

THIRD DIVISION

[G.R. No. 231345, August 19, 2019]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. MELCHOR J. CHIPOCO AND CHRISTY C. BUGANUTAN, RESPONDENTS.

[G.R. No. 232406]

ROBERTO R. GALON, PETITIONER, VS. MELCHOR J. CHIPOCO AND CHRISTY C. BUGANUTAN, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

At bench are two appeals^[1] assailing the Decision^[2] dated March 23, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 07524, which had set aside the Order^[3] dated May 27, 2016 of the Office of the Ombudsman (*Ombudsman*) in OMB-M-A-11-390-I.

The facts.

Galon's First Affidavit-Complaint and OMB-M-A-11-390-I

On January 28, 2011, the municipality of Labason, Zamboanga del Norte purchased a Nissan Patrol vehicle^[4] from one Eduardo A. Ayunting (*Ayunting*) for P960,000.00. This transaction was embodied in a *Deed of Sale of Motor Vehicle*^[5] that was signed by Ayunting and by the then Vice Mayor of Labason, Virgilio Go (*Go*).

Believing the above transaction to be anomalous, a certain Roberto R. Galon (*Galon*) filed with the Ombudsman an Affidavit-Complaint^[6] against Ayunting and several other officials of the Labason Municipal Government supposedly involved in the transaction. Among the Labason officials implicated in the affidavit-complaint were:

1. Wilfredo S. Balais (*Balais*), the incumbent municipal mayor;
2. Go;
3. The members^[7] of the *Sangguniang Bayan* of Labason;
4. Respondent Melchor J. Chipoco (*Chipoco*), the municipal treasurer and chairman of the Bids and Awards Committee (*BAC*) of the municipality; and
5. Respondent Christy C. Baganutan, the municipal accountant and head of the Technical Working Group (*TWG*) of the BAC.

Galon, in essence, claimed that the purchase of the Nissan Patrol vehicle was designed to give undue benefit to Balais at the expense of the municipality. He pointed to the following circumstances in support:^[8]

1. The Nissan Patrol vehicle was originally owned by Balais. It was the latter who sold the vehicle to Ayunting on November 26, 2010 for P500,000.00.^[9] Just a little over a month later, however, the municipality curiously entered into the contested transaction — by purchasing the same vehicle from Ayunting, this time, for the price of P960,000.00.
2. The municipality's purchase of the Nissan Patrol vehicle was also made without a competitive public bidding, in violation of Republic Act (R.A.) No. 9184.

Galon's Affidavit-Complaint kick-started an administrative case and a criminal case with the Ombudsman. The administrative case was docketed as **OMB-M-A-11-390-I**, while the criminal case was docketed as OMB-M-C-11-0356-I.

On September 1, 2014, the Ombudsman rendered a Decision^[10] in **OMB-M-A-11-390-I**, holding Balais and the respondents administratively liable, but absolved the rest of the Labason officials named in the affidavit-complaint.^[11]

The Ombudsman found Balais guilty of *Grave Misconduct* and *Serious Dishonesty* and meted upon him the penalty of dismissal.^[12] The respondents, however, were only found guilty of *Neglect of Duty*, levied with the penalty of suspension for three (3) months.^[13]

In pinning the liability of the respondents, the Ombudsman, in the same decision, discussed:

Although respondents x x x may not have taken part in the execution of the contract, the fact that they processed the disbursement and allowed the payment, despite the transaction not being in accordance with the procurement law, indicates their laxity in the observance of the requirements in procurement and disbursement of funds. Accordingly, they should be held liable for Neglect of Duty.^[14]

Meanwhile, the Ombudsman issued a Resolution^[15] in OMB-M-C-11-0356-I, finding the existence of probable cause to charge Ayunting, Balais and Go for violation of Section 3(e) of R.A. No. 3019. A corresponding Information^[16] was later filed before the Sandiganbayan against Ayunting, Balais and Go.

Motions for Reconsideration in OMB-M-A-11-390-I

The Ombudsman's Decision in **OMB-M-A-11-390-I** was challenged by Galon and the respondents *via* separate motions for reconsideration. In his motion,^[17] Galon sought the imposition of stiffer penalties against respondents and a reversal of the absolutions handed down by the decision.

In their motion for reconsideration,^[18] on the other hand, the respondents pleaded for their exculpation. They denied that they had been lax in observing procurement and disbursement requirements, insisting that they only signed the disbursement

voucher for the purchase of the Nissan Patrol vehicle after a competitive bidding had taken place and after all the necessary documents had been presented to them.

To bolster their position, the respondents annexed to their motion for reconsideration the following documents which tend to prove the conduct of a competitive bidding prior to the municipality's purchase of the Nissan Patrol vehicle:
[19]

1. Certification as to the Posting of Notice/Invitation to Bid in Conspicuous Places, issued by Chipoco in his capacity as BAC chairman; [20]
2. Price Quotations of the Participating Bidders, namely:
 - a. EVS Display Center; [21]
 - b. Catmon Car Sales; [22] and
 - c. Oro Cars Display Center; [23]
3. Department of Trade and Industry Certificates and Business Permits of the Participating Bidders; [24]
4. Abstract of Bids dated January 19, 2011; [25]
5. Minutes of the Meeting of the BAC held on January 19, 2011; [26]
6. Notice of Award dated January 20, 2011 in favor of the winning bidder, Oro Cars Display Center; [27]
7. Purchase Order dated January 20, 2011 in favor of Oro Cars Display Center; [28]
8. Acceptance and Inspection Report dated January 20, 2011; [29]
9. Obligation Request dated January 21, 2011; [30] and
10. Disbursement Voucher No. 100-11-01-212 in favor of Oro Cars Display Center. [31]

