

FIRST DIVISION

[G.R. Nos. 234664-67, January 12, 2021]

RAUL R. LEE, PETITIONER, VS. HON. SANDIGANBAYAN FIRST DIVISION AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

PERALTA, C.J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] of the Sandiganbayan, First Division, in Criminal Case Nos. SB-11-CRM-0036-37 and SB-11-CRM-0038-39, entitled "*People of the Philippines v. Gov. Raul R. Lee, Raul G. Hernandez, and Ofelia D. Velasco.*"

The antecedent facts are summarized as follows:

In 2004, through the initiative of then Governor Raul R. Lee, the Province of Sorsogon was allocated with the amount of P5,000,000.00 from the Agriculture and Fisheries Modernization Act (AFMA) appropriations to finance the acquisition of agricultural supplies and inputs for the Province of Sorsogon under the project entitled "*Financial Assistance to Small and Marginal Farmers of the Province of Sorsogon for Agricultural Reinforcement Project.*" Governor Lee was the lead implementer of the said project.

In two occasions, Governor Lee took the lead in purchasing 2,000 liters of liquid fertilizer in the total amount of P3,000,000.00 at P1,500.00 per liter, and 133 liters of liquid fertilizer in the amount of P199,500.00 also at P1,500.00 per liter, for distribution to small and marginal farmers in the Province of Sorsogon.

However, in the *Annual Audit Report on the Province of Sorsogon for the Year Ended December 31, 2004* prepared by the Commission on Audit, and which was later on presented as one of the documentary exhibits of the prosecution, it was observed that certain transactions did not comply with the laws, rules and regulations.

This observation pertains to: (1) the establishment of three distance learning centers in the Provincial Capitol of Sorsogon, (2) the procurement and distribution of 2,133 liters of liquid fertilizers by the Province, and (3) poor collection performance of the provincial share of RPT/SET from the municipalities. The audit observation on the procurement and distribution of the 2,133 liters of fertilizers was based on the following documents: *Disbursement Vouchers, checks, Journal Entry Vouchers, Purchase Request, Purchase Orders, invoices, inspection and acceptance reports, certifications from Governor Lee, request and issue slips, Memorandum of Agreement (MOA) between Gov. Lee and Dr. Hector Sales of the Department of Agriculture (DA) Regional Field Unit V.* All these documents were submitted by the Province of Sorsogon to Auditor Binamira.

The Provincial Government received the P5,000,000.00 in two tranches. The first tranche was received on April 16, 2004 in the amount of P3,250,000.00 per

Disbursement Voucher (DV) and OR No. 6175876. The second tranche was received by the Province on December 28, 2004 in the amount of P1,750,000.00 per OR No. 5661194.

The subject 2,133 liters of fertilizers were procured in two batches. The first batch of 2,000 liters was purchased on April 16, 2004, as shown by Purchase Request No. 300-04-04-405-A, and the second batch of 133 liters was bought on April 22, 2004, per Purchase Request No. 300-04-04-16.

The said fertilizers were procured through direct contracting. There was no document that would show that a public bidding was conducted. The documents submitted to the witness were only the Purchase Requests, Abstract of Proposal on Personal Canvass, Purchase Orders, Invoices, Inspection and Acceptance Reports, Letter of Appointment of Bio Nature Technology PTE Ltd. To Feshan Phils., Certifications signed by Governor Lee acknowledging receipt of the 2,000 and 133 liters of fertilizers, and the canvasses showing that the source of the fertilizer was only Feshan Phils. Inc. The procurement was requested and approved by Governor Lee.

The COA Auditor observed that the Purchase Requests specified the brand name *Bio Nature **Organic** Fertilizer*, in violation of the law mandating that procurement of goods shall be based on relevant characteristics, and reference to brand names shall not be allowed.

The COA Auditor explained that in procurement procedure, the purchase request must be submitted to the Bids and Awards Committee (BAC) of the procuring entity which must make a determination of the appropriate mode of procurement. The decision must be embodied in a BAC resolution. If the mode of procurement chosen is not public bidding, the reason must be stated in the BAC resolution. The BAC resolution should have been referred to the Governor as the head of the procuring entity, and the Governor should approve the issuance of a notice of award and notice to proceed, to be followed by the delivery and inspection of the fertilizer and then payment thereof.

The COA Auditor noted, however, that in this case, there was no BAC resolution, notice of award and notice to proceed. The BAC issued Abstracts of Proposal on Personal Canvass instead of a resolution, and awarded the procurement of 2,000 liters and 133 liters of fertilizer to Feshan Phils. Inc. at P1,500.00 per liter through direct contracting. Invoices No. 5751 and No. 5731 were issued on the very day the deliveries were made. The inspection and acceptance reports bore the same date as that of the invoices.

