

FIRST DIVISION

[G.R. NO. 149846, September 27, 2006]

HON. SECRETARY OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG), THE HON. DILG ASST. SECRETARY FOR FINANCE ADMINISTRATION, THE CHIEF OF THE PHILIPPINE NATIONAL POLICE (PNP), PNP DIRECTOR FOR COMPTROLERSHIP, AND PNP DIRECTOR FOR COMMUNICATION AND ELECTRONIC SERVICE , PETITIONERS, VS. TOMAS JOSE BERENGUER, RESPONDENT.

R E S O L U T I O N

CHICO-NAZARIO, J.:

On 16 September 1998, Motorola, Inc. (Motorola) and Philippine National Police (PNP) entered into two contracts, named as follows:

- (a) Contract for Negotiated Purchase Supply, Delivery and Installation of the PNP Multi-Trunked Radio System (MTRS) for Phase IV; and
- (b) Contract for the Negotiated Purchase, Supply Delivery and Installation of the PNP Multi-Trunked Radio System (MTRS) for Phase V.

The contracts were signed by Dale A. Zuiderma, for Motorola, and P/Director General Roberto T. Lastimoso, for the PNP, and approved by Department of Interior and Local Government (DILG) Undersecretary Ronaldo V. Puno, by authority of the President/Concurrent Secretary, DILG/Chairman, NAPOLCOM per D.O. No. 98-488 dated 1 July 1998.

Phase IV was covered by Purchase Order No. PNP P#IT-180898-011 dated 18 August 1998, for P99,959,967.20 obligated under release of Advise of Allotment from the Department of Budget and Management (DBM) under SARO No./GARO No. A-97-04228 (RIR) dated 23 September 1997 in the amount of P100,000,000.00 and ROA No. 309-101-332-98.

Phase V, on the other hand, was covered by Purchase Order No. PNPP0#1-180898-012 dated 18 August 1988, for P49,939,477.62 and obligated under release of Advise of Allotment from the DBM under SARO No./GARO No. BAS-98-001 dated 25 February 1998 in the amount of P392,709,000.00. This was further sub-allocated under AA No. D2554- A.II.c.1-000-219-501-(36-000) 7-264098 dated 15 July 1998 and ROA No. 309-101-08-333-98 in the amount of P49,939,477.62.

Also on 16 September 1998, Undersecretary Puno provided TheSys Inc. (TheSys), Motorola's agent or representative, with copies of the Purchase Orders and the duly signed and approved Multi-Trunked Radio System (MTRS) Phases IV and V Contracts.

On 18 September 1998, TheSys was informed that the Contracts had been put on

hold and returned to the Office of Undersecretary Puno. Undersecretary Puno allegedly cancelled the Contracts.

Subsequently, an Ad Hoc and Independent Citizens' Committee, created under Executive Order No. 53 and chaired by former Senator Rene V. Saguisag, was tasked to investigate the controversy involving the Contracts entered into by the PNP and Motorola. The investigation was spawned by a series of newspaper articles in the Philippine Daily Inquirer (PDI) that suggested improper conduct by certain government officials.

On 10 October 1999, the Saguisag Committee, after conducting public hearings and receiving evidence from all parties concerned, released its Report finding, among other things, that the subject Contracts had been perfected and that they should "be forthwith implemented." The Saguisag Committee also declared that Undersecretary Puno's cancellation of the Contracts constitutes a criminal act; hence, it recommended his investigation and indictment for violation of the Anti-Graft Law, and the Code of Conduct and Ethical Standards.

Consequently, a complaint for violation of Section 3(e), Republic Act No. 3019 was filed against Undersecretary Puno before the Office of the Ombudsman, which, after conducting preliminary investigation, filed the corresponding Information against him before the Sandiganbayan.

In the wake of the Saguisag Committee Report and the Ombudsman's Resolution, various efforts to implement the subject Contracts were taken by Motorola and TheSys.

On 30 November 1999, TheSys wrote former President Joseph Estrada appealing for the immediate implementation of the Contracts. Copies of the letter were furnished the Office of the Executive Secretary, the DILG, the PNP, and the Saguisag Committee.

On 23 December 1999, TheSys wrote then PNP Chief, P/Director General Panfilo Lacson, likewise requesting for the implementation of the Contracts. The PNP, in a letter dated 11 January 2000, replied that P/Director General Lacson had taken up the matter with former Executive Secretary Ronaldo Zamora, and that P/Director General Lacson had signified his intention to pursue the procurement.

On 3 February 2000, P/Director General Lacson wrote the Executive Secretary seeking official guidance on the PNP's desire to procure the equipment for MTRS IV and V. On 4 February 2000, the Executive Secretary favorably endorsed to the President the request of P/Director General Lacson. The President approved the request on 14 February 2000 and affixed his signature and hologram on the 4 February 2000 letter of the Executive Secretary.

