

FIRST DIVISION

[G.R. Nos. 168951 & 169000, July 17, 2013]

**DR. ROGER R. POSADAS AND DR. ROLANDO P. DAYCO,
PETITIONERS, VS. SANDIGANBAYAN AND PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

D E C I S I O N

VILLARAMA, JR., J.:

Petitioners assail their conviction for Violation of Section 3(e) of Republic Act (R.A.) No. 3019 (The Anti-Graft and Corrupt Practices Act) and Section 7(b) of R.A. No. 6713 (The Code of Conduct and Ethical Standards for Public Officials and Employees) under Decision^[1] dated June 28, 2005 of the Sandiganbayan in Crim. Case Nos. 25465-66.

The Facts

Petitioner Dr. Roger R. Posadas (Dr. Posadas), a Ph.D. in Relativity Physics graduate from the University of Pittsburgh, is a longtime professor and former Dean of the College of Science at the University of the Philippines-Diliman Campus (UP Diliman). He was appointed by the Board of Regents (BOR) of the University of the Philippines System as UP Diliman Chancellor for a three-year term starting November 1, 1993 and ending October 31, 1996.

During his term as Chancellor, Dr. Posadas is one of the leading figures in the emerging inter-disciplinary field of technology management in the Philippines. Upon the recommendation of the UP Diliman Task Force on Science and Technology Assessment, Management and Planning composed of deans and professors from the various colleges in UP Diliman, the BOR on February 23, 1995 approved the establishment of the Technology Management Center (TMC) under the direct supervision of the Office of the Chancellor, UP Diliman. When the TMC became operational in June 1995, the Task Force on Science and Technology Assessment, Management and Planning wrote then UP President Dr. Emil Q. Javier, nominating Dr. Posadas for the position of TMC Director. For undisclosed reason, Dr. Posadas declined the nomination and instead he (Dr. Posadas) designated Prof. Jose Tabada of the College of Public Administration as Acting Director of TMC.

On July 26, 1995, Dr. Posadas submitted to the National Economic and Development Authority (NEDA) an Application for Funding of his proposed project entitled "Institutionalization of Technology Management at the University of the Philippines in Diliman" (TMC Project). The TMC Project, to be funded by a grant from the Canadian International Development Agency (CIDA), aimed to design and develop ten new graduate courses in technology management for the diploma, master's and doctoral programs to be offered by TMC.^[2]

On September 18, 1995, a Memorandum of Agreement^[3] (MOA) was executed between Dr. Posadas, on behalf of UP-Diliman, and the Philippine Institute for Development Studies (PIDS) as the Local Executing Agency of the Policy, Training and Technical Assistance Facility (PTTAF) of CIDA. Under the MOA, CIDA shall provide the funding for the total project cost (P5,442,400.00), with the NEDA as the designated PTTAF Project Implementer or for the Government of the Philippines, while UP Diliman shall direct, manage and implement all activities under the approved project with counterpart funding in the amount of P4,228,524.00.

In a letter dated July 30, 1995, the President of Hua Qiao University in Fujian Province, China invited Dr. Posadas and a delegation from UP Diliman to visit on October 30 to November 6, 1995. On October 5, 1995, then Senior Deputy Executive Secretary Leonardo A. Quisumbing (retired Member of this Court) issued the Authority to Travel for the UP Diliman delegation headed by Dr. Posadas. Among those who joined the delegation were Dr. Amaryllis Torres and Dr. Rosario Yu, UP Diliman's Vice-Chancellor for Academic Affairs and Vice-Chancellor for Student Affairs, respectively.^[4] Under Administrative Order (AO) No. 95-170 dated October 24, 1995, Dr. Posadas designated petitioner Dr. Rolando P. Dayco (Dr. Dayco), Vice-Chancellor for Administrative Affairs, as Officer-In-Charge (OIC) of UP Diliman effective October 30, 1995 until November 6, 1995. This was followed by AO No. 95-170-A dated October 27, 1995, which amended the previous order by extending the OIC designation of Dr. Dayco to November 7, 1995.^[5]

