

## SECOND DIVISION

[ G.R. No. 184766, August 15, 2018 ]

**JOSIE CASTILLO-CO, PETITIONER, V. HONORABLE  
SANDIGANBAYAN (SECOND DIVISION), AND PEOPLE OF THE  
PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**A. REYES, JR., J.:**

*When a local legislative board gives the local chief executive authority to perform a certain act or enter into a specific transaction, the latter ought to strictly abide by the express terms of such authority. Any deviation therefrom, to the detriment of the local government unit, constitutes an offense punishable under the Anti-Graft and Corrupt Practices Act, for which the chief executive must be held accountable.*

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court seeking to nullify (1) the Decision<sup>[2]</sup> dated April 28, 2008 of the Sandiganbayan, which found the petitioner, Josie Castillo-Co (Gov. Co), Governor of the Province of Quirino, guilty of violating Section 3(g) of Republic Act (R.A.) No. 3019, and (2) the subsequent Resolution<sup>[3]</sup> dated September 24, 2008 denying her Urgent Motion for Reconsideration and Supplemental Motion for Reconsideration.

#### **The Factual Antecedents**

On June 27, 1997, Junie E. Cua, (Rep. Cua) Representative of the Province of Quirino and the Chairman of the Committee on Good Government of the House of Representatives, filed a letter-complaint before the Office of the Ombudsman against the petitioner, Gov. Co, and the Provincial Engineer of the Province of Quirino, Virgilio Ringor (Engr. Ringor), for violations of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Acts, Frauds Against the Public Treasury, and Malversation of Public Funds.<sup>[4]</sup>

In the letter-complaint, Rep. Cua alleged that irregularities attended the purchase of heavy equipment by the Provincial Government of Quirino from Nakajima Trading Co., Ltd. (Nakajima Trading).<sup>[5]</sup>

According to Rep. Cua, prior to contracting with Nakajima Trading and in order to fund the purchase, Gov. Co entered into a loan agreement with the Philippine National Bank (PNB) by virtue of a resolution of the Sangguniang Panlalawigan of Quirino. The resolution authorized Gov. Co to obtain a loan to fund the purchase of brand new heavy equipment.<sup>[6]</sup>

However, on January 11, 1996, Gov. Co entered into an agreement to purchase reconditioned heavy equipment instead, with the Province of Quirino as the buyer and Nakajima Trading as the seller.<sup>[7]</sup>

The letter-complaint also alleged that Gov. Co agreed to advance 40% of the total purchase price before the delivery of the machinery would be effected, in violation of the prohibition on advance payments found in Section 338 of the Local Government Code of 1991.<sup>[8]</sup>

Rep. Cua additionally averred that the equipment purchased by the Province of Quirino was overpriced. To substantiate this allegation, he presented quotations comparing the prices of the equipment furnished by Nakajima Trading and similar or equivalent models of the same machines from local suppliers.<sup>[9]</sup>

Lastly, Rep. Cua alleged that despite full payment of the purchase price, the Province of Quirino did not receive everything owing it under the agreement with Nakajima Trading.<sup>[10]</sup> According to Rep. Cua, Nakajima Trading failed to ship an Ingersol-Rand SP 100 Vibratory Road Roller and a set of tools and spare parts within the stipulated 90-day delivery period.<sup>[11]</sup> While the amount pertaining to the equipment was subsequently returned, Rep. Cua averred that Nakajima Trading did not refund the amount of interest pertaining to the refunded amount, to the prejudice of the province.<sup>[12]</sup>

Meanwhile, Engr. Ringor was charged with conspiring with Gov. Co.<sup>[13]</sup> In his counter-affidavit, however, he interposed the defense that he merely recommended the purchase of reconditioned heavy equipment in place of brand new heavy equipment due to insufficiency of funds.<sup>[14]</sup>

After the letter-complaint was filed, the case was assigned to Graft Investigation Officer Germain G. Lim of the Office of the Ombudsman who, later on, recommended the prosecution of Gov. Co.<sup>[15]</sup> and the dismissal of the case against Engr. Ringor.<sup>[16]</sup> These recommendations were contained in the Ombudsman Resolution<sup>[17]</sup> dated September 1, 1998.

