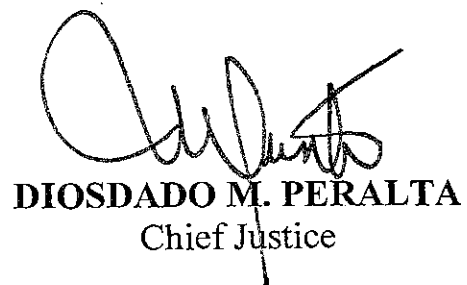
**RODIL V. ZALAMEDA**  
Associate Justice



**SAMUEL H. GAERLAN**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.



**DIOSDADO M. PERALTA**  
Chief Justice