On November 7, 1995, Dr. Dayco appointed Dr. Posadas as Project Director of UP TMC effective September 18, 1995 up to September 17, 1996. In another undated "Contract for Consultancy Services" signed by Dr. Dayco, Dr. Posadas was hired as Consultant for the TMC Project for the same period.^[6] As evidenced by disbursement vouchers and admitted by Dr. Posadas, the latter received his "honoraria" (P30,000.00 per month) and consultancy fees (totaling P100,000.00) as Project Director and Consultant of the TMC Project until May 1996 when the Commission on Audit (COA) raised questions on the legality of the said fees.^[7]

In August 1996, payment of the subject "honoraria" and fees was suspended by COA Resident Auditor Romeo J. Pulido who noted the following deficiencies:

1. Honoraria were in excess of the rates provided for under the National Compensation Circular No. 73, dated March 1, 1996, x x x.
2. Legal basis for designating the incumbent Chancellor as Project Director by the Officer-In-Charge (OIC), considering that the latter can assume the post only in the absence of the former. An OIC cannot validly designate since the authority to designate/appoint is among the functions of the Chancellor which cannot be delegated as provided in the University Charter. Moreover, the authority to appoint can never be delegated since it involves discretion.
3. On the assumption that the designation of the Chancellor as Project Director and Consultant is valid, collecting the remuneration for both positions amount to double compensation which is contrary to existing auditing rules and regulations.^[8]

In a Memorandum^[9] dated September 16, 1996, UP's Chief Legal Officer Marichu C. Lambino addressed the foregoing concerns of COA Auditor Pulido. Atty. Lambino stated that (a) the compensation received by Dr. Posadas are in the nature of consultancy fees and hence expressly exempted by Department of Budget and Management (DBM) National Compensation Circular (NCC) No. 75 dated March 11, 1995; (b) the TMC Project, being a training program, is likewise exempted from the coverage of NEDA Guidelines on the Procurement of Consulting Services for Government Projects; and (c) under Civil Service Commission (CSC) Memorandum Circular (MC) No. 43, series of 1993 "Streamlining and Deregulating Human Resource Development Functions" UP is authorized, without prior approval from the CSC, to determine the rates of honorarium for government personnel participating as resource persons, coordinator, and facilitator, in training programs. On the issue of double compensation, Atty. Lambino pointed out that Dr. Posadas was appointed Project Director because of managerial expertise, and his skills in supervising personnel who are involved in an academic undertaking, and as Consultant because of his expertise in technology management. Finding these explanations/justifications acceptable, Auditor Pulido lifted the notices of suspension in September 1997.

However, even before the issuance of the suspension notices, then UP President Dr. Emil Q. Javier, ordered an investigation on the basis of an administrative complaint filed by Mrs. Ofelia L. Del Mundo, a staff of the University Library who was detailed at the TMC as its Administrative Officer. On July 24, 1996, President Javier created a Fact-Finding Committee to gather, review and evaluate pertinent documents regarding certain transactions of the TMC.^[10] After the conduct of a preliminary investigation and finding a *prima facie* case against the petitioners, President Javier issued the formal charges^[11] for Grave Misconduct and Abuse of Authority. Pursuant to the University's "Rules and Regulations on the Discipline of Faculty Members and Employees approved at the 704th Meeting of the Board of Regents on January 11, 1963,"^[12] an Administrative Disciplinary Tribunal (ADT) was constituted, chaired by Atty. Arturo E. Balastro, a faculty member of the UP College of Law.

On August 21, 1998, the ADT submitted its Report^[13] (ADT Case 96-001) to President Javier. The ADT found petitioners guilty of serious or grave misconduct and recommended the penalty of dismissal in accordance with CSC Memorandum Circular No. 30, series of 1989, as well as Article 250 of the University Code. The Report likewise stated that the acts of petitioners for which they were held administratively liable may warrant prosecution under Section 3(h) and (i) of R.A. No. 3019. Under the Order^[14] dated August 25, 1998 signed by President Javier, petitioners were dismissed from the service.

On September 3, 1998, Atty. Carmelita Yadao-Guno in her capacity as General Counsel of UP formally endorsed the findings and recommendations of the ADT to the Ombudsman.^[15] The case was docketed as OMB-0-98-1843.

