

EN BANC

[G.R. No. 150870, December 11, 2002]

DRA. HONORATA G. BAYLON, PETITIONER, VS. FACT-FINDING INTELLIGENCE BUREAU REPRESENTED BY DIRECTOR AGAPITO ROSALES AND THE OFFICE OF THE OMBUDSMAN, RESPONDENTS.

DECISION

CARPIO-MORALES, J.:

By the present petition for review on certiorari, petitioner prays this Court to give due course to her appeal and to ultimately set aside the Office of the Ombudsman's order for her suspension from public office.

The following facts are not disputed:

Sometime in 1993, Dr. Honorata G. Baylon (petitioner), Head of the Division of Hematology and Transfusion Medicine at the National Kidney and Transplant Institute (NKTi), was designated as Program Manager of the government's National Voluntary Blood Donation Program (Blood Donation Program) with NKTi as the lead agency in the implementation thereof.

The Blood Donation Program later became a component of the project "STOP D.E.A.T.H (Disasters, Epidemics, and Trauma for Health): Hospitals for Philippines 2000" which was launched on February 18, 1994 by the Department of Health (DOH) headed by the then Secretary Juan M. Flavio (Flavio).^[1] Petitioner remained at the helm of the Blood Donation Program.^[2]

On February 24, 1994, Flavio publicly disclosed the results of the United States Agency for International Development (USAID)-sponsored study on the safety of the country's blood banking system which found out that the Philippines' blood transfusion service failed to adequately meet the demand for safe blood and that the blood sourced from commercial blood banks had a contamination rate of four percent.^[3] Flavio thus ordered the closure of provincial retail outlets of commercial blood banks as a result of which an acute shortage of transfused blood ensued because of the blood banks' refusal to sell blood in retaliation to the said closure order.

Flavio accordingly directed the full operation of the Blood Donation Program, which apparently served as the then only viable system from which blood could be sourced.

On March 8 and 17, 1994, the NKTi, through petitioner, issued Requisition and Issue Vouchers^[4] for the purpose of purchasing blood bags for immediate distribution to DOH hospitals or medical centers where the system of voluntary blood donation would then be put in place. As "Terumo" blood bags were believed to be the finest in

the market, the NKTi obtained a quotation therefor dated March 16, 1994^[5] from their exclusive distributor, the FVA EX-IM Trading, Inc. (FVA), as follows:

1. [Blood Bag], Single Capacity = P 72.29 [per piece]
2. Double Capacity = P171.00
3. Triple Capacity = P263.70

Another quotation dated March 29, 1994^[6] was later furnished by FVA reflecting the following reduced prices:

1. Single = P 63.54
2. Double = P150.00
3. Triple = P209.09

Petitioner signified her conformity to the second quotation. The NKTi subsequently purchased "Terumo" blood bags from FVA under the following purchase orders with their corresponding dates, the respective amounts involved in each sale transaction, and the names of the approving authority:^[7]

Date	Purchase Order No.	Amount	Approving Authority
1. April 11, 1994	94-00943	P1,270,800.00	Juan M. Flavier, Jaime Galvez-Tan Juan R. Nanagas
2. May 25, 1994	94-00132	P536,025.00	Filoteo A. Alano (recommended by Aileen R. Javier)
3. August 12, 1994	94-00147	P1,702,687.65	Juan M. Flavier
4. November 14, 1994	94-00172	P2,209,915.00	Juan M. Flavier
5. December 6, 1994	94-00182	P 506,585.45	Juan M. Flavier

In March 1995, the Commission on Audit (COA) disallowed in post audit the sale transactions entered into by the NKTi with FVA on the ground that the blood bags were purchased without public bidding, contrary to the applicable laws or rules, thereby allegedly resulting to overpricing.^[8] The COA found that FVA sold "Terumo" blood bags to the Philippine National Red Cross (PNRC) and to blood banks Our Lady of Fatima and Mother Seaton at prices lower than those at which it sold to the NKTi,

leading to a consequent total loss to the government in the amount of P1,964,304.70.

