

## THIRD DIVISION

**[ G.R. No. 197886, October 04, 2017 ]**

**OFFICE OF THE OMBUDSMAN, PETITIONER, VS. ANTONIO Z. DE GUZMAN, RESPONDENT.**

### DECISION

**LEONEN, J.:**

The Postmaster General may only execute contracts for procurement of services with the Board of Directors' approval. However, this lack of authority may be ratified through the Board of Directors' silence or acquiescence. The ratification of the unauthorized act does not necessarily mean that the contract is valid. If the contract is executed without complying with the laws on procurement, the erring public official may be held administratively liable.

This is a Petition for Review on Certiorari<sup>[1]</sup> assailing the May 4, 2011 Decision<sup>[2]</sup> and July 14, 2011 Resolution<sup>[3]</sup> of the Court of Appeals in CA-G.R. SP No. 108182, which annulled and set aside the August 31, 2007 Decision<sup>[4]</sup> of the Office of the Ombudsman. The Office of the Ombudsman found respondent Antonio Z. De Guzman (De Guzman) guilty of grave misconduct and dishonesty for entering into a contract with a private entity for mail delivery in Luzon despite not having prior approval from the Philippine Postal Corporation Board of Directors.

Sometime in 2001, the Philippine Postal Corporation entered into a contract with Aboitiz Air Transport Corporation (Aboitiz Air) for the carriage of mail at a rate of P5.00 per kilogram.<sup>[5]</sup> This contract would expire on December 31, 2002.<sup>[6]</sup>

Sometime in October 2003, or after the expiry of its contract with Aboitiz Air, the Philippine Postal Corporation purchased 40 vehicles for mail deliveries in Luzon. It also hired 25 drivers for these vehicles on a contractual basis. All of these drivers' contracts would expire on March 31, 2004, except that of a certain Oliver A. Cruz.<sup>[7]</sup>

The Central Mail Exchange Center of the Philippine Postal Corporation conducted a post study of the delivery system and found that the expenses for the salaries and maintenance of its vehicles for Luzon deliveries were higher than its previous system of outsourcing deliveries to Aboitiz Air. On April 15, 2004, it submitted a recommendation that the Philippine Postal Corporation would save P6,110,152.44 per annum if deliveries were outsourced instead at the cost of P8.00 per kilogram.<sup>[8]</sup>

On April 29, 2004, the Board of Directors of the Philippine Postal Corporation held a Special Board Meeting where De Guzman,<sup>[9]</sup> the Officer-in-Charge, endorsed for approval the Central Mail Exchange Center's recommendation to outsource mail delivery in Luzon.<sup>[10]</sup>

On May 7, 2004, De Guzman sent a letter to Aboitiz Air, now Aboitiz One, Inc. (Aboitiz One), through its Chief Operating Officer, Efren E. Uy, stating:

Pending finalization of the renewal of our contract, you may now re-assume to undertake the carriage of mail from and to Regions 1, 2, 5, & CAR starting 11 May 2004 until further notice. The terms and conditions shall be the same as stipulated in the previous contract except for the schedule and the rate. The attached revised schedule shall be followed and the rate shall be P8.00 per Kilogram.<sup>[11]</sup>

Aboitiz One accepted the proposal and commenced its delivery operations in Luzon on May 20, 2004. When Postmaster General Diomedo P. Villanueva (Postmaster General Villanueva) resumed work, the Aboitiz One contract had already been fully implemented. Thus, the Postmaster General approved payments made to Aboitiz One for services rendered.<sup>[12]</sup>

On October 20, 2005, Atty. Sim Oresca Mata, Jr. filed an administrative complaint with the Office of the Ombudsman against De Guzman. He alleged that the Aboitiz One contract renewal was done without public bidding and that the rate per kilogram was unilaterally increased without the Philippine Postal Corporation Board of Directors' approval.<sup>[13]</sup>

In his Counter-Affidavit, De Guzman alleged that the Office of the Ombudsman no longer had jurisdiction over the case since it was filed one (1) year and five (5) months after the commission of the act complained of, or after he sent his May 7, 2004 letter to Aboitiz. He also alleged that the contract renewal was approved by the Board of Directors in the April 29, 2004 Special Meeting. He maintained that the expiration of the employment contracts of the drivers caused a delay in the delivery of mail, which justified the approval of the outsourcing of deliveries.<sup>[14]</sup>

