

THIRD DIVISION

[G.R. No. 130191, April 27, 1998]

**RODRIGO R. DUTERTE AND BENJAMIN C. DE GUZMAN,
PETITIONERS, VS. THE HONORABLE SANDIGANBAYAN,
RESPONDENT.**

D E C I S I O N

KAPUNAN, J.:

The right to preliminary investigation is not a mere formal right, it is a substantive right. To deny the accused of such right would be to deprive him of due process.

In this special civil action for *certiorari* with preliminary injunction, petitioners seek to set aside the Order of the Sandiganbayan dated 27 June 1997 denying the Motion to Quash the information filed against them for violating Sec. 3(g) of R.A. No. 3019, otherwise known as the Anti-Graft And Corrupt Practices Act. Petitioners similarly impugn the Resolution of the Sandiganbayan dated 5 August 1997 which denied their Motion for Reconsideration thereof.

Pertinent to this case are the following facts:

In 1990, the Davao City Local Automation Project was launched by the city government of Davao. The goal of said project was to make Davao City a leading center for computer systems and technology development. It also aimed to provide consultancy and training services and to assist all local government units in Mindanao set up their respective computer systems.

To implement the project, a Computerization Program Committee, composed of the following was formed:

Chairman : Atty. Benjamin C. de Guzman, City Administrator

Members : Mr. Jorge Silvosa, Acting City Treasurer

Atty. Victorino Advincula, City Councilor

Mr. Alexis Almendras, City Councilor

Atty. Onofre Francisco, City Legal Officer

Mr. Rufino Ambrocio, Jr., Chief of Internal Control Office

Atty. Mariano Kintanar, COA Resident Auditor.^[1]

The Committee's duty was to "conduct a thorough study of the different computers in the market, taking into account the quality and acceptability of the products, the reputation and track record of the manufacturers and/or their Philippine distributors, the availability of service centers in the country that can undertake preventive

maintenance of the computer hardwares to ensure a long and uninterrupted use and, last but not the least, the capability of the manufacturers and/or Philippine distributors to design and put into place the computer system – complete with the flow of paperwork, forms to be used and personnel required.”^[2]

Following these guidelines, the Committee recommended the acquisition of Goldstar computers manufactured by Goldstar Information and Communication, Ltd., South Korea and exclusively distributed in the Philippines by Systems Plus, Inc. (SPI).

After obtaining prior clearance from COA Auditor Kintanar, the Committee proceeded to negotiate with SPI, represented by its President Rodolfo V. Jao and Executive Vice President Manuel T. Asis, for the acquisition and installation of the computer hardware and the training of personnel for the Electronic Data-Processing Center. The total contract cost amounted to ₱11,656,810.00

On 5 November 1990, the City Council (Sangguniang Panlungsod) of Davao unanimously passed Resolution No. 1402 and Ordinance No. 173 approving the proposed contract for computerization between Davao City and SPI. The Sanggunian, likewise, authorized the City Mayor (petitioner Duterte) to sign the said contract for and in behalf of Davao City.^[3]

On the same day, the Sangguniang issued Resolution No. 1403 and Ordinance No. 174, the General Fund Supplemental Budget No. 07 for CY 1990 appropriating ₱3,000,000.00 for the city’s computerization project.

Given the go-signal, the contract was duly signed by the parties thereto and on 8 November 1990, petitioner City Administrator de Guzman released to SPI PNB Check No. 65521 in the amount of ₱1,748,521.58 as downpayment.

On 27 November 1990, the Office of the Ombudsman-Mindanao received a letter-complaint from a “concerned citizen,” stating that “some city officials are going to make a killing” in the transaction.^[4] The complaint was docketed as OMB-MIN-90-0425. However, no action was taken thereon.^[5]

Thereafter, sometime in February 1991, a complaint docketed as Civil Case No. 20,550-91, was instituted before the Regional Trial Court of Davao City, Branch 12 by Dean Pilar Braga, Hospicio C. Conanan, Jr. and Korsung Dabaw Foundation, Inc. against the petitioners, the City Council, various city officials and SPI for the judicial declaration of nullity of the aforestated resolutions and ordinances and the computer contract executed pursuant thereto.

On 22 February 1991, Goldstar, through its agent, Mr. S.Y. Lee sent a proposal to petitioner Duterte for the cancellation of the computerization contract.