The Auditor of the NKTl accordingly ordered the suspension of purchases of blood bags from FVA and eventually disallowed the payment of blood bags amounting to P6,006,133.54.

A **criminal** complaint, docketed as OMB-0-97-0242, for violation of Section 3(e) and (g) of Republic Act (R. A.) No. 3019 (The Anti-Graft and Corrupt Practices Act), was thus filed by the Office of the Ombudsman against petitioner, Flavie, then DOH Undersecretaries Dr. Jaime Galvez-Tan and Dr. Juan R. Nañagas, NKTl Executive Director Dr. Filoteo A. Alano, NKTl Deputy Executive Director Dr. Aileen R. Javier, NKTl Property Division Chief Diana Jean F. Prado and NKTl Accounting Division Chief Maribel U. Estrella. At the same time, an administrative complaint for gross misconduct was lodged against petitioner and the same respondents except Flavie and Galvez-Tan.

The **administrative** complaint was docketed as OMB-ADM-0-97-0165, now the subject of the present petition.

Petitioner disclaimed administrative liability. Adopting^[9] her May 20, 1997 counter-affidavit^[10] filed in the criminal complaint, petitioner claimed that the acquisition of the blood bags via negotiated purchase came under the exceptions to public bidding as provided for by law, citing the following pertinent provision of Executive Order No. 301 (DECENTRALIZING ACTIONS ON GOVERNMENT NEGOTIATED CONTRACTS, LEASE CONTRACTS AND RECORDS DISPOSAL):

SECTION 1. *Guidelines for Negotiated Contracts.* – Any provision of law, decree, executive order or other issuances to the contrary notwithstanding, no contract for public services or for furnishing supplies, materials and equipment to the government or any of its branches, agencies or instrumentalities shall be renewed or entered into without public bidding, except under any of the following situations:

x x x

b. Whenever the supplies are to be used in connection with a project or activity which cannot be delayed without causing detriment to the public service;

c. Whenever the materials are sold by an exclusive distributor or manufacturer who does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained elsewhere at more advantageous terms to the government;

x x x

e. In cases where it is apparent that the requisition of the needed supplies through negotiated purchase is most advantageous to the government to be determined by the Department Head concerned;

x x x (Underscoring supplied).

Thus she explained: firstly, the blood bags were used in the Blood Donation Program which had to be implemented immediately to address the scarcity of blood at the

time; secondly, FVA was the only exclusive distributor without subdealers of "Terumo" blood bags; and thirdly, negotiated purchase of the blood bags was most advantageous to the government for the prices at which the NKTi obtained them from FVA were the lowest compared to those at which they were acquired by other government hospitals, as the following shows:^[11]

HOSPITALS	BLOOD BAGS		
	Single	Double	Triple
NKTi	P63.54	P150.00	P209.00
Philippine General Hospital	P78.00	P185.40	P285.00
Jose Reyes Memorial Medical Center	P85.05	--	--
Dr. Jose Fabella Memorial Hospital	P85.00	P199.00	--
Philippine Children's Medical Center	P64.00	--	P209.09
Philippine Heart Center	P78.00	P190.00	--

Petitioner submitted certifications^[12] from various medical establishments attesting to the superior quality and features of "Terumo" blood bags which have made them the most widely used among hospitals and blood banks; the counter-affidavit filed in the same criminal complaint of FVA President Francisco V. Abalos,^[13] who was subsequently dropped as respondent therein upon his death on January 31, 1998; and Flavie's December 3, 1999 sworn statement submitted also in the criminal complaint.

In his counter-affidavit, Abalos explained that the lower prices at which the FVA sold blood bags to PNRC, Mother Seaton and Our Lady of Fatima, were meant to aid these blood banks to reduce their operational costs so that they would sell at low prices to their buyers who were mostly the poor, as well as to reduce FVA's excess inventory then.

