

THIRD DIVISION

[G.R. No. 189100, June 21, 2017]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. LETICIA BARBARA B. GUTIERREZ, RESPONDENT.

DECISION

VELASCO JR., J.:

Nature of the Case

This treats of the Petition for Review on Certiorari filed by the Office of the Ombudsman that seeks the reversal of the June 16, 2009 Decision^[1] and July 23, 2009 Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 107551. The adverted rulings absolved respondent Leticia Barbara B. Gutierrez (Gutierrez) from the charge of grave misconduct and denied petitioner's motion for intervention and reconsideration of the setting aside of respondent's dismissal from service.

The Facts

On October 25, 2002, the Bureau of Food and Drugs (BFAD), through its Bids and Awards Committee (BAC) composed of chairperson Christina dela Cruz and members Ma. Theresa Icabales, Rosemarie Juaño, Corazon Bartolome, and Ma. Florita Gabuna, issued an Invitation to Bid for the procurement of a Liquid Crystal Display (LCD) Projector. The said bidding was declared a failure because the price offered by the two (2) bidders, Advance Solutions and Gakken Phils. (Gakken), were higher than the recommended price of the Department of Budget and Management (DBM). Thus, on November 2, 2002, a second round of bidding was conducted, which was participated in by Linkworth International, Inc. (Linkworth). But again, the bidding was declared a failure because the price offered by Linkworth exceeded the DBM's recommended amount.^[2]

Due to the failure of the biddings, the BFAD decided to enter into negotiated contracts by way of canvas and based on the end-users' preference. Thereafter, Linkworth and Gakken submitted their respective quotations and conducted product demonstrations before the BAC, the BFAD Secretariat, and the end-users: the Supply Section and the Office of the Deputy Director, National Drug Policy (NDP).^[3] Upon conclusion of the demonstrations, the Deputy Director of the NDP allegedly informed the BAC that it preferred the product offered by Gakken.

On January 15, 2003, a new BAC was formed, composed of Jesusa Joyce N. Cirunay (Cirunay) as chairperson, and Leonida M. Castillo, Marle B. Koffa, Nemia T. Getes, and Emilio L. Polig, Jr. as members.^[4]

Then, on July 16, 2003, the BFAD, through Gutierrez, then Director of the BFAD, issued a Notice of Award to Linkworth for three (3) units of LCD Projectors for the aggregate amount of P297,000, which notice the supplier received through facsimile. Further, the notice required Linkworth to signify its conformity and to post a performance bond equivalent to 5% of the total price. However, when the representative from Linkworth tried to tender the required bond in the amount of P14,850 on July 25, 2003, the agency refused to accept the same. Linkworth, thus, wrote to respondent asking for an explanation.^[5]

Despite having acknowledged receiving the letter from Linkworth on July 31, 2003, no written response was given by respondent. Gutierrez merely informed Linkworth that the agency will investigate the matter. Linkworth then sought the assistance of a law firm to look into the anomaly, and it was only then when it found out that it was allegedly awarded the procurement project by mistake. According to respondent, it was Gakken that actually won the award for the supply as shown by the July 10, 2003 Resolution of the BAC, unanimously approved by the new BAC composition. Linkworth was then advised by Gutierrez to disregard the Notice of Award earlier made in its favor.^[6] This led to the filing of administrative charges against respondent and the members of the two BACs for grave misconduct.

In her defense, respondent averred that she did not collude, as she could not have colluded, with Gakken for the supply contract since she had no participation in selecting the winning supplier. The award in favor of Gakken was due to the fact that the end-users preferred its product over that of Linkworth. And since the purchase was through negotiated contract, the product specifications and other terms and conditions of the bidding were rendered ineffective, making the end-user preference the primary selection criterion.^[7] Additionally, respondent countered that affixing her signature in the Notice of Award was only a ministerial function.

