

THIRD DIVISION

[G.R. No. 185954, February 16, 2010]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. MAXIMO D. SISON, RESPONDENT.

D E C I S I O N

VELASCO JR., J.:

The Case

Before us is a Petition for Review on Certiorari under Rule 45 assailing and seeking to set aside the Resolution^[1] dated December 18, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 96611, entitled *Maximo D. Sison v. Fr. Noel Labendia for Himself and in Representation of Isog Han Samar Movement, Diocese of Calbayog, Catbalogan, Samar*. The CA Resolution denied petitioner Office of the Ombudsman's Omnibus Motion for Intervention and to Admit Attached Motion for Reconsideration of the CA's June 26, 2008 Decision.^[2]

The Facts

On October 11, 2004, the Isog Han Samar Movement, represented by Fr. Noel Labendia of the Diocese of Calbayog, Catbalogan, Samar, filed a letter-complaint addressed to then Ombudsman, Hon. Simeon Marcelo, accusing Governor Milagrosa T. Tan and other local public officials^[3] of the Province of Samar, including respondent Maximo D. Sison, of highly anomalous transactions entered into by them amounting to several millions of pesos. Sison was the Provincial Budget Officer.

The letter-complaint stemmed from the audit investigation dated August 13, 2004 conducted by the Legal and Adjudication Office (LAO), Commission on Audit (COA), which found, among others, that various purchases totaling PhP 29.34 million went without proper bidding procedures and documentations; that calamity funds were expended without a State of Calamity having been declared by the President; and that purchases for rice, medicines, electric fans, and cement were substantially overpriced.

The Special Audit Team, which was created under LAO Office Order No. 2003-059 dated July 7, 2003, summarized the corresponding COA audit findings and observations, to wit:

1. Rules and regulations pertaining to procurement of supplies and materials were consciously and continually violated as disclosed in the verification of selected purchases of the Province. Below were the findings and observations:

- a. Purchases of various items, totaling at least PhP 29.34 million and allegedly procured through public bidding, were found highly irregular for lack of proper bidding procedures and documentation;
 - b. At least PhP 28.165 million worth of purchases through repeat orders were made by the Province without observing the pertinent law, rules and regulations governing this mode of procurement; and
 - c. Emergency purchases of medicines and assorted goods totaling PhP 14.67 million were found not complying with the requirements set forth under the Rules and Regulations on Supplies and Property Management in Local Governments (RRSPMLG). Moreover, the purchases were charged against the calamity fund, despite absence of any declaration from the President that Samar was under a state of calamity, in violation of Sec. 324(d) of R.A. 7160.
2. Inconsistencies in the dates of supporting documents relating to the purchases discussed in finding No. 1 were so glaring that they raised doubts on the validity of the transactions per se;
 3. The use of the 5% budgetary reserves for calamity as funding source of emergency purchases was not legally established, there being no declaration from the Office of the President that Samar was under a state of calamity, as required under Sec. 324(d) of R.A. 7160;
 4. Splitting of requisitions and purchase orders was resorted to in violation of COA Circular No. 76-41 dated July 30, 1976;
 5. There was overpricing in the purchase of rice, medicines, electric fans and cement in the amount of PhP 580,000.00, PhP 322,760.00, PhP 341,040.00, and PhP 3.6 million, respectively. An overpayment was also committed in the payments of cement in the amount of PhP 96,364.09;
 6. Other observations gathered corollary to the purchases made are the following:
 - a. Purchase Orders were not duly accomplished to include a complete description of the items to be purchased, the delivery date and the terms of payment, in violation of the provisions of Section 74 and other corollary provisions of RRSPMLG. Some were even acknowledged by suppliers;
 - b. At least 36 vouchers/claims were not supported with an official receipt, in violation of the provisions of Section 4 of PD 1445 that all disbursements must be supported with complete documentation; and

- c. Advanced deliveries of medicines and assorted goods were made on some purchases even before the purchase orders were prepared and before the public biddings were conducted.
7. The necessity and veracity of the distribution of t-shirts/caps, medicines, assorted goods and cement purchased by the Province of Samar could not be established due to rampant inconsistencies in dates, quantities, as well as the signatures of the alleged recipients in the Requisition and Issue Slip; and,
8. Financial Assistance (FA)/Assistance to Individuals in Crisis Situation (AICS) totaling at least PhP 5.4 million in 2002 and PhP 2.78 million as of April 2003 were granted to various applicant-recipients without subjecting them to the guidelines set forth by the Department of Social Welfare and Development (DSWD).^[4] x x x

On January 24, 2005, the Office of the Ombudsman, through Director Jose T. De Jesus, Jr., found basis to proceed with the administrative case against the impleaded provincial officials of Samar, docketed as OMB-C-A-05-0051-B. The latter were then required to file their counter-affidavits and countervailing evidence against the complaint.

In his counter-affidavit, Sison vehemently denied the accusations contained in the letter-complaint and claimed his innocence on the charges. He asserted that his function is limited to the issuance of a certification that an appropriation for the requisition exists, that the corresponding amount has been obligated, and that funds are available. He did not, in any way, vouch for the truthfulness of the certification issued by the requesting parties. In addition, he averred that he never participated in the alleged irregularities as shown in the minutes and attendance sheet of the bidding.

