

FIRST DIVISION

[G.R. NO. 135535, February 14, 2005]

ZOOMZAT, INC., PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, ROMULO S. RODRIGUEZ, JR., AVELINO C. CANOSA, ROLANDO G. CHAVEZ, CEFERINO C. GARCIA, DEMOCRITO C. LAGO, ANTONIO F. LUGOD, WAYNE T. MILITANTE, JOHNNY L. MOTOOMULL, JR., FLORENTINO S. OCAMPO, EDUARDO L. REMEGOSO, CLEOFAS B. SALUGSUGAN, RAFAEL T. BERDELAO, AND WINFREDO T. MILITANTE, JR., RESPONDENTS.

DECISION

YNARES-SANTIAGO, J.:

Assailed in this petition for review on certiorari is the Resolution^[1] dated June 17, 1998 of the Sandiganbayan in Crim. Case No. 22026 approving the withdrawal of the Information charging herein respondents, all members of the *Sangguniang Panlungsod* of Gingoog City, of violation of Section 3(e), R.A. No. 3019, otherwise known as the *Anti-Graft and Corrupt Practices Act*, and its Resolution^[2] dated September 9, 1998, denying petitioner Zoomzat, Inc.'s motion for reconsideration.

The factual antecedents are as follows:

Petitioner Zoomzat, Inc. alleged that on December 20, 1991, the Sangguniang Panlungsod of Gingoog City passed Resolution No. 261^[3] which resolved "to express the willingness of the City of Gingoog to allow Zoomzat to install and operate a cable TV system." Thereupon, petitioner applied for a mayor's permit but the same was not acted upon by the mayor's office.

Subsequently, or on April 6, 1993, respondents enacted Ordinance No. 19^[4] which granted a franchise to Gingoog Spacelink Cable TV, Inc. to operate a cable television for a period of ten (10) years, subject to automatic renewal.

Hence, on July 30, 1993, petitioner filed a complaint with the Office of the Ombudsman against herein respondents for violation of Section 3(e), R.A. No. 3019. The complaint alleged that in enacting Ordinance No. 19, the respondents gave unwarranted benefits, advantage or preference to Spacelink, to the prejudice of petitioner who was a prior grantee-applicant by virtue of Resolution No. 261.

On December 20, 1994, Graft Investigation Officer I Virginia Tehano-Ang, recommended the indictment of the respondents under Section 3(e), R.A. No. 3019, ^[5] which recommendation was affirmed on review by Special Prosecution Officer II Rolando Ines.^[6]

Accordingly, a criminal information for violation of Section 3(e), R.A. No. 3019, was filed against the respondents before the Sandiganbayan. The case was docketed as Crim. Case No. 22026.

However, upon directive by the Sandiganbayan to restudy the instant case, Special Prosecution Officer II Antonio Manzano recommended the dismissal of the case and the Information withdrawn for lack of probable cause.^[7] On further investigation, Special Prosecution Officer III Victor Pascual also recommended that the case be dismissed for insufficiency of evidence.^[8]

Consequently, on June 17, 1998, the Sandiganbayan issued the now assailed resolution approving the dismissal of the case and ordering the withdrawal of the Information against the respondents. On September 9, 1998, the Sandiganbayan denied petitioner's motion for reconsideration.

Hence, the instant petition.

Petitioner assails the findings of Special Prosecutor Pascual that under Executive Order No. 205,^[9] it is the National Telecommunications Commission (NTC), and not the local government unit, that has the power and authority to allow or disallow the operation of cable television. It argues that while the NTC has the authority to grant the franchise to operate a cable television, this power is not exclusive because under the Local Government Code, the city council also has the power to grant permits, licenses and franchises in aid of the local government unit's regulatory or revenue raising powers.

Petitioner also contends that the grant of exclusive franchise to Spacelink for a period of ten (10) years subject to automatic renewal, contravenes Section 2 of Executive Order No. 205, which provides that "*a certificate of authority to operate a CATV by the Commission shall be on a non-exclusive basis and for a period not to exceed 15 years.*" Thus, in awarding an exclusive franchise, the petitioner asserts that respondents gave Spacelink undue or unwarranted advantage and preference because it stifled business competition. It claims that, even assuming the lack of actual damage or injury, the fact remains that respondents extended undue favor and advantage to Spacelink, which makes them liable under Section 3(e) of R.A. No. 3019.

The petition is bereft of merit.

Respondents were charged with violation of Section 3(e), R.A. No. 3019, which states:

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:

...

(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