On 16 February 2000, the Executive Secretary wrote P/Director General Lacson informing him that the President had approved the PNP's plan to proceed with the procurement of the MTRS IV and V radio system. On 26 June 2000, P/Director General Lacson informed Motorola of the President's approval.

On even date, respondent Tomas Jose Berenguer, standing as a citizen and taxpayer, filed a Petition for *Certiorari* and Prohibition before the Regional Trial Court (RTC) in

Quezon City, with application for Temporary

Restraining Order (TRO) and Writ of Preliminary Injunction, to prevent the delivery of the MTRS under Phases IV and V of the contracts. Respondent argued in the main that the Contracts could not be implemented because they had not been approved by the President.

The petition was raffled off to RTC, Branch 223, presided by Judge Victorino P. Evangelista, who scheduled a hearing on the application for a TRO.

On 3 July 2000, the lower court issued a TRO and subsequently heard the parties on the application for an injunction writ. Hearings were conducted on 6, 7 and 11 June 2000.

After the parties had submitted their respective memoranda, the lower court issued a Resolution^[1] dated 24 July 2000:

Finding that the assailed contracts to be valid and binding, we find no danger of any grave and irreparable injury that would affect petitioner as taxpayer that would warrant the injunctive writ being prayed for. On the contrary, considering the present and compelling need to control the rising criminality in the Metro Manila today, the immediate implementation of the contracts covering Phases IV and V of the MTRS would work not only to petitioner's benefit but to the greater public as well.

WHEREFORE, in view of the foregoing, the prayer for the issuance of a writ of preliminary injunction is hereby DENIED and we deem it necessary that the petition, together with all pending motions be DISMISSED.^[2]

Without filing a motion for reconsideration, respondent assailed the Resolution of the lower court before the Court of Appeals, *via* a Petition for *Certiorari*, docketed as CA- G.R. SP No. 59934.

On 30 August 2001, the Court of Appeals issued a TRO ordering petitioners "to desist from enforcing the proposed MTRS Phases IV and V project." An oral argument on the application for a writ of preliminary injunction was held on 28 September 2000.

Thereafter, the Court of Appeals issued an injunctive writ with the same tenor as the TRO and upon respondent's filing a bond of P300,000.00.

On 30 March 2001, the Court of Appeals rendered its Decision^[3] disposing:

WHEREFORE, the petition is GRANTED and the questioned resolution dated 24 July 2000 insofar as it dismisses the petition together with all pending motions, is hereby SET ASIDE, AND ALL PENDING INCIDENTS ARE MOOTED. Civil Case No. Q-00-41153 including its records is ordered REMANDED to the trial court for further proceedings. No costs.^[4]

Petitioners moved for reconsideration, but it was denied by the Court of Appeals in its Resolution of 5 September 2001.^[5]

On 29 October 2001, petitioners filed the present Petition for Review on *Certiorari*.^[6]

Meanwhile, the Office of the Solicitor General (OSG) received a letter from P/Director General Hermogenes E. Ebdane, Jr., who later became PNP Chief, requesting withdrawal of the Petition. Ebdane explained:

While the PNP has much interest in having the said case resolved by no less than the Supreme Court, the PNP's growing need for communications equipment that will go along with its program in fighting all forms of criminality and lawlessness is a major concern that calls for immediate solution. At this time, however, this urgent concern could not be addressed for want of the needed fund. The implementation, therefore, of the aforesaid contracts remains the only viable option for the realization of the needed equipment.

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It is in view of the foregoing, and in the light of the urgency for high end communications equipment, especially now that some criminal elements are active in sowing terror and violence that require the involvement of more PNP field elements, it is respectfully submitted for your consideration the propriety of withdrawing the pending petition before the Supreme Court so that the PNP and MOTOROLA Incorporated, which expressed their willingness to sit with the PNP and abandon their view with regard to the status of the contracts, could pursue the MTRS Phases IV and V projects and negotiate new contracts in accordance with the guidelines set in the September 9, 1999 memorandum by the Executive Secretary, which the President reiterated on October 18, 2000.^[7]

Subsequently, the OSG likewise received a letter from DILG Secretary Jose D. Lina, Jr. dated 1 October 2003, stating:

This is to formally inform your office that this Department interposes no objection to the withdrawal of the appeal filed in the above-entitled case before the Supreme Court after renegotiation of the MTRS Phases IV and V contracts is made, as recommended by PNP Director General Hermogenes E. Ebdane, Jr.^[8]

Pursuant to the foregoing letters, the OSG filed a Manifestation and Motion^[9] dated 6 October 2003, praying for the withdrawal of the Petition for Review.

On 24 November 2003, this Court issued a Resolution^[10] requiring respondent to comment on the 6 October 2003 Manifestation and Motion within 10 days from notice. On 22 June 2005, this Court issued another Resolution reiterating the requirement that respondent file a comment. On 14 June 2006, this Court issued a third Resolution^[11] requiring counsel for respondent to show cause why it should not be disciplinarily dealt with or held in contempt for such failure to comply with the 22 June 2005 Resolution.