Gutierrez likewise averred that the error in the procurement process was only discovered when a representative from Linkworth presented a copy of the Notice of Award and offered to post a performance bond. She then ordered the investigation of the incident, following Linkworth's complaint. As borne by the investigation, one Johnny Gutierrez was ordered to prepare the Notice of Award, but he mistakenly instructed Danilo Asuncion, the typist at the Supply Section, to address the said notice to Linkworth instead of Gakken. And when Danilo Asuncion gave Johnny Gutierrez the Notice of Award that he had prepared, the latter brought it to Cirunay, the chairperson of the second BAC, for her initials. Before affixing her initials, Cirunay asked Johnny Gutierrez if the latter cross-checked the notice of award with the July 10, 2003 Resolution, which he answered in the affirmative. The Notice of Award was then forwarded to and initialled in turn by the Officer-in-Charge of the Administrative Division before it reached respondent's desk. Relying in good faith on the initials of her subordinates, particularly the members of the BAC, respondent claims that she could not be held administratively liable for grave misconduct.^[8]

Ruling of the Ombudsman

On February 27, 2006, the Office of the Ombudsman rendered a Decision finding respondent guilty of Grave Misconduct in the following wise:^[9]

PREMISES CONSIDERED, pursuant to Section 52 (A-3) Rule IV of the Uniform Rules on Administrative Cases (CSC Resolution No. 991936), dated August 31, 1999, respondents JESUSA JOYCE N. CIRUNAY, LEONIDA M. CASTILLO, MARLE B. KOFFA, NEMIA T. GETES, EMILIO L. POLIG, JR. and LETICIA-BARBARA B. GUTIERREZ are hereby found guilty of **GRAVE MISCONDUCT** and [are] meted the corresponding penalty of **DISMISSAL FROM THE SERVICE** with cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service.

On the other hand, respondents CHRISTINA A. DELA CRUZ, MA. THERESA ICABALES, ROSEMARIE JUANO, CORAZON BARTOLOME, MA. FLORITA GABUNA, and MA. ELENA FRANCISCO are **ABSOLVED** of the charges hurled against them.

SO ORDERED.

In so ruling, the Ombudsman did not give credence to the defense that the Notice of Award in favor of Linkworth was vitiated by error or mistake. It deemed improbable, if not impossible, that everyone who prepared, initialled, and signed the Notice of Award would make the same mistake despite the presence or availability of the attached July 10, 2003 Resolution that allegedly declares Gakken as the awardee of the negotiated purchase.^[10] The Ombudsman also found it suspicious that when a representative from Linkworth attempted to post the required performance bond on July 25, 2003, a copy of the July 10, 2003 Resolution was not presented to him right then and there.^[11]

Respondent, along with the members of the second BAC, moved for reconsideration from the judgment of dismissal, but to no avail. On September 30, 2008, the Ombudsman issued an Order, denying the recourses for lack of merit. Hence, the aggrieved parties filed their separate petitions for review before the appellate court. Respondent's appeal was docketed as CA-G.R. SP No. 107551, entitled "*Leticia Barbara B. Gutierrez vs. Linkworth International, Inc., represented by Tador L. Efann.*" Petitioner was personally served a copy of respondent's petition for review.

Ruling of the Court of Appeals

Insofar as respondent is concerned, the CA, on June 16, 2009, reversed the findings of the Ombudsman, thusly:^[12]

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED** and the Decision dated February 27, 2006 of the Office of the Ombudsman finding petitioner Leticia Barbara B. Gutierrez guilty of grave misconduct is **REVERSED** and **SET ASIDE**. Accordingly, the administrative complaint against her is dismissed.

SO ORDERED.

Justifying the reversal, the appellate court noted that Linkworth failed to file its comment on the petition despite due notice;^[13] that there was no showing that respondent conspired with her co-respondents; that she neither acted irregularly nor did she perform an act outside of her official functions; and that there appears to be no deliberate or conscious act on her part showing bad faith or intent to give undue advantage to Gakken.^[14]

Additionally, the CA ratiocinated that as head of office, respondent is saddled with numerous documents and other papers that routinely pass her office for signature. It is, thus, not humanly possible for her to examine each and every detail in the transaction or probe every single matter, but had to rely to a reasonable extent on the good faith of her subordinates who prepare the documents.^[15] Citing *Arias v. Sandiganbayan (Arias)*,^[16] the CA held that reliance in good faith by the head of office on his or her subordinates, upon whom the primary responsibility rests, absent clear proof of conspiracy, absolves the former from any liability. In this case, respondent relied on the initials of the BAC chairperson and the acting head of the administrative division when she signed the Notice of Award, and no conspiracy among them was established. Johnny Gutierrez and Danilo Asuncion even admitted to committing the mistake in the preparation of the Notice of Award.