In his December 3, 1999 sworn statement, Flavie declared that the negotiated purchase of the blood bags was justified by the conditions obtaining at the time; the NKTi's transactions with FVA were not tainted with any irregularities; petitioner and the other NKTi officials were responsible for successfully implementing a 100% voluntary blood donation system in ten regional hospitals and medical centers; and that were it not for petitioner's work as Program Manager of the Blood Donation Program, disastrous consequences would have befallen patients, the DOH, and the Blood Donation Program itself.

By Memorandum Review of June 13, 2000,^[14] Assistant Ombudsman Abelardo L. Aportadera (Aportadera) recommended the exoneration of the respondents Nañagas and Estrella. Taking note, of the Ombudsman's finding of probable cause to criminally hale petitioner and company into court, Aportadera recommended, by the same Review Memorandum, that herein petitioner and the rest of her co-

respondents be held guilty of Grave Misconduct for which they should be meted a penalty of SIX (6) MONTHS SUSPENSION.

Aportadera's recommendation was approved by the Ombudsman on June 16, 2000. A motion for reconsideration of this June 16, 2000 – approved Memorandum Review having been denied by the Memorandum Review of July 19, 2000 which the Ombudsman approved on July 28, 2000,^[15] petitioner filed on October 4, 2000 a petition with this Court for certiorari and prohibition with prayer for a temporary restraining order (TRO) and/or writ of preliminary injunction, docketed as **G. R. No. 145000**, seeking the nullification of the Ombudsman's above-said Memorandum Reviews.

By Resolution of October 16, 2000, this Court dismissed the petition for having been brought to the wrong forum in light of the ruling in *Fabian v. Desierto*^[16] that appeals from the decision of the Ombudsman should be made to the Court of Appeals by a petition for review under Rule 43 of the 1997 Rules of Civil Procedure. Unlike the *Fabian*, this Court did not order the transfer of the petition to the Court of Appeals for proper disposition pursuant to this Court's Resolution in A. M. No. 99-2-02-SC dated February 9, 1999 declaring that any appeal filed with this Court after March 15, 1999 from a decision, resolution or order of the Ombudsman in an **administrative** case would no longer be referred to the Court of Appeals. Petitioner's Motion for Reconsideration of this Court's October 16, 2000 Resolution was denied on January 22, 2001.

Petitioner thus elevated the Ombudsman's Memorandum Reviews to the Court of Appeals by a petition for review filed on April 18, 2001, docketed as CA-G. R. SP No. 64332. By Resolution of May 2, 2001,^[17] however, the Court of Appeals dismissed the petition for having been filed beyond the fifteen-day reglementary period, reckoned from petitioner's receipt of the Ombudsman's second Memorandum Review on August 7, 2000.

Petitioner filed a Motion for Reconsideration of the May 2, 2001 Resolution of the Court of Appeals. Pending resolution thereof or on July 6, 2001, petitioner filed a motion for leave to submit a copy of the COA Decision No. 2001-11 dated June 21 2001^[18] which lifted the audit disallowance of the payments made for the purchases by the NKTi of the "Terumo" blood bags from FVA. In said decision, the COA held that the purchase of blood bags without public bidding was not violative of the law, was not disadvantageous to the government, and did not accord undue preference to FVA. In a Resolution of November 21, 2001,^[19] the Court of Appeals denied petitioner's Motion for Reconsideration.

Hence, the present petition for review on certiorari with an application for a TRO and/or an injunctive writ which was filed on December 21, 2001. Public respondents filed their Comment,^[20] to which petitioner filed her Reply.^[21]

Petitioner imputes to the Court of Appeals the commission of grave error in dismissing her petition for review on a mere technicality. She invokes considerations of substantial justice for this Court to give her petition due course and essentially prays that the Resolutions of the Court of Appeals be set aside and that the Memorandum Reviews of the Ombudsman be nullified.