On September 2, 1998, an Information<sup>[18]</sup> was filed before the Sandiganbayan against Gov. Co for violation of Section 3(g) of R.A. No. 3019, the accusatory portion of which reads:

That on or about 11 January 1996, or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, then being the Governor of the Province of Quirino, committing the penal offense herein charged while in the performance of, in relation to, and taking advantage of her official position and functions as such did then and there willfully, unlawfully and criminally enter, on behalf of the Province of Quirino and the government as the buyer, into the Agreement dated 11 January 1996 with Nakajima Trading Co., Ltd. as the seller, for the purchase by the aforesaid buyer from the seller of overpriced reconditioned heavy equipment, spare parts, and tools, specified as follows:

1. One (1) unit Bulldozer CAT D6H Series II or equivalent;
2. One (1) unit Motor Grader Mitsubishi LG2H Blade 3.7M or equivalent;
3. One (1) unit Wheel Loader 3.5M3 Class CAT 936/Komatsu wa450 or equivalent;

4. One (1) unit Vibratory Road Roller Ingersol-Rand SP 100 or equivalent;
5. One (1) unit Backhoe Mitsubishi with 128 Flywheel HP Diesel Engine, track link type or equivalent;
6. Five (5) units LHD Dump Truck Isuzu CXZ 19/21 or equivalent;
7. One (1) lot Spare Parts for 2 yrs. fast moving;
8. One (1) unit Isuzu Water Tank Lorry w/ Sprinkle 10KL Cap w/ 6HEI Diesel Engine or equivalent;
9. One (1) Set Low Bed Trailer 40 tons, 10 Wheeler Tractor Head Isuzu EXZ 19/21 double diff.;
10. One (1) unit Toyota Hi-Lux, 4WD Double Cab 2.8 Diesel, FLD, Complete w/ Accessories; and
11. One (1) lot Tools.<sup>[19]</sup>

at a total contract price of Y160,425,000.00, Japanese currency, which contract is manifestly and grossly disadvantageous to the Province of Quirino and the government, as the same provides for the unlawful advance payment by the buyer to the seller of forty percent (40%) of the said contract price, in violation of Section 338 of the Local Government Code, and for the purchase by the buyer from the seller of reconditioned heavy equipments (sic) instead of brand new ones as expressly mandated by the Resolution No. 120 dated 20 October 1995 passed by the Province of Quirino, to the damage and prejudice of the Sangguniang Panlalawigan of the Province of Quirino and the government.

CONTRARY TO LAW.

### **Ruling of the Sandiganbayan**

In the April 28, 2008 Decision, which is now before this Court for review, the Sandiganbayan found Gov. Co guilty of entering into a transaction grossly and manifestly disadvantageous to the government, in violation of Section 3(g) of R.A. No. 3019. The dispositive portion thereof reads:

Accordingly, We find the Accused, Josie Castillo-Co, GUILTY of violating Sec. 3(g) of R.A 3019 and sentence her to an Indeterminate Penalty of imprisonment of Six Years and One Month as minimum to Nine Months as maximum with perpetual disqualification from public office. By way of civil liability, Accused Josie Castillo-Co is ordered to indemnify the Provincial Government of Quirino, the sum of P330,490.78 representing the interest paid to PNB by the Provincial Government on the 40% advance payment to Nakajima Trading.

SO ORDERED.<sup>[20]</sup>

The anti-graft court ruled that Gov. Co had entered into an agreement to purchase reconditioned heavy equipment when the authority given to her by the Sangguniang Panlalawigan of Quirino was for the purpose of obtaining a loan to fund the purchase of brand new equipment.<sup>[21]</sup> It held that she was not able to show that the Sangguniang Panlalawigan had ratified the purchase of reconditioned equipment, thus causing gross and manifest disadvantage to the province.<sup>[22]</sup>

In addition, the Sandiganbayan found that not only was an advance payment of 40% of the purchase price effected in violation of Section 338 of the Local Government Code, but also that the remaining 60% was paid before complete delivery of all the subject equipment. The evidence of the prosecution showed that Nakajima Trading failed to deliver the vibratory road roller, tools, and spare parts within the 90-day delivery period stated in the agreement. To the Sandiganbayan, this too constituted gross disadvantage.<sup>[23]</sup>