Meanwhile, the BOR at its 1126th meeting on November 26, 1998, resolved petitioners' appeal in ADT Case 96-001, as follows:

1. The Board affirmed the ADT decision finding the respondents guilty of grave misconduct and imposed on them the penalty of forced resignation with the accessory penalties defined in the Omnibus Rules Implementing Book V of Executive Order 292 and other Pertinent Civil Service Laws – i.e., cancellation of eligibility, forfeiture of all leave credits and retirement benefits, and disqualification from government service for one year.
2. If after one year they should reapply to the University, they must render an apology to the University and their reappointments will be subject to Board approval.
3. The respondents are permanently disqualified from holding any administrative position in the University.
4. The decision takes effect immediately.^[16]

Satisfied with the BOR's action, petitioners caused the withdrawal of their appeal before the CSC.^[17]

On June 9, 1999, the Evaluation and Preliminary Investigation Bureau of the Office of Ombudsman recommended the dismissal of the charges against petitioners for insufficiency of evidence. However, said recommendation was disapproved by then Ombudsman Aniano A. Desierto who ordered that petitioners be indicted for violation of Section 3(e) of R.A. No. 3019 and Section 7(b) in relation to Section 11 of R.A. No. 6713.^[18]

The corresponding Informations^[19] were thus filed against the petitioners before the Sandiganbayan (Criminal Case Nos. 25465-66), as follow:

Criminal Case No. 25465

That on or about 7 November 1995, or sometime prior or subsequent thereto, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, both high-ranking public officers, ROGER DELA ROSA POSADAS, being then the Chancellor and a faculty member of the University of the Philippines-Diliman Campus, and ROLANDO PASCUAL DAYCO, being then the Vice-Chancellor of the said university and Officer-In-Charge of the Office of the Chancellor, committing the crime herein charged in relation to, while in the performance and taking advantage of their official and administrative functions, and conspiring and confederating with and mutually helping each other, did then and there willfully, unlawfully and criminally give unwarranted benefits, privilege or advantage to accused POSADAS, when accused DAYCO appointed or designated accused POSADAS as a Project Director of the lone project, Institutionalization of the Management of Technology at U.P. Diliman, of the Technology Management Center (TMC) of the Office of the Chancellor, U.P. Diliman, which enabled or caused the disbursement and payment of monthly salary of P30,000.00 of accused POSADAS, duly received by the latter, for the period 18 September 1995

to 17 September 1996, with accused POSADAS also receiving his salaries as Chancellor and faculty member of U.P. Diliman during this period, and both accused knowing fully well that the appointment of accused POSADAS was beyond the power or authority of accused DAYCO as an OIC and likewise violative of the law, rules and regulations against multiple positions, double compensation and retroactivity of appointment, thereby causing undue injury to the Government in the amount of *PESOS: THREE HUNDRED SIXTY THOUSAND (P360,000.00)*, to the damage and prejudice of the Government.

CONTRARY TO LAW.

Criminal Case No. 25466

That on or about 7 November 1995, or sometime prior or subsequent thereto, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, both high-ranking public officers, ROGER DELA ROSA POSADAS, being then the Chancellor and a faculty member of the University of the Philippines-Diliman Campus, and ROLANDO PASCUAL DAYCO, being then the Vice-Chancellor of the said university and Officer-In-Charge of the Office of the Chancellor, committing the crime herein charged in relation to, while in the performance and taking advantage of their official and administrative functions, and conspiring and confederating with and mutually helping each other, did then and there willfully, unlawfully and criminally engage in the unauthorized private practice of accused POSADAS's profession as a technology manager, when accused DAYCO appointed or designated accused POSADAS as a consultant to the project, Institutionalization of the Management of Technology at U.P. Diliman, of the Technology Management Center (TMC) of the Office of the Chancellor, U.P. Diliman, which enabled or caused the disbursement and payment of consultancy fees in the amount of P100,000.00 to accused POSADAS, duly received by the latter, with respondent POSADAS also receiving his salaries as Chancellor and faculty member of U.P. Diliman, and both accused knowing fully well that the appointment to and acceptance of the position of consultant by respondent POSADAS was without authority from the latter's superior(s) or the U.P. Board of Regents, to the damage and prejudice of the Government service.

CONTRARY TO LAW.

Dr. Dayco and Dr. Posadas were duly arraigned on June 15, 2000 and May 28, 2001, respectively, both pleading not guilty to the charges against them.^[20]

Ruling of the Sandiganbayan

After due proceedings, the Sandiganbayan rendered its Decision^[21] dated June 28, 2005, the decretal portion of which reads: