



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 6, 2022 which reads as follows:

“G.R. No. 236427 (*Ma. Negenia V. Araneta v. Office of the Ombudsman and Agustin Sonza, Jr.*). - This Petition for *Certiorari* with Prayer for the Issuance of Temporary Restraining Order and/or Preliminary Injunction¹ under Rule 65 of the Rules of Court assails the Resolution² dated 02 August 2016 and Order³ dated 19 October 2017 of the Office of the Ombudsman (OMB) in OMB-V-C-13-0160. The OMB found probable cause to indict herein petitioner Ma. Negenia V. Araneta (petitioner) for violations of Section 65(b)(3) of Republic Act (RA) No. 9184,⁴ otherwise known as the Government Procurement Reform Act, and Section 3(e) of RA 3019,⁵ otherwise known as the Anti-Graft and Corrupt Practices Act.

Antecedents

This case stemmed from a Letter-Complaint⁶ dated 16 August 2006, filed by complainant Agustin Sonza, Jr. (Sonza) before the Office of the Ombudsman-Visayas (OMB-Visayas) against public officials of the Municipality of Santa Barbara, Province of Iloilo: Municipal Mayor Isabelo J. Maquino (Maquino); Municipal Administrator and Bids and Awards Committee (BAC) Chairman Lyndofer V. Beup (Beup); Municipal Engineer and BAC Vice Chairman Noel T. Jaspe (Jaspe); Municipal Agriculturist and BAC Member Sanny Apuang (Apuang); and petitioner as Municipal Budget

¹ *Rollo*, pp. 8-21.

² *Id.* at 23-34.

³ *Id.* at 43-46.

⁴ Entitled “AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES.” Approved on 10 January 2003.

⁵ Entitled “ANTI-GRAFT AND CORRUPT PRACTICES ACT.” Approved on 17 August 1960.

⁶ *Rollo*, p. 51.

Officer and BAC Member. Also charged were: Raymund E. Tabuga (Tabuga), President of Topmost Development and Marketing Corporation (TDMC); Sally G. Tampos (Sally) Henry P. Longno (Henry) Genevieve Clavecillas (Clavecillas), all TDMC Board Members; Frelyn L. Garcia (Garcia), TDMC Corporate Secretary; and Felix Q. Gurrea (Felix), President of F. Gurrea Construction, Inc. (FGCI), Ivy L. Gurrea (Ivy), William Q. Gurrea (William), Asuzena Gurrea (Asuzena), Jimmy Gurrea (Jimmy), Sally Gurrea (Sally), Annie Gurrea (Annie) and Alex Gurrea (Alex), all FGCI Board Directors, for violations of Section 65(b)(3) of Republic Act No. (RA) 9184, otherwise known as the "Government Procurement Reform Act" and Section 3(e) of RA 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act."⁷

Sonza alleged that the bidding of several projects in Santa Barbara, Iloilo was rigged by two bidders, TDMC and FGCI, in collusion with Maquino and the members of the BAC.⁸

Acting on the Letter-Complaint, the OMB-Visayas requested the Commission on Audit, Regional Office VI (COA), to conduct a special audit examination on the alleged irregularity in the procurement for the following infrastructure projects of Santa Barbara: (1) Concreting of Libertad and Arroyo (Ilawod) Streets; (2) Asphalt Overlaying of Castilla Street; (3) Concreting of Sodusta Street; (4) Asphalting of Arroyo Street (front of the Public Market); and (5) Construction of the Fish Section Building.⁹

Subsequently, the COA submitted its fact-finding investigation report to the OMB-Visayas for evaluation and determination.¹⁰

After investigation, OMB-Visayas Graft Investigator and Prosecution Officer Maricel M. Marcial-Oquendo (GIPO Marcial-Oquendo) issued a Resolution¹¹ dated 02 August 2016, finding probable cause to indict petitioner together with Maquino, Jaspe, Beup, Apuang, Tabuga, and Felix for violations of Section 65(b) (3) of RA 9184 and Section 3(e) of RA 3019, as amended. In the same Resolution, the charges against the other respondents were dismissed for insufficiency of evidence.