Linkworth did not move for reconsideration of the above ruling.

Meanwhile, petitioner Ombudsman received a copy of the assailed CA Decision on June 22, 2009. Thereafter, it filed an Omnibus Motion for Intervention and for Admission of Attached Motion for Reconsideration (Omnibus Motion). Petitioner argued that under the 1997 Constitution and Republic Act No. 6770, otherwise known as the Ombudsman Act, the Ombudsman, as the mandated disciplining body with quasi-judicial authority to resolve administrative cases against public officials, has legal standing to explain, if not defend, its decisions in disciplinary cases,^[17] consistent with the Court's pronouncement in *Philippine National Bank v. Garcia*,^[18] *Civil Service Commission v. Dacoycoy*,^[19] and *Office of the Ombudsman v. Samaniego*.^[20]

Unfortunately for petitioner, the Omnibus Motion was denied on July 23, 2009 for having been filed out of time. The pertinent portion of the CA Resolution reads:

Considering that the time for intervention has already passed with the rendition by the Court of its decision on June 16, 2009 (Sec. 2, Rule 19, 1997 Revised Rules of Civil Procedure), the Omnibus Motion for Intervention and for Admission of Attached Motion for Reconsideration filed by the Office of the Ombudsman is DENIED.

Thus, the instant recourse.

Grounds for the Allowance of the Petition

Petitioner invokes the following grounds for the reinstatement of its February 27, 2006 Decision:

I.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN NOT TAKING COGNIZANCE OF AND NOT GRANTING THE OFFICE OF THE OMBUDSMAN'S MOTIONS FOR INTERVENTION AND RECONSIDERATION

II.

THE OFFICE OF THE OMBUDSMAN'S DECISION DATED 27 FEBRUARY 2006 FINDING RESPONDENT ADMINISTRATIVELY LIABLE FOR GRAVE MISCONDUCT AND THE ORDER DATED 30 SEPTEMBER 2008 DENYING RESPONDENT'S MOTION FOR RECONSIDERATION ARE IN ACCORDANCE WITH LAW AND ARE SUPPORTED BY SUBSTANTIAL EVIDENCE.^[21]

Primarily, petitioner bases its motion to intervene on the catena of cases it cited in its Omnibus Motion. It reiterates that as the constitutionally mandated disciplining body, it has the authority to defend its rulings on appeal, and that it had been allowed to do so via intervention before judicial authorities. As a party directly affected by the ruling rendered by the CA, it has sufficient legal interest to intervene, so the Ombudsman claims.^[22]

More importantly, petitioner argues that its rulings were supported by substantial evidence on record. Conspiracy, according to petitioner, does not require direct evidence to be proven.^[23] Here, respondent's role as a co conspirator was established through her signature in the Notice of Award. The *Arias* doctrine could not exonerate respondent from liability, in view of the difference in factual milieu compared with the case at bar. The presumption that official duty has been regularly performed had been overturned since there is evidence to the contrary.^[24]

In her Comment, respondent prays that the Court sustain the ruling of the CA. She discussed that the denial of the Omnibus Motion is consistent with Section 2, Rule 19 of the Rules of Court; that petitioner has no legal standing to intervene in this case in accordance with the Court's ruling in *Office of the Ombudsman v. Magno*,^[25] *National Police Commission v. Mamauag*,^[26] *Mathay, Jr. v. Court of Appeals*,^[27] and *Pleyto v. Philippine National Police Criminal Investigation and Detection Group*; ^[28] that there is no valid reason to liberally apply the rules on intervention; and that even assuming arguendo that belated intervention is proper, the petition should still be denied for it failed to show any reversible error on the part of the CA.

Petitioner would reinforce its position in its Reply.

The Issue