

## FIRST DIVISION

[ G.R. No. 171609, August 17, 2007 ]

**DR. JUANITO RUBIO, PETITIONER, VS. THE HONORABLE  
OMBUDSMAN, HONORABLE SANDIGANBAYAN AND BAYANI  
MIRA, RESPONDENTS.**

### D E C I S I O N

**SANDOVAL-GUTIERREZ, J.:**

For our resolution is the instant Petition for *Certiorari* with Special Prayer for the Issuance of a Temporary Restraining Order<sup>[1]</sup> assailing the Resolution<sup>[2]</sup> dated August 1, 2005 and Order<sup>[3]</sup> dated December 7, 2005 of the Office of the Ombudsman in OMB-C-C-04-0345-G.

The facts are:

Dr. Juanito A. Rubio, petitioner, is the Assistant Secretary for Finance and Management of the Department of Health and the Executive Director of the Lung Center of the Philippines (Lung Center).

Bayani Mira, private respondent, on the other hand, is the Operations Officer of Merit Protection Investigation Agency (Merit), a domestic corporation engaged in the business of providing security and investigation services.

On July 10, 2003, the Lung Center, through its Bids and Awards Committee (BAC), conducted an open bidding for the purpose of determining the security service which will protect and guard its properties and installations and maintain peace and order within its premises.

On July 17, 2003, a pre-bid conference was held. It was attended by representatives from various security services. On July 24, 2003, the opening of the bids was conducted. The bid proposal/abstract of bids is summarized as follows:

<b>Agency</b>	<b>Bid Proposal (Per Security Guard)</b>
Merit Protection Investigation Agency	P12, 000.00
Star Special Watchman and Detective Agency	P14, 000.00
Starforce Security and Allied Services	P14, 000.00
Arm Corporate Security Services	P13, 630.00 (day); P14, 709.90 (night)

On July 31, 2003, Starforce Security and Allied Services (Starforce) brought to the attention of petitioner that Merit failed to comply with Memorandum Circular NR. 1, Series of 2001 issued by the Philippine Association of Detective and Protective Agency Operators (PADPAO), Inc. providing for standard contract rate for security guard services.

On August 1, 2003, the BAC prepared and signed a Resolution recommending the award of the Lung Center's security service to Merit, the latter tendering the lowest bid at P12,000.00 as monthly salary for each guard which was deemed most advantageous to the government. On August 12, 2003, the BAC presented to petitioner its recommendation to award the security service to Merit.

However, petitioner noted that Merit's bid proposal was below the standard contract rate provided by the Memorandum Circular of PADPAO; and that the current rate of P11,530.00 monthly salary per guard of Starforce, the Lung Center's incumbent security agency, is more advantageous to the government.

On August 26, 2003, the BAC prepared and signed another Resolution awarding the security service of the Lung Center to Star Special Watchman and Detective Agency (Star Special). The BAC also forwarded to petitioner the Notice of Award to Star Special, but the same remained unsigned.

Sometime in September 2003, the Lung Center retained its security service contract with Starforce at the old rate at P11,530.00 per guard. On January 6, 2004, Starforce requested the Lung Center a retroactive adjustment of the contract rate from P11,530.00 to P14,000.00 to cover the period from January 2003 to December 2003. On January 12, 2004, the Lung Center's Management Committee granted the request for the adjustment of salary rate but to cover only the period from January 2004 to July 2004.

On January 23, 2004, the security service contract<sup>[4]</sup> providing the rate of P14,000.00 was signed by the Lung Center and Starforce.

On July 1, 2004, private respondent Bayani Mira of Merit filed with the Office of the Ombudsman a complaint<sup>[5]</sup> for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) against petitioner.

The complaint alleges, among others, that petitioner, in disregarding the results of the public bidding and entering into a contract of security service with Starforce, caused undue injury to the government; and conferred to a private party unwarranted benefit, advantage or preference through manifest partiality, evident bad faith or gross excusable negligence.

In his counter-affidavit,<sup>[6]</sup> petitioner vehemently denied the allegations and countered that the complaint is a harassment suit from a losing bidder.

On August 1, 2005, the Office of the Ombudsman, through Prosecution Officer Rogelio A. Ringpis, issued a Resolution recommending the filing with the Sandiganbayan of an Information for violation of Section 3(e) of R.A. No. 3019 against petitioner.