Consequently, on 8 April 1991, the Sangguniang issued Resolution No. 449 and Ordinance No. 53 accepting Goldstar’s offer to cancel the computerization contract provided the latter return the advance payment of ₱1,748,521.58 to the City Treasurer’s Office within a period of one month. Petitioner Duterte, as city mayor, was thus authorized to take the proper steps for the mutual cancellation of the said contract and to sign all documents relevant thereto.^[6]

Pursuant to the aforestated authority, on 6 May 1991, petitioner Duterte, in behalf of Davao City, and SPI mutually rescinded the contract and the downpayment was duly refunded.

In the meantime, a Special Audit Team of the Commission on Audit was tasked to conduct an audit of the Davao City Local Automation Project to determine if said contract conformed to government laws and regulations.

On 31 May 1991, the team submitted its Special Audit Report (SAR) No. 91-05 recommending rescission of the subject contract. A copy of the report was sent to petitioner Duterte by COA Chairman Eufemio C. Domingo on 7 June 1991. In the latter's transmittal letter, Chairman Domingo summarized the findings of the special audit team, thus:

1. The award of the contract for the "Davao City Local Automation Project" to Systems Plus, Inc., for ₱11,656,810 was done thru negotiated contract rather than thru competitive public bidding in violation of Sections 2 and 8 of PD 526. Moreover, there was no sufficient appropriation for this particular contract in violation of Sec. 85 of PD 1445.
2. Advance payment of ₱1.7M was made to Systems Plus, Inc. covering 15% of the contract cost of ₱11.6M in violation of Sec. 45 of PD 477 and Sec. 88 of PD 1445.
3. The cost of computer hardware and accessories under contract with "Systems Plus, Inc. (SPI)" differed from the team's canvass by as much as 1200% or a total of ₱1.8M.
4. The City had no Information System Plan (ISP) prior to the award of the contract to SPI in direct violation of Malacañang Memo. Order No. 287 and NCC Memo. Circular 89-1 dated June 22, 1989. This omission resulted in undue disadvantage to the City Government.
5. To remedy the foregoing deficiencies, the team recommends that the contract with Systems Plus, Inc. be rescinded in view of the questionable validity due to insufficient funding. Further, the provisions of NCC-Memorandum Circular 89-1 dated June 22, 1989 regarding procurement and/or installation of computer hardware/system should be strictly adhered to.^[7]

The city government, intent on pursuing its computerization plan, decided to follow the audit team's recommendation and sought the assistance of the National Computer Center (NCC). After conducting the necessary studies, the NCC recommended the acquisition of Philips computers in the amount of ₱15,792,150.00. Davao City complied with the NCC's advice and hence, was finally able to obtain the needed computers.

Subsequently, on 1 August 1991, the Anti-Graft League-Davao City Chapter, through one Miguel C. Enriquez, filed an unverified complaint with the Ombudsman-Mindanao against petitioners, the City Treasurer, City Auditor, the whole city government of Davao and SPI. The League alleged that the respondents, in entering into the computerization contract, violated R.A. No. 3019 (Anti-Graft and Corrupt Practices Act), PD No. 1445 (Government Auditing Code of the Philippines), COA circulars and regulations, the Revised Penal Code and other pertinent laws. The case was docketed as OMB-3-91-1768.^[8]

On 9 October 1991, Graft Investigation Officer (GIO) Pepito A. Manriquez of the Office of the Ombudsman sent a letter^[9] to COA Chairman Domingo requesting the Special Audit Team to submit their joint affidavit to substantiate the complaint in compliance

with Section 4, par. (a) of the Rules of Procedure of the Office of the Ombudsman (A. O. No. 07).

On 14 October 1991, Judge Paul T. Arcangel, issued an Order dismissing Civil Case No. 20,550-91. The dispositive portion reads, thus:

WHEREFORE, in view of all the foregoing, this case is hereby dismissed on the ground of prematurity and that it has become moot and academic with the mutual cancellation of the contract. The other claims of the parties are hereby denied. No pronouncement as to costs.