To justify the resort to direct contracting, the Provincial Government submitted a Letter of Appointment dated January 5, 2004 from Derek G. Glass, Managing Director of Bio Nature Technology Pte. Ltd. (BNTPT), addressed to Feshan Phils. Inc. However, records show that there were other suppliers in the market selling the same product at a much lower price. Moreover, there were other suitable substitutes available in the market for the liquid fertilizers purchased from Feshan Phils. Inc. This was shown by the price canvass dated November 24, 2004 from JL Trading in San Vicente, Camarines Sur, price canvass dated November 24, 2004 from Unibest Enterprises in Pili, Camarines Sur, and Sales Invoice dated February 9, 2004 from JL Trading.

It was also noted that the office addresses of Feshan Phils. Inc. are located in Metro Manila while the other possible suppliers are located in Camarines Sur, which is about 150 kilometers away from Sorsogon.

The payment of the purchase of 2,000 liters from Feshan Phils. Inc. was evidenced by DV No. 8220, LBP Check No. 311701, and OR No. 1541; while the payment for the purchase of 133 liters was evidenced by DV No. 200, LBP Check No. 311702, and OR NO. 1543.

It was likewise discovered that Feshan Phils. Inc. was not granted a license in 2004 by the Fertilizer and Pesticide Authority (FPA). Likewise, the purchase price paid by the Province of Sorsogon for the fertilizers was way higher than the prices listed in the *Average Prices of Fertilizers and Pesticides* prepared by FPA.

Following a finding of probable cause by the Office of the Ombudsman with respect to the purchase of 2,133 liters of fertilizer, four Informations were filed against Governor Lee, Hernandez, and Velasco before the Sandiganbayan - two Informations for violation of Section 3(e) of Republic Act (R.A.) No. 3019, docketed as SB-11-CRM-0036 and 0037, and two Informations for violation of Section 3(g), docketed as SB-11-CRM-003 8 and 0039. Subsequently, the Informations in SB-11-CRM-0036 and 0037 were amended and, after such amendments, the accusatory portions of all the Informations read as follows:

SB-11-CRM-0036

That on 01 June 2004, or sometime prior or subsequent thereto, in the Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the accused, **Raul R. Lee**, Governor, **Raul G. Hernandez**, Provincial Chief Accountant, and **Ofelia D. Velasco**, Provincial Treasurer, all public officers of the Provincial Government of Sorsogon, committing the crime in the discharge of their official functions, acting together, conspiring and confederating with one another, with **manifest partiality**, evidence bad faith, **or gross inexcusable negligence**, did then and there willfully, unlawfully, and criminally cause undue injury to the Government in the amount of One Hundred Seventy-Five Thousand, Five Hundred Sixty Pesos (Php175,560.00), by then and there deliberately giving **unwarranted benefit, advantage** or preference to Bio Nature Liquid Fertilizer purportedly distributed exclusively by FESHAN PHIL. INC., thereby dispensing with the conduct of public bidding, and by then and there purchasing from FESHAN PHIL. INC. through exclusive distributorship albeit without an appropriate exclusive agency or distributorship certificate required under Rule 11, Section 105, COA Circular 92-386, and Section 50, Rule XVI, Republic Act No. 9184, in relation to Section 50, Rule XVI of its Implementing Rules and Regulations, **despite the existence of suitable market substitutes**, 133 liters of Bio Nature Liquid Fertilizer in the amount of One Hundred Ninety-Nine Thousand, Five Hundred Pesos inclusive of taxes (Php199,500.00), when in truth and in fact, said quantity of fertilizer costs only Twenty-Three Thousand Nine Hundred Forty Pesos (Php23,940.00), thereby causing the Government to pay the excess amount of Php 175,560.00 to the damage thereof in the afore-stated amount.

CONTRARY TO LAW.

SB-11-CRM-0037

That on 06 May 2004, or sometime prior or subsequent thereto, in the Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the accused, **Raul R. Lee**, Governor, **Raul G. Hernandez**, Provincial Chief Accountant, and **Ofelia D. Velasco**, Provincial Treasurer, all public officers of the Provincial Government of Sorsogon, committing the crime in the discharge of their official functions, acting together, conspiring and confederating with one another, with manifest partiality, evidence bad faith, or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally cause undue injury to the Government in the amount of Two Million, Six Hundred Forty Thousand Pesos (Php2,640,000.00), by then and there deliberately giving unwarranted benefit, advantage or preference to Bio Nature Liquid Fertilizer purportedly distributed exclusively by FESHAN PHIL. INC., thereby dispensing with the conduct of public bidding, and by then and there purchasing from FESHAN PHIL. INC. through exclusive distributorship albeit without an appropriate exclusive agency or distributorship certificate required under Rule 11, Section 105, COA Circular 92-386, and Section 50, Rule XVI, Republic Act No. 9184, in relation to Section 50, Rule XVI of its Implementing Rules and Regulations, despite the existence of suitable market substitutes, 2,000 liters of Bio Nature Liquid Fertilizer in the amount of Three Million Pesos inclusive of taxes (Php3,000,000.00), when in truth and in fact, said quantity of fertilizer costs only Three Hundred Sixty Thousand Pesos (Php360,000.00), thereby causing the Government to pay the excess amount of Php2,640,000.00 to the damage thereof in the afore-stated amount.

