

## THIRD DIVISION

**[ G.R. Nos. 170339, 170398-403, March 09, 2010 ]**

**ROLANDO E. SISON, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**CORONA, J.:**

The requirements of the law on government procurements should never be taken for granted because grave consequences await those who violate them.

Petitioner Rolando E. Sison was the municipal mayor of Calintaan, Occidental Mindoro, a fourth-class municipality,<sup>[1]</sup> from July 1, 1992 to June<sup>[2]</sup> 30, 1995, while Rigoberto de Jesus was the municipal treasurer. On July 18, 1994, state auditor Elsa E. Pajayon conducted a post-audit investigation which revealed that during petitioner's incumbency, no public bidding was conducted for the purchase of a Toyota Land Cruiser, 119 bags of Fortune cement, an electric generator set, certain construction materials, two Desert Dueler tires, and a computer and its accessories. Pajayon also found out that there were irregularities in the documents supporting the acquisitions.

Thus, on June 4, 1998, petitioner and de Jesus were indicted before the Sandiganbayan in seven separate Informations<sup>[3]</sup> for seven counts of violation of Section 3(e) of Republic Act (RA) 3019.<sup>[4]</sup>

On June 24, 1999, petitioner pleaded not guilty to all the Informations. Accused de Jesus has remained at large.

Trial on the merits ensued. Pajayon was the lone witness for the prosecution. She narrated the State's version of the facts as above stated. The prosecution thereafter rested its case and formally offered its exhibits.

When it was the turn of the defense to present evidence, petitioner was called to the witness stand where he admitted that indeed, no public bidding was conducted insofar as the purchases he was being accused of were concerned. When asked how the purchases were made, he answered that they were done through personal canvass. When prodded why personal canvass was the method used, he retorted that no public bidding could be conducted because all the dealers of the items were based in Manila. It was therefore useless to invite bidders since nobody would bid anyway. The defense thereafter rested its case and formally offered its exhibits.

On November 14, 2005, the Sandiganbayan found petitioner guilty as charged.<sup>[5]</sup> As such, he was meted in each Information an imprisonment term ranging from six years and one month as minimum to ten years as maximum and perpetual disqualification from holding public office. The Sandiganbayan also ordered that an

alias warrant of arrest be issued against accused de Jesus.

Petitioner appealed<sup>[6]</sup> to this Court, praying for an acquittal because his guilt was allegedly not proven beyond reasonable doubt.

We dismiss the appeal.

### **NON-COMPLIANCE WITH THE REQUIREMENTS OF PERSONAL CANVASS**

RA 7160<sup>[7]</sup> explicitly provides that, as a rule, "acquisitions of supplies by local government units shall be through competitive bidding."<sup>[8]</sup> By way of exception, no bidding is required in the following instances:

- (1) personal canvass of responsible merchants;
- (2) emergency purchase;
- (3) negotiated purchase;
- (4) direct purchase from manufacturers or exclusive distributors and
- (5) purchase from other government entities.<sup>[9]</sup>

Since personal canvass (the method availed of by petitioner) is an exception to the rule requiring public bidding, Section 367 of RA 7160 provides for limitations on the resort to this mode of procurement:

*Sec. 367. Procurement through Personal Canvass.*--Upon approval by the Committee on Awards, procurement of supplies may be affected after personal canvass of at least three (3) responsible suppliers in the locality by a committee of three (3) composed of the local general services officer or the municipal or *barangay* treasurer, as the case may be, the local accountant, and the head of office or department for whose use the supplies are being procured. The award **shall** be decided by the Committee on Awards.

Purchases under this Section **shall** not exceed the amounts specified hereunder for all items in any one (1) month for each local government unit:

xxx

Municipalities:

First Class	--One hundred fifty thousand pesos (P150,000.00)
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Second and Third--Forty thousand pesos (P40,000.00)  
Class

**Fourth Class--Twenty thousand pesos (P20,000.00)  
and Below (emphasis supplied)**

In relation thereto, Section 364 of RA 7160 mandates:

Section 364. *The Committee on Awards.*--There **shall** be in every province, city or municipality a Committee on Awards to decide the winning bids and questions of awards on procurement and disposal of property.

The Committee on Awards **shall** be composed of the local chief executive as chairman, the local treasurer, the local accountant, the local budget officer, the local general services officer, and the head of office or department for whose use the supplies are being procured, as members. **In case a head of office or department would sit in a dual capacity a member of the *sanggunian* elected from among its members shall sit as a member.** The Committee on Awards at the *barangay* level shall be the *sangguniang barangay*. No national official shall sit as member of the Committee on Awards. (emphasis supplied)

Note that the law repeatedly uses the word "shall" to emphasize the mandatory nature of its provisions.

This Court is not a trier of facts. The resolution of factual issues is a function exercised by lower courts, whose findings on these matters are received with respect and are in fact binding on the Court except only where it is shown that the case falls under the accepted exceptions.<sup>[10]</sup> Petitioner failed to establish that his case falls under those exceptions. Hence, we have no other option but to uphold the Sandiganbayan's factual findings.

Insofar as the purchase of the Toyota Land Cruiser<sup>[11]</sup> is concerned, the Sandiganbayan found that the personal canvass was effected solely by petitioner, without the participation of the municipal accountant and petitioner's co-accused de Jesus, the municipal treasurer. Worse, there was no showing that the award was decided by the Committee on Awards. Only an abstract of canvass supported the award, signed by petitioner and de Jesus, without the required signatures of the municipal accountant and budget officer.

To reiterate, RA 7160 requires that where the head of the office or department requesting the requisition sits in a dual capacity, the participation of a *Sanggunian* member (elected from among the members of the *Sanggunian*) is necessary. Petitioner clearly disregarded this requirement because, in all the purchases made, he signed in a dual capacity--as chairman and member (representing the head of office for whose use the supplies were being procured). That is strictly prohibited. None of the regular members of the Committee on Awards may sit in a dual capacity. Where any of the regular members is the requisitioning party, a special

member from the *Sanggunian* is required. The prohibition is meant to check or prevent conflict of interest as well as to protect the use of the procurement process and the public funds for irregular or unlawful purchases.

The same flaws attended the procurement of 119 bags of Fortune cement,<sup>[12]</sup> electric power generator set,<sup>[13]</sup> various construction materials,<sup>[14]</sup> two Desert Dueler tires<sup>[15]</sup> and a computer and its accessories.<sup>[16]</sup>

With the kind of items purchased by petitioner, he also clearly spent more than P20,000--or beyond the threshold amount per month allowed by Section 367 of RA 7160 as far as purchases through personal canvass by fourth-class municipalities (like Calintaan) are concerned.

### **Violation of Section 3(e) of RA 3019**

Section 3(e) of RA 3019 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:

xxx

(e) Causing any undue injury to any party, including the Government, **or** giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest impartiality, evident bad faith or gross inexcusable negligence. xxx. (emphasis supplied)

To be found guilty under said provision, the following elements must concur:

- (1) the offender is a public officer;
- (2) the act was done in the discharge of the public officer's official, administrative or judicial functions;
- (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and
- (4) the public officer caused any undue injury to any party, including the Government, **or** gave any unwarranted benefits, advantage or preference.<sup>[17]</sup> (emphasis supplied)

It is undisputed that the first two elements are present in the case at bar. The only question left is whether the third and fourth elements are likewise present. We hold that they are.

The third element of Section 3 (e) of RA 3019 may be committed in three ways, *i.e.*,