On August 31, 2007, the Office of the Ombudsman rendered its Decision<sup>[15]</sup> finding De Guzman guilty of grave misconduct and dishonesty. The dispositive portion of this Decision read:

**WHEREFORE,** premises considered, respondent ATTY. ANTONIO Z. DE GUZMAN is found GUILTY of GRAVE MISCONDUCT and DISHONESTY, and hereby meted the corresponding penalty of DISMISSAL FROM THE SERVICE including all its accessory penalties and without prejudice to criminal prosecution.

The Honorable Postmaster General of Philippine Postal Corporation is hereby directed to implement immediately this decision pursuant to Memorandum Circular No. 01, Series of 2006.<sup>[16]</sup>

De Guzman filed his Motion for Reconsideration<sup>[17]</sup> but it was denied in an Order<sup>[18]</sup>

dated June 16, 2008. Thus, he filed a Petition for Review<sup>[19]</sup> with the Court of Appeals, insisting that the outsourcing of mail deliveries in Luzon was approved by the Philippine Postal Corporation Board of Directors and that the lack of bidding was justified by the delivery delays due to the expiration of the mail delivery drivers' employment contracts.<sup>[20]</sup>

On May 4, 2011, the Court of Appeals rendered its Decision<sup>[21]</sup> annulling the Decision and Order of the Office of the Ombudsman and setting aside the Complaint against De Guzman for lack of merit.<sup>[22]</sup> The Court of Appeals found that according to the Minutes of the April 29, 2004 Special Board Meeting, the engagement of Aboitiz's services was approved by the Board of Directors.<sup>[23]</sup> The Court of Appeals also found that there was an urgent need for the procurement of Aboitiz's services due to the expiration of the delivery drivers' employment contracts, which justified the negotiated procurement of Aboitiz's contract.<sup>[24]</sup>

The Court of Appeals likewise found that the rate increase per kilogram from P5.00 to P8.00 was approved by the Board of Directors in the April 29, 2004 Special Board Meeting after considering and deliberating on the Central Mail Exchange Center's study on the rates of Aboitiz One's competitors.<sup>[25]</sup> It also found that the implementation of the contract and the subsequent approvals of payments to Aboitiz One by then Postmaster General Villanueva and then Postmaster General Dario Rama (Postmaster General Rama) were a subsequent ratification of De Guzman's acts.<sup>[26]</sup>

The Office of the Ombudsman moved for reconsideration but it was denied by the Court of Appeals in a Resolution<sup>[27]</sup> dated July 14, 2011. Hence, this Petition<sup>[28]</sup> was filed.

Petitioner argues that respondent committed grave misconduct since he was not authorized to enter into a contract with Aboitiz One or to allow the rate increase per kilogram of mail considering that in the April 29, 2004 Special Board Meeting, respondent was merely instructed to provide more information on Aboitiz One and to submit a copy of the proposed contract.<sup>[29]</sup> It insists that the approval of the contract was contingent upon respondent's compliance with the conditions set by the Board of Directors and that the Board of Directors was not fully apprised of the details during the meeting.<sup>[30]</sup> Petitioner likewise submits that negotiated procurement was not applicable. It alleges that Aboitiz One took over only two (2) months after the expiration of the mail delivery drivers' employment contracts, showing no urgency in the situation. It also avers that the Board of Directors could only exercise negotiated procurement when there are substantiated claims of losses.<sup>[31]</sup>

Respondent counters that he obtained the Board of Directors' approval of his request for authority to enter into the outsourcing contract with Aboitiz One after a full disclosure to the Board of Directors of the cost-benefit analysis submitted by the Central Mail Exchange Center.<sup>[32]</sup> Respondent likewise contends that he had no legal duty to conduct a public bidding since he was not the procuring entity.<sup>[33]</sup> The Board of Directors, as the procuring entity, did not direct or suggest the conduct of a public bidding.<sup>[34]</sup> He insists that negotiated procurement was necessary, arguing that the

non-renewal of the mail delivery drivers' employment contracts would cause delay or stoppage of mail delivery to various parts' of the country.<sup>[35]</sup>