SO ORDERED.^[10]

On 12 November 1991, Graft Investigator Manriquez issued an order in OMB-3-91-1768 directing petitioners, Jorge Silvosa (City Treasurer), Mariano Kintanar (City Auditor) and Manuel T. Asis of SPI to:

xxx file in ten (10) days (1) their respective verified point-by-point comment under oath upon every allegation of the complaint in Civil Case No. 20,550-91 in the Regional Trial Court (RTC), Branch 12, Davao City “Dean Pilar C. Braga, et al. vs. Illegality of City Council of Davao Resolutions and Ordinances, and the Computer Contract executed Pursuant Thereto, for Recovery of Sum of Money, Professional Fees and Costs – with Injunctive Relief, including the Issuance of a Restraining Order and/or a Writ of Preliminary Prohibitory Injunction in which they filed a motion to dismiss, not an answer and (2) the respective comments, also under oath, on the Special Audit Report No. 91-05, a copy of which is attached.^[11]

On 4 December 1991, the Ombudsman received the affidavits of the Special Audit Team but failed to furnish petitioners copies thereof.

On 18 February 1992, petitioners submitted a manifestation adopting the comments filed by their co-respondents Jorge Silvosa and Mariano Kintanar dated 25 November 1991 and 17 January 1992, respectively.

Four years after, or on 22 February 1996, petitioners received a copy of a Memorandum prepared by Special Prosecution Officer I, Lemuel M. De Guzman dated 8 February 1996 addressed to Ombudsman Aniano A. Desierto regarding OMB-MIN-90-0425 and OMB-3-91-1768. Prosecutor De Guzman recommended that the charges of malversation, violation of Sec. 3(e), R.A. No. 3019 and Art. 177, Revised Penal Code against petitioners and their co-respondents be dismissed. He opined that any issue pertaining to unwarranted benefits or injury to the government and malversation were rendered moot and academic by the mutual rescission of the subject contract before the COA submitted its findings (SAR No. 91-05) or before the disbursement was disallowed. However, Prosecutor De Guzman recommended that petitioners be charged under Sec. 3(g) of R.A. No. 3019 “for having entered into a contract manifestly and grossly disadvantageous to the government, the elements of profit, unwarranted benefits or loss to government being immaterial.”^[12]

Accordingly, the following information dated 8 February 1996 was filed against petitioners before the Sandiganbayan (docketed as Criminal Case No. 23193):

That on or about November 5, 1990, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, accused Benjamin C. De Guzman being then the City Administrator of Davao City,

committing the crime herein charged in relation to, while in the performance and taking advantage of their official functions, and conspiring and confederating with each other, did then and there willfully, unlawfully and criminally enter into a negotiated contract for the purchase of computer hardware and accessories with the Systems Plus, Incorporated for and in consideration of the amount of PESOS: ELEVEN MILLION SIX HUNDRED FIFTY-SIX THOUSAND EIGHT HUNDRED TEN (P11,656,810.00), which contract is manifestly and grossly disadvantageous to the government, said accused knowing fully-well that the said acquisition cost has been overpriced by as much as twelve hundred (1200%) percent and without subjecting said acquisition to the required public bidding.

CONTRARY TO LAW.^[13]

On 27 February 1996, petitioners filed a motion for reconsideration and on 29 March 1996, a Supplemental Motion for Reconsideration on the following grounds:

1. Petitioners were deprived of their right to a preliminary investigation, due process and the speedy disposition of their case;
2. Petitioner Duterte acted in good faith and was clothed with authority to enter into the subject contract;
3. There is no contract manifestly and grossly disadvantageous to the government since the subject contract has been duly rescinded.

On 19 March 1996, the Ombudsman issued a Resolution denying petitioners' motion for reconsideration.

On 18 June 1997, petitioners filed a Motion to Quash which was denied by the Sandiganbayan in its Order dated 27 June 1997. The Sandiganbayan ruled:

It appears, however, that the accused were able to file motions for the reconsideration of the Resolution authorizing the filing of the Information herein with the Ombudsman in Manila. This would mean, therefore, that whatever decision which might have occurred with respect to the preliminary investigation would have been remedied by the motion for consideration in the sense that whatever the accused had to say in their behalf, they were able to do in that motion for reconsideration.

Considering the denial thereof by the Office of the Ombudsman, the Court does not believe itself empowered to authorize a reinvestigation on the ground of an inadequacy of the basic preliminary investigation nor with respect to a dispute as to the proper appreciation by the prosecution of the evidence at that time.

In view hereof, upon further representation by Atty. Medialdea that he represents not only Mayor Duterte but City Administrator de Guzman as well, upon his commitment, the arraignment hereof is now set for July 25, 1997 at 8:00 o'clock in the morning.^[14]

On 15 July 1997, petitioners moved for reconsideration of the above order but the same was denied by the Sandiganbayan for lack of merit in its Resolution dated 5 August 1997.^[15]

Hence, the present recourse.