GIPO Marcial-Oquendo held that the agreement of the bidders, in connivance with the members of the BAC, to rig the bidding of the five [5] Santa Barbara infrastructure projects was established by the following circumstantial evidence: *first*, TDMC and FGCI have interlocking incorporators, directors, and stockholders; *second*, TDMC and FGCI share the same office address in Iloilo City and in Manila; *third*, TDMC and FGCI's officers and employees have connections, past or current, with the

⁷ Id. at 23.

⁸ Id. at 24.

⁹ Id.

¹⁰ Id. at 24-25.

¹¹ Id. at 23-34.

other corporation; and *fourth*, that TDMC and FGCI withdrew their respective bids at the same time and in the same manner leaving each one of them as sole bidders for each of the five projects is too much of a coincidence, not to mention the time and manner by which the other bidder (AFG) also withdrew its bid.¹² According to GIPO Marcial-Oquendo, such acts are indicative of the intention to split the project between them and violate the sanctity of open competition in a public bidding.¹³

It was found that the AFG representative verbally notified the BAC of its withdrawal of bids for all the five projects moments prior to the opening of the technical envelopes on the day of the opening of the bids.¹⁴ This is contrary to Section 26 of RA 9184, which states that bidders may, through a letter, withdraw their bid or express their intention not to participate in the bidding before the deadline for the receipt of the bids. After the applicable deadline, withdrawal of bids shall be subject to appropriate sanctions prescribed in the IRR-A of RA 9184. Under Section 26.2, IRR-A of RA 9184, a bidder may also express their intention not to participate in the bidding through a letter, which should reach and be stamped received by the BAC before the deadline for the receipt of bids.

In this case, even assuming that the withdrawals by TDMC and FGCI were submitted prior to the deadline for the submission of their bids because these were attached to their respective Technical and Financial Envelopes, notice to the BAC was made only on the day of the bid opening, contrary to the requirement and intention of RA 9184 and its rules. Despite these glaring procedural flaws, however, the BAC did not rule on the validity of the bid withdrawals and instead accepted them as regular and legal.¹⁵

In addition, GIPO Marcial-Oquendo found that Beup, Jaspe, petitioner, and Apuang, who compose the BAC of Santa Barbara, Iloilo violated Section 3(e) of RA 3019, as amended. They acted with manifest partiality, evident bad faith, or gross inexcusable negligence when they allowed, on the day of bid opening, AFG to verbally withdraw its bids, then further allowed TDMC and FGCI to withdraw their bids thereby making either company the sole bidder for each of the five infrastructure projects, in violation of RA 9184 and its IRR-A. This is especially so in light of the commonalities and related interests of TDMC and FGCI. The BAC has the power and right to reject any and all bids if there is *prima facie* evidence of collusion between or among bidders, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition. However, instead of exercising this power, the BAC proceeded with the procurement, and eventually recommended the award of the projects to TDMC and FGCI.¹⁶

¹² Id. at 30.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 30-31.

¹⁶ Id. at 32.

Petitioner and Jaspe moved for reconsideration,¹⁷ but the same was denied in an Order¹⁸ dated 19 October 2017 for lack of merit. Aggrieved, petitioner filed the present petition.¹⁹

Issue

The main issue for the Court's resolution is whether the OMB-Visayas committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding probable cause to indict petitioner for violations of Section 65(b)(3) of RA 9184, Section 26.2 of the IRR of RA 9184, and Section 3(e) of RA 3019.

Petitioner's arguments

Petitioner argues the following: *first*, the procedural lapses were made in good faith and may even be relaxed by the subsequent and substantial compliance to Section 26.2 of the IRR of RA 9184. Petitioner claims that the withdrawal made by AFG was made before the deadline for the receipt of the bids and in accordance with the rules. The duly authorized representative of AFG verbally informed the BAC that an official letter of withdrawal was to follow, and the same was duly recorded in the minutes of the opening bids. Thus, petitioner believed in good faith that such withdrawal was validly made and substantially complied with the rules.²⁰ She further alleges that the letters of withdrawal of TMDC and FGCI, which were submitted and attached to their Technical and Financial envelopes, were acceptable as the same were submitted before the deadline for the receipt of bids.²¹ Petitioner likewise claims that the head of the procuring entity found no irregularity in the conduct of the bidding by the BAC, which even passed the audit of the Commission on Audit (COA).²²