Respondent explains that the Philippine Postal Corporation had been incurring costs of P21.00 per kilogram and that if services were outsourced at P8.00 per kilogram, it could save P13.00 per kilogram or a total of P6,110,152.44 per annum.<sup>[36]</sup> He alleges that this price would have been the most advantageous for the government since no other company offered a rate lower than P8.00 per kilogram for its Luzon mail deliveries.<sup>[37]</sup> Respondent further asserts that a public bidding was conducted in 2005, and Airfreight 2100, Inc., the winning bidder, refused the award and did not sign the contract. He states that due to the cancellation of Aboitiz One's contract on January 31, 2006, the Philippine Postal Corporation has incurred costs of more than P25.00 per kilogram in Luzon mail deliveries.<sup>[38]</sup> Respondent contends that if he was the only official of the Philippine Postal Corporation found liable of grave misconduct and dishonesty, it would violate his right to due process since he merely endorsed for approval a recommendation by the Central Mail Exchange Center.<sup>[39]</sup>

This Court is tasked to resolve the issue of whether or not the Court of Appeals erred in absolving respondent Antonio Z. De Guzman of his administrative offenses. In resolving this issue, this Court must first resolve whether or not he committed grave misconduct and dishonesty in (a) engaging the services of Aboitiz One, Inc. allegedly without the approval of the Philippine Postal Corporation Board of Directors, and (b) in procuring Aboitiz One, Inc.'s services through negotiated procurement.

## I

To determine whether or not respondent acted without authority when he procured Aboitiz One's services in outsourcing mail deliveries in Luzon, it is necessary to determine first the scope of his authority under the law.

Respondent was designated Officer-in-Charge when the contract between the Philippine Postal Corporation and Aboitiz One was effected, since the Postmaster General had taken a leave of absence. Thus, he is considered to have been exercising the functions of the Postmaster General during this period. Under Republic Act No. 7354,<sup>[40]</sup> the powers of the Philippine Postal Corporation are exercised by the Board of Directors,<sup>[41]</sup> with the President appointing all seven (7) members and "with the Postmaster General as one of the members to represent the government shareholdings."<sup>[42]</sup>

The Postmaster General manages the Philippine Postal Corporation<sup>[43]</sup> and has the power to sign contracts on behalf of the corporation as "authorized and approved by the Board [of Directors]."<sup>[44]</sup> Valid corporate acts are those that have "the vote of at least a majority of the members present at a meeting at which there is a quorum."<sup>[45]</sup>

There is no board resolution authorizing respondent to enter into a contract with Aboitiz One for the outsourcing of mail deliveries in Luzon. Likewise, there are no Minutes of the April 29, 2004 Special Board Meeting. Thus, respondent relies on the

transcript of stenographic notes taken during the April 29, 2004 Special Board Meeting<sup>[46]</sup> to prove that he had the Board of Directors' approval to enter into the contract. Pertinent portions of the transcript state:

CORSEC F.C. CRUZ;

Next is, "Renewal of the contract with Aboitiz for the outsourcing of Luzon Mail Run from [the Central Mail Exchange Center] to Region[s] 1,2,5[,] CAR [and] [v]ice [v]ersa.'

. . . .

CHAIRMAN H.R.R. VILLANUEVA:

. . . .

So, ladies and gentlemen, what is the pleasure of the Board on this?

DIRECTOR A.P. LORETO:

Mr. Chairman, we would like to request Atty. De Guzman to present to us more or less, a profile of this company, Aboitiz, and then, let's say, a draft of the contract before we can totally approve the proposal.

CHAIRMAN H.R.R. VILLANUEVA:

Is there a prepared contract here?

OIC-POSTGEN A.Z. DE GUZMAN:

Yeah, there was, sir.

CHAIRMAN H.R.R. VILLANUEVA:

Any other comments, Director Gelvezon?

DIRECTOR R.L. GELVEZON:

None.

CHAIRMAN H.R.R. VILLANUEVA:

Governor?

DIRECTOR I.S. SANTIAGO:

No.

CHAIRMAN (sic) H.R.R. VILLANUEVA;

So, we will consider it as approve[d] subject to . . . [pauses]