On August 3, 2005, the Office of the Ombudsman filed with the Sandiganbayan the corresponding Information which reads:

The Tanodbayan (Ombudsman), through the undersigned Graft Investigation and Prosecution Officer II, accuses JUANITO RUBIO y ADIARTE of violation of Section 3, paragraph (e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, committed as follows:

That on or about January 23, 2004, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused JUANITO RUBIO y ADIARTE, a high ranking officer with Salary Grade 29, being then Assistant Secretary of the Department of Health and concurrent Officer-in Charge of the Lung Center of the Philippines (for brevity Lung Center), a government-owned hospital located at Quezon Avenue Extension, Quezon City, committing the offense herein charged in relation to, while in the performance and taking advantage of his official functions and duties as the then officer-in-charge of the Lung Center, did then and there, willfully, unlawfully and criminally cause undue injury to the Government (Lung Center) by causing the award to Starforce Security and Allied Services, Incorporated (for brevity STARFORCE), a private security agency, the contract of providing security services to Lung Center's properties and installation, covering the period of seven (7) months, from January 1, 2004 to July 31, 2004, inclusive, through manifest partiality and evident bad faith. Although fully knowing that STARFORCE, with its bid of P14, 000.00 monthly salary per guard for eight (8) hours daily duty, was not the lowest bidder, but that of Merit Protection Investigation Agency (MERIT) whose bid was only P12,000.00 per guard, thereby giving STARFORCE unwarranted benefit, advantage and preference, inasmuch as the Lung Center was compelled to pay STARFORCE additional amount of P2, 000.00 per guard per month or P82, 000.00 loss a month given the number of guards deployed at forty one (41) for each month served, to the damage and prejudice of the government in general and the Lung Center, in particular, in the estimated total amount of FIVE HUNDRED SEVENTY FOUR PESOS (P574,000.00), representing the total additional amount paid to STARFORCE for the whole period covered by the contract.

CONTRARY TO LAW.<sup>[7]</sup>

On December 5, 2005, petitioner timely filed with the Office of the Ombudsman a motion for reconsideration of the latter's August 1, 2005 Resolution. However, in his Order<sup>[8]</sup> dated December 7, 2005, the Ombudsman denied the motion.

Hence, the present petition.

Petitioner contends that the Ombudsman acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in filing an Information with the Sandiganbayan for violation of Section 3(e) of R.A. No. 3019 against him.

Private respondent counters that the petition lacks of merit.

Case law has it that this Court does not ordinarily interfere with the discretion of the Office of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts if necessary. Certainly, it has been the policy of this Court to vest upon the Office of the Ombudsman wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints.<sup>[9]</sup>

However, while it is the function of the Ombudsman to determine whether or not the petitioner should be subjected to the expense, rigors and embarrassment of trial, he cannot do so arbitrarily. This seemingly exclusive and unilateral authority of the Ombudsman must be tempered by the Court when powers of prosecution are in danger of being used for persecution.<sup>[10]</sup>

Section 3(e) of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act states:

Sec. 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:

x x x x x x x x

e. Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefit, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices of government corporations charged with the grant of licenses or permits or other concessions.

To hold a person liable under this section, the concurrence of the following elements must be established beyond reasonable doubt by the prosecution:

- (1) that the accused is a public officer or a private person charged in conspiracy with the former;
- (2) that said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public positions;
- (3) that he or she causes undue injury to any party, whether the government or a private party; and
- (4) that the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.<sup>[11]</sup>

As may be noted, what contextually is punishable is the act of causing any undue injury to any party, or the giving to any private party unwarranted benefits, advantage or preference in the discharge of the public officer's functions.<sup>[12]</sup> The records disclose that Merit indeed tendered the lowest bid of Twelve Thousand Pesos

(PP12,000.00) salary per month for every guard who will render eight hours of work per day. In fact, the BAC recommended to petitioner to award the security service contract to Merit. However, petitioner declined because Merit's bid price rate violates PADPAO's Memorandum Circular NR. 1, Series of 2001, the pertinent portion of which is reproduced hereunder:

**MEMORANDUM CIRCULAR  
NR 1, Series of 2001**

WHEREAS, PADPAO, in its efforts to professionalize the industry, is desirous of standardizing the contract rate for security guard services, which rate must be adequate and in conformity with current labor and social legislation;

WHEREAS, the wages and other benefits due to a security guard are covered by the Labor Code of the Philippines, as amended by various laws and wage orders;

WHEREAS, it is necessary to effect adjustments in the salaries of the security guards and in the contract rate for security guard services to be able to comply with the aforementioned laws;

NOW, WHEREFORE, taking into account the wages and benefits due to a security guard as prescribed by the current wage orders, and adding thereto a reasonable allowance for overhead and margin and the Value Added Tax (VAT), the PADPAO has the minimum contract rate that should be adopted immediately and uniformly in the National Capital Region as follows:

	5-Nov-01	1-Jan-02	4-Feb-02
Contract rate per month per guard service of eight (8) hours duty per day	P13,500.00	P13,525.00	<b>P14,000.00</b>

x x x

Thus, in keeping with proper ethical procedures within the Security Industry and in the interest of unity within the organization, the members resolved and bound themselves collectively:

1. To observe, adhere and comply with the new minimum with the new standard rates referred to in the preceding paragraph, as the MINIMUM CONTRACT RATES, and to compensate the guards and employees in accordance with the provisions of the Labor Code, as amended by various laws and wage orders.
2. To adhere strictly with the provisions of Section 1, paragraphs C and (F) of the Rules and Regulations Implementing Republic Act No. 5487, as