Second, on the alleged interlocking directors, stockholders, incorporators of TDMC and FGCI, herein petitioner argues that the BAC Secretariat relied on the documents submitted by the said corporations, in good faith, considering that they were submitted under oath to be true and correct. COA, on the other hand, based its findings on documents secured from the Securities and Exchange Commission (SEC). Petitioner also maintains that at the time of the bidding, the old procurement rules were in effect, which gives the BAC only a maximum of seven (7) calendar days for post qualification and determination of Lowest Calculated and Responsive Bidder/Highest Rated Responsive Bidder (LCRB/HRRB), in accordance with RA 9184. In contrast, the current rules give the BAC thirty (30) calendar days for post qualification and determination of LCRB-HRRB. Thus, they have limited time to check and countercheck the post

¹⁷ Id. at 36-41.

¹⁸ Id. at 43-46.

¹⁹ Id. at 8-21

²⁰ Id. at 12

²¹ Id.

²² Id. at 13.

qualification and determination of the bidders.²³

Third, the government agency was not deprived of the true benefits of a competitive public bidding because the law allows Single Calculated/Rated and Responsive Bids pursuant to Section 36 of the IRR of RA 9184. After comparing the amount of the total bid with that of the approved budget, it was determined that the amount was neither excessively high nor unreasonably low to the detriment of the government. Moreover, it appears that Sonza conformed to the bids by affixing his signature.²⁴

Finally, there was no willful intent to violate the established rule, as withdrawal of bids are allowed by the procurement law. In this case, the withdrawals were made in the proper and timely manner.²⁵ Moreover, the element of conspiracy has not been sufficiently established by positive and conclusive evidence.²⁶ Petitioner also avers that this is her first administrative complaint.²⁷

PACPO's arguments

PACPO filed its Comment with Opposition to Petitioner's Application for the Issuance of TRO and/or WPI,²⁸ and prayed for its dismissal based on the following procedural deficiencies: (1) the filing of the Information and the Sandiganbayan's issuance of warrant of arrest against petitioner had already rendered the present petition moot and petitioners have already posted bail;²⁹ (2) the petition lacks the requisite verification and certification of non-forum shopping;³⁰ and (3) the petition was filed beyond the reglementary period, as Jaspe received a copy of the Order³¹ dated 19 October 2017 on 13 November 2017, thus, he has until 12 January 2018, within which to file a Petition for *Certiorari*. However, Jaspe filed his petition on 15 January 2018 or three days late.³²

Moreover, PACPO argues that a Petition for *Certiorari* under Rule 65 of the Rules of Court is not the appropriate remedy in this case since petitioners miserably failed to prove that the Ombudsman gravely abused its discretion in finding probable cause for violations of Section 65(b)(3) of RA 9184 and Section 3(e) of RA 3019.³³ PACPO also maintains that the Ombudsman's findings and conclusion that petitioner is probably guilty of violating the said provisions are not without support and merit.³⁴ It also reiterates the policy of non-interference with the exercise of the

²³ Id. at 15.

²⁴ Id. at 16-17.

²⁵ Id. at 18.

²⁶ Id. at 19.

²⁷ Id. at 18.

²⁸ Id. at 81-101.

²⁹ Id. at 86-87; SB-17-CRM-2414 and SB-17-CRM-2415.

³⁰ Id. at 87-88.

³¹ Id. at 43-46.

³² Id. at 88-89.

³³ Id. at 90-91.

³⁴ Id. at 91-95.

Ombudsman's constitutionally mandated investigatory and prosecutor powers, provided it has not been done in an arbitrary or despotic manner.³⁵

Ruling of the Court

We resolve to DISMISS the petition.

At the outset, We note that the instant petition is marred by procedural deficiencies warranting its outright dismissal.

Preliminary issues

A writ of *certiorari* is a prerogative writ, never demandable as a matter of right. Hence, he who seeks a writ of *certiorari* must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules.³⁶ Its principal office is to keep inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction.³⁷

Section 1, Rule 65 of the Rules of Court requires that the aggrieved person may file a verified petition in the proper court, to wit:

SECTION 1. *Petition for Certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, **a person aggrieved thereby may file a verified petition in the proper court, alleging facts with certainty and praying that the judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.**

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the paragraph of Section 3, Rule 46.

