

EN BANC

[G.R. No. 136470, October 16, 2001]

**VENANCIO R. NAVA, PETITIONER, VS. COMMISSION ON AUDIT,
REGION XI, REPRESENTED BY ITS DIRECTOR, DAVAO, CITY,
RESPONDENT.**

D E C I S I O N

BUENA, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court, seeks to review the Ombudsman's disapproval of the Resolution dated May 21, 1998, of the Office of the Special Prosecutor, which recommended that petitioner Nava be dropped from the Information filed against him in Criminal Case No. 23459 before the Sandiganbayan.

The antecedents are simple.

The Commission on Audit (COA), Regional Office No. XI, Davao City, conducted an audit investigation on the procurement of the Department of Education and Culture (DECS) Division Office of Davao City, particularly of construction materials for its 1991 School Building Program. The audit report revealed, among others, that the DECS Division Office purchased construction materials and supplies from Giomiche Incorporated, a Manila based supplier. In order to determine the reasonableness of the prices, the resident auditor compared the prices of the construction materials purchased from Giomiche with those sold by reputable suppliers and establishment in Davao City. A comparison showed that the items sold to the DECS Division Office exceeded the prevailing market prices in the city, ranging from 6.09% to 695.45%, resulting to a government loss of P512,967.69. The audit likewise revealed that the procurement was not made through a public bidding.

On November 8, 1993, the COA Regional Office, through Director Amado C. Baul, transmitted the audit report to the Deputy Ombudsman, Office of the Ombudsman-Mindanao, Sta. Ana, Davao City, for appropriate action.^[1]

Finding *prima facie* evidence to proceed with the preliminary investigation, the Office of the Ombudsman directed the petitioner and concerned officers^[2] of the DECS who had a hand in the transaction to file their answer and other controverting evidence.

Petitioner Nava denied the charges explaining that his alleged participation in the purchase of overpriced school construction materials was limited to the signing of the "Invitation to Bid" and approving the purchase order. He claims that the "Invitation to Bid" cannot by itself cause any irregularity, it being the initial action in the purchasing process of procurement and that it

has no relevance or bearing on whether or not the amounts finally paid constitute overpayment or overpricing. He also maintains that he signed the purchase orders upon recommendation of DECS Division Superintendent Luceria M. de Leon and that his act of affixing his signature on the purchase orders was merely ministerial.

On July 25, 1996, the Ombudsman, through Graft Investigation Officer I, Jovito A. Coresis, Jr. issued a Resolution, the decretal portion of which reads:

"WHEREFORE, finding sufficient evidence to hold that the offense of violation of Section 3 (g) and (e) of RA 3019 and falsification have been committed and that the hereunder list of persons are probably guilty thereof, let the following criminal Information be filed with the following courts, namely:

"X X X

X X X

X X X

"B) Violation of Section 3 (g) of RA 3019 relative to the overpricing of construction materials with the Sandiganbayan against:

- "1. DECS Regional Director VENANCIO NAVA (with salary _____),
- "2. DECS Assistant Director SUSANA CABAUG,
- "3. DECS Regional Administrative Officer AQUILINA B. GRANADA,
- "4. DECS Finance Officer, CARLOS BAUTISTA,
- "5. DECS Division Superintendent LUCERIA M. DE LEON,
- "6. DECS Division Administrative Officer EDILBERTO MADRIA,
- "7. DECS Supply Officer FELIPE PANCHO, and
- "8. GEOMICHE, Incorporated President JESUSA DELA CRUZ.'

"X X X

X X X

X X X

"SO RESOLVED."[\[3\]](#)

In warranting the prosecution of the petitioner and his co-respondents, the Ombudsman ratiocinated in this wise:

"Apropos the alleged overpricing of construction materials, this Office finds that the DECS Division of Davao City purchased the following construction materials from Geomiche, Incorporated thru its President Jesusa dela Cruz which per comparison between the price actually paid and the price per canvass by the COA showed overpricing ranging from 6.09% to 695.45%, thus:

"X X X

X X X

X X X

"Verily, the contract for the purchase of the above-enumerated construction materials at overpriced costs ranging from 6.09% to 695.45% was grossly and manifestly disadvantageous to the government

for it left the government short-changed by a hefty sum of P512,967.69 – the total amount of the overprice.

“Moreover, the said purchases were made without a public bidding in violation of Executive Order No. 298, Series of 1940. Furthermore, two (2) sets of purchase orders were prepared: one set was issued by the DECS Division Office and another set by the DECS Regional Office. Finally, the payments made to Geomiche were split, thus: payment under Voucher No. 91-05-02-SB for P1,500,000.00 was supported by a set of purchase orders issued by the DECS Division Office BUT ONLY for the amount of P70,505,21; another payment to Geomiche under Voucher No. (illegible) in the amount of P557,093.25 was supported by a set of purchase orders issued by the DECS Regional Office BUT ONLY for P71,429.75 in violation of COA rules and regulations prohibiting splitting of payment.

“In fine, the failure to conduct a public bidding, the preparation of two sets of purchase orders, the splitting of payments to Geomiche—seemingly separate and distinct acts though—yet lead to the inescapable conclusion that they were segments of a grand conspiratorial design on the part of the DECS Officials and Jesusa dela Cruz of Geomiche to enter into a contract of purchase of construction materials grossly and manifestly disadvantageous to the government. Since in conspiracy, the liability of one is the liability of all who have participated in such conspiracy, the following persons should be held liable for violation of Section 3 (g) of R.A. 3019, namely:

“x x x
x”^[4].

x x x

x x

Thereafter, an Information was filed before the Sandiganbayan against herein petitioner which was docketed as Criminal Case No. 23459.^[5]

On May 6, 1997, petitioner moved for a reinvestigation before the Sandiganbayan^[6] contending that the acts imputable to him, *i.e.*, approving the disbursement voucher, purchase order and invitation to bid and in signing the checks for payment, are not indicative of any conspiracy to prejudice the government. He argues that his actions are the very functions he had to discharge in the performance of his official duties as Regional Director of the DECS and had to rely in good faith on the representation of his subordinates.

On June 6, 1997, the Sandiganbayan ordered the reinvestigation of the case.

On May 21, 1998, Special Prosecution Officer Diosdado V. Calonge, issued a Resolution recommending that petitioner, together with Susana Cabahug and Felipe Pancho, be dropped from the complaint and the Information filed against them before the Sandiganbayan be withdrawn. Special Prosecutor Calonge maintains that the respondents “cannot be held liable for entering into a contract grossly and manifestly disadvantageous to the government because their individual participation in the questioned transaction are purely ministerial acts, without indication that they are attended by bad