Finally, the Sandiganbayan held that, while Nakajima Trading refunded the amount representing the value of the undelivered equipment, the Province of Quirino still suffered losses by reason of the interest it owed the PNB under the loan agreement because the amount returned by the Japanese company did not include the amount representing interest due. The Sandiganbayan also said, however, that the prosecution was unable to prove the exact amount of interest paid to the PNB.<sup>[24]</sup>

Gov. Co filed her Urgent Motion for Reconsideration on May 8, 2008 and Supplemental Motion for Reconsideration on May 14, 2008. The Sandiganbayan, however, denied both in its Resolution dated September 24, 2008.<sup>[25]</sup>

Hence, the instant petition.

### **The Issue**

In her petition asking for the reversal of the Sandiganbayan's decision, Gov. Co raises issues that may be synthesized as:

WHETHER OR NOT THE SANDIGANBAYAN COMMITTED A REVERSIBLE ERROR IN RULING THAT GOVERNOR CO ENTERED INTO A TRANSACTION GROSSLY AND MANIFESTLY DISADVANTAGEOUS TO THE PROVINCIAL GOVERNMENT OF QUIRINO<sup>[26]</sup>

### **The Court's Ruling**

The petition is devoid of merit. The Sandiganbayan's decision, convicting Gov. Co of violating Section 3(g) of R.A. No. 3019 and sentencing her accordingly, must be affirmed.

R.A. No. 3019 was enacted to repress certain acts of public officers and private persons alike that constitute graft or corrupt practices or may lead thereto.<sup>[27]</sup>

Particularly, Section 3(g) of R.A. No. 3019, under which Governor Co was charged and found guilty, relevantly provides:

**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

(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.

In *Henry T. Go vs. Sandiganbayan*,<sup>[28]</sup> the elements of the offense defined in Section 3(g) of R.A. No. 3019 were enumerated, to wit:

- (1) that the accused is a public officer;
- (2) that he or she entered into a contract or transaction on behalf of the government; and
- (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.<sup>[29]</sup>

There is no debate as to the existence of the first two elements. That the petitioner is a public officer is settled. At the time of the commission of the act complained of, she was the Governor of Quirino Province.<sup>[30]</sup> There is also no disputing that the Agreement with Nakajima Trading was a contract or transaction that Gov. Co entered into on behalf of the Provincial Government of Quirino.<sup>[31]</sup> There is thus no doubt that the first two elements are present in the case at bar.

Gov. Co now contends that the third element cannot exist because, assuming that the province suffered disadvantage, the same was not gross and manifest.

This assertion, however, has no merit.

Section 3(g) of R.A. No. 3019 is intended to be flexible in order to give judges some latitude in determining whether the disadvantage to the government, occasioned by the act of a public officer in entering into a particular contract is, indeed, gross and manifest.<sup>[32]</sup> Otherwise stated, there is no hard and fast rule against which the disadvantageous acts complained of should be calibrated. The determination of whether the disadvantage caused was gross and manifest, as contemplated by Section 3(g), should be done on a case-to-case basis.

"Gross" connotes something "glaring, reprehensible, flagrant, or shocking."<sup>[33]</sup> On the other hand, "manifest" is defined as "evident to the senses, open, obvious, notorious, and unmistakable."<sup>[34]</sup>

In this case, the Sandiganbayan finds, and that Court agrees, that the following acts caused gross and manifest disadvantage to the Province of Quirino:

*First*, entering into an agreement to purchase reconditioned heavy equipment, contrary to the terms of Sangguniang Panlalawigan Resolution No. 120, which authorized Gov. Co to purchase only brand new heavy equipment;

*Second*, advancing forty (40%) percent of the total contract price to Nakajima Trading, in violation of Section 338 of the Local Government Code, which explicitly prohibits advance payments; and

*Third*, paying the balance, or sixty (60%) percent of the total contract price, despite non-compliance by Nakajima Trading with a provision in the agreement, which provided that delivery had to be effected within ninety (90) days from payment.

*Anent the first act*, it was settled at the trial that on December 23, 1995, when the loan agreement with the PNB was entered into, and on January 11, 1996, when the