Further, Section 3, Rule 46, provides:

SECTION 3. *Contents and Filing of Petition; Effect of Non-Compliance with Requirements.* – The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be **accompanied by a**

³⁵ Id. at 95-98.

³⁶ *Del Monte Land Transport Bus Company v. Abergos*, G.R. No. 245344, 02 December 2020.

³⁷ *Lagon v. Velasco*, 826 Phil. 75, 82 (2018).

clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as referred to therein, and other documents relevant or pertinent thereto. The certification shall be accompanied by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the original.

The petitioner **shall also submit together with the petition a sworn certification** that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Emphasis supplied.)

The instant Petition for *Certiorari* should be dismissed outright based on the following defects: *first*, the petition was not verified by the petitioner; *second*, the petitioner did not attach certified true copies of the assailed resolution and order by the OMB-Visayas;³⁸ *third*, the petition lacks a certificate of non-forum shopping and verification; and *fourth*, there is a deficit in the payment of the fees for the issuance of a TRO.³⁹

Substantive issues

Time and again, this Court's consistent policy has been to maintain non-interference in the Ombudsman's determination of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. This policy has been observed not only to respect the investigatory and prosecutor powers granted by the 1987 Constitution to the Office of the Ombudsman, but upon practicality as well.⁴⁰

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner – which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law – in order to exceptionally warrant juridical intervention.⁴¹

³⁸ *Rollo*, pp. 23-34; 43-49.

³⁹ In the amount of ₱730.00; *Rollo*, pp. 7; 2.

⁴⁰ *Cambe v. Office of the Ombudsman*, 802 Phil. 190, 213-214 (2016).

⁴¹ *Casing v. Ombudsman*, 687 Phil. 468,476 (2012).

Probable cause, on the other hand, has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.⁴² Otherwise stated, a finding of probable cause need not be based on clear and convincing evidence of guilt, but on a well-founded belief that a crime has been committed and that the accused is probably guilty thereof and should be held in trial.

Petitioner’s defense in contesting the finding or lack of probable cause calls for a factual determination. It is evidentiary in nature and its probative value can be best passed upon after a full-blown trial on the merits⁴³ and not in a Special Civil Action for *Certiorari*.

In the instant case, petitioner was unable to prove that the OMB committed grave abuse of discretion in finding probable cause to indict her for violations of Section 65 (b) (3) of RA 9184,⁴⁴ Section 26.2 of its IRR and Section 3(e) of RA 3019.⁴⁵ She failed to support her arguments with any specific act or omission on the part of the OMB that would show capricious and whimsical exercise of judgment amounting to lack or excess of

⁴² *Pemberton v. De Lima*, 784 Phil. 918, 925 (2016); citation omitted.

⁴³ *Esquivel v. Ombudsman*, 437 Phil. 702, 712 (2002).

⁴⁴ **Section 65. Offenses and Penalties –**

x x x x

(b) Private individuals who commit any of the following acts, including ant public officers who conspires with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years.

x x x x

(3) When two or more bidders enter into an agreement which call upon one to refrain from bidding for Procurement contracts, or which call for withdrawal of Bids already submitted, or which are otherwise intended to secure an undue advantage to any one of them.

x x x x

⁴⁵ **Section 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.

x x x x



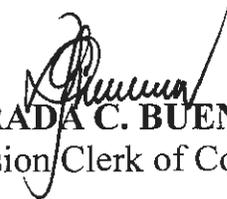
jurisdiction. Thus, the OMB did not commit grave abuse of discretion.

Considering that the Information and the subsequent warrant of arrest have been issued by the Sandiganbayan, this Petition for *Certiorari*, assailing the validity of OMB-Visayas in finding probable cause to indict petitioner, has been rendered moot.

WHEREFORE, the Petition for *Certiorari* with Prayer for Temporary Restraining Order and/or Injunction is hereby **DISMISSED** for being moot.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
9/21/22

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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