CONTRARY TO LAW.

SB-11-CRM-0038

That on 01 June 2004, or sometime prior or subsequent thereto, in the Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the accused, **Raul R. Lee**, Governor, **Raul G. Hernandez**, Provincial Chief Accountant, and **Ofelia D. Velasco**, Provincial Treasurer, all public officers of the Provincial Government of Sorsogon, committing the crime in the discharge of their official functions, and in grave abuse thereof, acting together, conspiring and confederating with one another did then and there willfully, unlawfully, and criminally enter on behalf of the Provincial Government of Sorsogon into a contract with FESHAN PHIL. INC. which is manifestly and grossly disadvantageous to the Government, by then and there deliberately giving preference to Bio Nature Liquid Fertilizer purportedly distributed exclusively by FESHAN PHIL. INC., thereby dispensing with the conduct of public bidding, and by then and there purchasing from FESHAN PHIL. INC. through exclusive distributorship albeit without an appropriate exclusive agency or distributorship certificate required under Rule 11, Section 105, COA Circular 92-386, and Section 50, Rule XVI, Republic Act No. 9184, in relation to Section 50, Rule XVI of its Implementing Rules

and Regulations, 133 liters of Bio Nature Liquid Fertilizer in the amount of One Hundred Ninety-Nine Thousand, Five Hundred Pesos inclusive of taxes (Php199,500.00), when in truth and in fact, said quantity of fertilizer costs only Twenty-Three Thousand Nine Hundred Forty Pesos (Php23,940.00), thereby causing the Government to pay the excess amount of Php175,560.00 to the damage thereof in the afore-stated amount.

CONTRARY TO LAW.

SB-11-CRM-0039

That on 06 May 2004, or sometime prior or subsequent thereto, in the Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the accused, **Raul R. Lee**, Governor, **Raul G. Hernandez**, Provincial Chief Accountant, and **Ofelia D. Velasco**, Provincial Treasurer, all public officers of the Provincial Government of Sorsogon, committing the crime in the discharge of their official functions, and in grave abuse thereof, acting together, conspiring and confederating with one another did then and there willfully, unlawfully, and criminally enter on behalf of the Provincial Government of Sorsogon into a contract with FESHAN PHIL. INC. which is manifestly and grossly disadvantageous to the Government, by then and there deliberately giving preference to Bio Nature Liquid Fertilizer purportedly distributed exclusively by FESHAN PHIL. INC., thereby dispensing with the conduct of public bidding, and by then and there purchasing from FESHAN PHIL. INC. through exclusive distributorship albeit without an appropriate exclusive agency or distributorship certificate required under Rule 11, Section 105, COA Circular 92-386, and Section 50, Rule XVI, Republic Act No. 9184, in relation to Section 50, Rule XVI of its Implementing Rules and Regulations, 2,000 liters of Bio Nature Liquid Fertilizer in the amount of Three Million Pesos inclusive of taxes (Php3,000,000.00), when in truth and in fact, said quantity of fertilizer costs only Three Hundred Sixty Thousand Pesos (Php360,000.00), thereby causing the Government to pay the excess amount of Php2,640,000.00 to the damage thereof in the afore-stated amount.

CONTRARY TO LAW.^[2]

On March 6, 2012, Governor Lee and Velasco filed a motion to quash (*first motion to quash*) dated September 23, 2013, arguing that their right to speedy disposition of cases were violated, and that there is no probable cause to charge them with violations of R.A. No. 3019.

This was denied by the Sandiganbayan in a Resolution dated June 18, 2012, citing *Dela Peña v. Sandiganbayan*^[3] where it was ruled that the failure of the petitioners to earlier invoke the right to speedy disposition of cases during the preliminary investigation constitutes laches or his waiver of the said right.

On July 18, 2012, with the exception of the other accused, Governor Lee moved for the reconsideration of the June 18, 2012 Resolution.

In the meantime, Velasco and Hernandez were arraigned on September 6, 2012.