

### THIRD DIVISION

G.R. No. 253688 — MEHOL K. SADAIN, *petitioner*, versus OFFICE OF THE OMBUDSMAN, *respondent*.

Promulgated:

February 8, 2023

X- ----- Mis-DCB-t ----- X

### SEPARATE CONCURRING OPINION

CAGUIOA, J.:

I concur with the *ponencia*'s ruling that public bidding was not required in the above-captioned case as Government Procurement Policy Board (GPPB) Resolution No. 12-2007,<sup>1</sup> is not applicable.<sup>2</sup>

The Court's ruling aims to clarify what has been often misunderstood as regards the applicability of GPPB Resolution No. 12-2007 in the selection of non-governmental organizations (NGO) for certain government projects.

Annex A of GPPB Resolution No. 12-2007, entitled "Guidelines on Non-Governmental Organization Participation in Public Procurement," specifically limits its scope and application to situations where there is "an appropriation law or ordinance" that "specifically earmarks an amount for projects to be specifically contracted out to NGOs:"

#### 2. SCOPE AND APPLICATION

These guidelines prescribe the allowable modes of selecting an NGO **in case an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs.**

x x x x

#### 4. GENERAL GUIDELINES

4.1 **When an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs,** the procuring entity may select an NGO through competitive public bidding or negotiated procurement under Section 53 (j) of the IRR-A. (Additional emphasis supplied)

Based on the above-quoted provisions, it is clear that GPPB Resolution No. 12-2007 applies only when an appropriation law or

<sup>1</sup> Entitled: "AMENDMENT OF SECTION 53 OF THE IMPLEMENTING RULES AND REGULATIONS PART A OF REPUBLIC ACT 9184 AND PRESCRIBING GUIDELINES ON PARTICIPATION OF NON-GOVERNMENTAL ORGANIZATIONS IN PUBLIC PROCUREMENT," approved on June 29, 2007.

<sup>2</sup> *Ponencia*, pp. 12-14.

ordinance earmarks an amount for projects specifically contracted out to NGOs.

In the instant case, there was no specific appropriation for NGOs in the 2012 General Appropriations Act (GAA).<sup>3</sup> To the contrary, the funds were sourced from former Senator Gregorio Honasan II's (Senator Honasan) Priority Development Assistance Fund (PDAF).<sup>4</sup> Ineluctably, therefore, GPPB Resolution No. 12-2007 does not apply and public bidding was not a requirement.

To be sure, what was the applicable rule in this case is Commission on Audit (COA) Circular No. 2007-001 or the Revised Guidelines in the Granting, Utilization, Accounting, and Auditing of the Funds Released to NGOs or People's Organizations, which provides:

4.5 Procedure for the Availment, Release and Utilization of Funds

x x x x

4.5.2 For each project proposal, the [Government Organization] shall accredit the NGO/PO project partners through the Bids and Awards Committee (BAC), or a committee created for the purpose, which shall formulate the selection criteria. The Committee shall perform the selection process, including the screening of the qualification documents, ocular inspection of the NGOs/POs business site, and evaluation of the technical and financial capability of the NGO/PO. (Emphasis and underscoring supplied)

Under Section 4.5.2, the accreditation and selection of the partner NGO need not be done through a Bids and Awards Committee, but may be conducted by a committee created for the purpose. As stated in the *ponencia*, petitioner Mehol K. Sadain (Sadain) and the National Commission on Muslim Filipinos (NCMF) complied with the said requirement in forming the NCMF's "PDAF Accreditation Committee" which conducted the evaluation of Focus on Development Goals Foundation, Inc. (Focus).<sup>5</sup>

It is also important to note that the PDAF project in the instant case was implemented prior to the promulgation of the Court's Decision in *Belgica v. Hon. Exec. Sec. Ochoa, Jr.*<sup>6</sup> (*Belgica*), which struck down post-enactment measures of lawmakers for being unconstitutional. In *Belgica*, the Court described the practice of identifying and awarding projects in previous years:

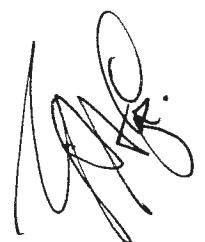
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<sup>3</sup> Id. at 4.

<sup>4</sup> Id. at 2.

<sup>5</sup> Id. at 12.

<sup>6</sup> 721 Phil. 416 (2013).



In the 2012 and 2013 PDAF Articles, it is stated that the “[i]dentification of projects and/or designation of beneficiaries shall conform to the priority list, standard or design prepared by each implementing agency [(priority list requirement)] x x x.” **However, as practiced, it would still be the individual legislator who would choose and identify the project from the said priority list.**

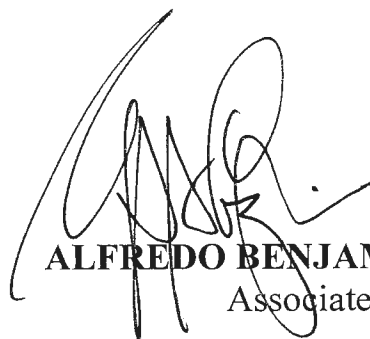
x x x **Legislators were also allowed to identify programs/projects**, except for assistance to indigent patients and scholarships, outside of his legislative district provided that he secures the written concurrence of the legislator of the intended outside-district, endorsed by the Speaker of the House. **Finally, any realignment of PDAF funds, modification and revision of project identification, as well as requests for release of funds, were all required to be favorably endorsed by the House Committee on Appropriations and the Senate Committee on Finance, as the case may be.**<sup>7</sup> (Citations and original emphasis omitted; emphasis supplied)

As determined by the Court in *Belgica*, it was the practice in the 2012 GAA that the lawmakers would identify the project and even the beneficiaries of their PDAF based on their priority projects. Furthermore, any request for modification or revision of the project identification and release of funds, required the favorable endorsement of the Senate Committee on Finance or House Committee on Appropriations.

As correctly stated in the *ponencia*, however, the Court’s pronouncement in *Belgica* applies prospectively.<sup>8</sup> The operative fact doctrine exhorts that until the judiciary declares the invalidity of a certain legislative or executive act, such acts are presumed constitutional and valid.<sup>9</sup>

Prior to *Belgica*, the PDAF system institutionalized under the 2012 GAA was considered valid. Thus, Sadain cannot be faulted for giving weight to Senator Honasan’s endorsement of Focus. Nonetheless, to Sadain and the NCMF’s credit, they did not solely rely on Senator Honasan’s endorsement but they also conducted their own evaluation of Focus in compliance with COA Circular 2007-001.

All told, I concur with the *ponencia* that Sadain did not violate the rule on public bidding as GPPB Resolution No. 12-2007 is not applicable to the instant case.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

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<sup>7</sup> Id. at 503-506.

<sup>8</sup> *Ponencia*, p. 15

<sup>9</sup> *Belgica v. Hon. Exec. Sec. Ochoa, Jr.*, supra note 6, at 580.