Galon 's Second Complaint-Affidavit

Yet, on February 9, 2016, Galon filed with the Ombudsman a *second* complaint-affidavit [32] concerning the same transaction as in his original complaint-affidavit. The second complaint-affidavit also implicated the same persons named in the original, adding only a number of individuals as new defendants. Galon justified the filing of a second complaint-affidavit on what he claims as "*newly-discovered evidence*" in the form of several documents that had been attached by Ayunting in his (Ayunting's) application to become a state witness in the criminal case pending before the Sandiganbayan. [33]

To avoid conflict with his pending motion for reconsideration in **OMB-M-A-11-390-I**, Galon prayed that the same be consolidated with the administrative aspect of his

second complaint-affidavit.^[34]

Galon's second complaint-affidavit gave rise to the administrative case **OMB-M-A-16-0151** and the criminal case OMB-M-C-16-0112 before the Ombudsman. On April 11, 2016, the Ombudsman issued a Joint Order^[35] in OMB-M-A-16-0151 and OMB-M-C-16-0112, directing the persons complained of in Galon's second complaint-affidavit to file their respective counter-affidavits.

Disposition of Motions for Reconsideration in OMB-M-A-11-390-I

During the pendency of **OMB-M-A-16-0151**, however, the Ombudsman issued an Order^[36] dated May 27, 2016, disposing of the motions for reconsideration of respondents and Galon in **OMB-M-A-11-390-I**. In the order, the Ombudsman denied the motion for reconsideration of the respondents, but partially granted that of Galon.

The Ombudsman held that the documents annexed to the respondents' motion for reconsideration do not at all settle the existence of a *bona fide* public bidding but, on the contrary, merely preview the conduct of a sham one.^[37] It noted three (3) irregularities that lend to such view:^[38]

1. The documents submitted by the respondents do not justify the municipality's purchase of the Nissan Patrol vehicle from Ayunting. The Notice of Award, Purchase Order, Obligation Request, and Disbursement Voucher all identified a certain Oro Cars Display Center as the winning bidder, which must then supply the municipality with a Nissan Patrol vehicle. However, the deed of sale for the said vehicle was actually executed not between the municipality and Oro Cars Display Center, but between the municipality and Ayunting.
2. The fact that an invitation to bid was posted, in accordance with the law, was also not established. The Certification as to the Posting of Notice/Invitation to Bid in Conspicuous Places submitted by the respondents does not suffice to prove said fact. Such certification cannot substitute for the actual copy of the Invitation to Bid as proof that such an invitation was, in fact, posted.
3. The Price Quotations prepared by the Labason BAC are also non-compliant with the procurement law. The quotations, in their "*Items & Description*" portion, specifically identified "*Nissan Patrol Year 2001 Model*" as the vehicle subject of bidding. This is a clear violation of Section 18 of R.A. No. 9184, which provides that specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements, and prohibits any reference to brand names in any bidding documents.

The Ombudsman stressed that the respondents, due to them being part of the Labason BAC, cannot feign ignorance of the above irregularities.^[39] Accordingly, the Ombudsman heightened the administrative culpability of respondents from Neglect of Duty to Grave Misconduct, and increased their penalty from suspension to dismissal from the service.

Petition for Review to the CA and the Instant Appeals by Petitioners

Aggrieved, respondents elevated the Order of the Ombudsman to the CA by way of a petition for review under Rule 43 of the Rules of Court. The petition was titled, "*Melchor J. Chipoco and Christy C. Bugarutan v. Honorable Office of the Ombudsman (herein represented by Honorable Conchita Carpio-Morales, in her capacity as Tanodbayan and Honorable Gian Carla V. Hernal, in her capacity as Graft Investigation and Prosecution Officer I) and Roberto R. Galon*" and was docketed as CA-G.R. SP No. 59. 07524.^[40]

On March 23, 2017, the CA rendered a Decision setting aside the Order of the Ombudsman for being *premature*, remanding **OMB-M-A-11-390-I** back to the latter, and ordering the consolidation of the motions for reconsideration of respondents and Galon in **OMB-M-A-11-390-I** with **OMB-M-A-16-0151**. The CA held that the Ombudsman should have refrained from disposing of such motions for reconsideration precisely in light of Galon's second complaint-affidavit and its resulting administrative case. As the CA ratiocinated:

Both the original and the new complaints filed by x x x Galon before the [Ombudsman] referred to the same transaction. Despite the fact that it was still investigating another administrative case arising from the same transaction, the [Ombudsman] issued the assailed Order.

The respective administrative liabilities of [respondents] in the transaction complained of will be reexamined by the [Ombudsman] in the resolution of the new administrative case. There is no indication that [respondents] were no longer required to participate in the new case. On the contrary, it is noted that [respondents] were among those directed to submit their counter-affidavit in the new case.

With the pendency of the new case, the [Ombudsman] should have refrained from ruling on the administrative liabilities of [respondents]. As to them, the new case would be rendered meaningless since it would appear that the [Ombudsman] had already made a definitive finding on their liabilities. The [Ombudsman] would not reexamine [respondents'] case if it had already decided on their liabilities. It would thus be premature for the [Ombudsman] to resolve the motions for reconsideration in view of the pendency of the new case.

x x x x

For a judicious determination of [respondents'] liabilities, the motions for reconsideration must be consolidated with the new case. It bears stressing that even x x x Galon prayed for the consolidation of his Partial Motion for Reconsideration with his new complaint. Hence, the remand of the instant case to [Ombudsman] is warranted.^[41]

Hence, the respective appeals of the Ombudsman and Galon. The Ombudsman's appeal was docketed as **G.R. No. 231345**, whereas Galon's appeal was docketed as **G.R. No. 232406**.

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