Further, he alleged that not one of the documentary evidences so far attached in the letter-complaint bore his signature and that he was neither factually connected nor directly implicated in the complaint.

On May 6, 2005, Sison submitted his Position Paper to the Office of the Ombudsman and reiterated that he had not participated in the alleged anomalous purchases and use of public funds by the Province of Samar.

On August 22, 2006, the Office of the Ombudsman rendered a Decision, finding Sison and several other local officials of the Province of Samar guilty of grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service and dismissing him from service. The dispositive portion of the Decision reads:

VIEWED IN THE FOREGOING LIGHT, DECISION is hereby rendered as follows:

1. Respondents ROLANDO B. MONTEJO, DAMIANO Z. CONDE, JR., ROMEO C. REALES, **MAXIMO D. SISON**, AURELIO A. BARDAJE and

NUMERIANO C. LEGASPI are FOUND GUILTY of GRAVE MISCONDUCT, DISHONESTY and CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, and are METED the penalty of DISMISSAL FROM SERVICE, and shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service.

Accordingly, Governor Milagrosa T. Tan and Executive Director Presentacion R. Montesa of the Bureau of Local Government Finance, Department of Finance, are respectfully directed to implement this Order upon receipt hereof and to forthwith inform the Office of compliance herewith.

2. The administrative complaint against respondents MILAGROSA T. TAN, FE ORTEGA TAN ARCALES, SUSANO DIMAKILING SALURIO, BARTOLOME P. FIGUEROA, ANTONIO DE LEON BOLASTIG, III, ROSENAIDA A. ROSALES and BARTOLOME R. CASTILLO III is DISMISSED in view of their re-election in May 2004;
3. The administrative complaint against ERNESTO CARCILLAR ARCALES, FELIX T. BABALCON, JR., JIMMY R. DY, JUAN COLINARES LATORRE, JR., MARIA LOURDES CORTEZ UY, BIENVENIDA P. REPOL and RAMON P. DEAN, JR., who are no longer public officials, is DISMISSED.
4. For insufficiency of evidence, the administrative complaint against ANAMIE P. MANATAD-NUNEZ and ROSIE AMARO VILLACORTE is DISMISSED.
5. The Fact-Finding and Intelligence Office is DIRECTED to conduct further fact-finding investigations on the following:
 - a. On DV Nos. 221-2002-12-083 and 221-2002-11-065: (a) to DETERMINE the other public officials who may be held administratively liable; and (b) to FILE, if necessary, the corresponding Complaint;
 - b. On Bid Nos. 079-2002, 442-2002, 554-2002, 861-2002, 937-2002, 947-2002, 1221-2002, 1375-2002, 1411-2002, 007-2003, 014-2003, 023-2003, 047-2003 and 082-2002: (a) to VERIFY whether actual public biddings took place relative to the transactions covered by these bids; (b) to CHECK the veracity of the documents relative to the repeat orders made; (c) to DETERMINE the other public officials who may appear to be administratively liable therefor; and (d) to FILE, if warranted, the corresponding Complaint; and
 - c. On Bid Nos. 078-2002, 448-2002, 931-2002, 1230-2001, 411-2002, 944-2002, 1244-2002, 1407-2001, 198-2002, 316-2002 and 431-2002: (a) to DETERMINE whether actual public

biddings were held relative to the above-mentioned transactions; (b) to CHECK the veracity of the documents relative to the repeat orders made; (c) to ASCERTAIN the other public officials who may be held administratively liable therefor; and (d) to FILE the corresponding Complaint, if warranted.

Accordingly, let a copy of this Memorandum be furnished the Fact-Finding and Intelligence Office for its appropriate action.

SO ORDERED.^[5] (Emphasis supplied.)

Aggrieved, Sison appealed to the CA via a Petition for Review under Rule 43, docketed as CA-G.R. SP No. 96611.

On June 26, 2008, the CA rendered a decision reversing and setting aside the decision of the Office of the Ombudsman against Sison. The *fallo* of the CA decision reads:

WHEREFORE, the decision of the Ombudsman dated 22 August 2006 in OMB-C-A-05-0051-B in so far as it finds the herein petitioner MAXIMO D. SISON administratively liable for grave misconduct, dishonesty and conduct prejudicial to the best interest of service is hereby REVERSED and SET ASIDE for insufficiency of evidence. Accordingly, he is absolved from administrative liability as charged.

SO ORDERED.^[6]

In ruling thus, the CA held that the Office of the Ombudsman failed to adduce substantial evidence in order to convict Sison. Moreover, it reasoned that Sison's responsibility as Provincial Budget Officer was to ensure that appropriations exist in relation to the emergency purchase being made and that he had no hand or discretion in characterizing a particular purchase as emergency in nature. Hence, he cannot be held administratively liable for simply attesting to the existence of appropriations for a certain purpose, save if such certification is proved to be false.

On July 22, 2008, the Office of the Ombudsman filed an Omnibus Motion for Intervention and to Admit Attached Motion for Reconsideration, which was subsequently denied by the CA in its assailed resolution of December 18, 2008.

Hence, we have this petition.

The Issues

I

Whether the [CA] gravely erred in denying petitioner's right to intervene in the proceedings, considering that (a) the Office of the Ombudsman has sufficient legal interest warranting its intervention in the proceedings