

## **EIGHTEENTH DIVISION**

**[ CA-G.R. SP. NO. 06124, November 28, 2014 ]**

**ARTURO M. ECIJA, LUZVIMINDA G. BIBAR, MEONILLO C. REFORZADA, RICARDO M. EFREN AND ALFREDO P. CANONIGO, PETITIONERS, VS. OFFICE OF THE OMBUDSMAN (VISAYAS) AND RUSTICO B. BALDERIAN, RESPONDENTS.**

### **D E C I S I O N**

**INGLES, G. T., J.:**

#### **THE CASE**

Before this Court is a Petition for Review with Prayer for the Issuance of Temporary Restraining Order or Writ of Preliminary Injunction<sup>[1]</sup> filed by petitioners assailing the Decision<sup>[2]</sup> dated February 10, 2009 and the June 1, 2010 Order<sup>[3]</sup> of the Office of the Ombudsman (Visayas) in OMB-V-A-08-0055-B.

#### **THE PARTIES**

Petitioners Arturo M. Ecija, Luzviminda G. Bibar, Meonilo C. Reforzada, Ricardo M. Efren and Alfredo P. Canonigo are former employees of the Municipality of Tabontabon, Leyte<sup>[4]</sup> and are the respondents in OMB-V-A-08-0055-B<sup>[5]</sup>.

Private Respondent Dr. Rustico B. Balderian was the former mayor of the Municipality of Tabontabon, Leyte and may be served with pleadings and court processes at Sto. Nino St. Poblacion, Tabontabon, Leyte.

Public Respondent Office of the Ombudsman (OMB) is impleaded in its nominal capacity and may be served with pleadings and Court processes at the Department of Agriculture RO8 Compound, M. Velez St., Guadalupe, Cebu City.<sup>[6]</sup>

#### **THE ANTECEDENTS**

Petitioners are former employees of the Municipality of Tabontabon, Leyte holding the following items:

- |                         |      |                                       |
|-------------------------|------|---------------------------------------|
| 1. Arturo M. Ecija      | ---- | Municipal Budget Officer (SG-24)      |
| 2. Luzviminda G. Bibar  | ---- | Municipal Treasurer (SG-24)           |
| 3. Meonilo C. Reforzado | ---- | Municipal Accountant (SG-11)          |
| 4. Ricardo M. Efren     | ---- | Revenue Collection Officer (SG-7)     |
| 5. Alfredo P. Canonigo  | ---- | Utility Worker (SG-4). <sup>[7]</sup> |

Petitioners, together with former Mayor Priscila R. Justimbaste, Municipal Planning Officer Edgardo E. Cinco and Municipal Auditor Luz D. Yulo constituted themselves as members of the Bids and Awards Committee (BAC) of the Municipality of Tabontabon.<sup>[8]</sup> Concomitant to their functions as members of the BAC, petitioners received compensation in the form of an honorarium.<sup>[9]</sup>

On June 30, 2007, private respondent Rustico B. Balderian succeeded as Mayor of the Municipality of Tabontabon.<sup>[10]</sup> On January 30, 2008, A Complaint-Affidavit<sup>[11]</sup> for criminal and administrative charges was filed by private respondent against petitioners. The Complaint alleged that as members of the Bids and Awards Committee (BAC), respondents, during their incumbency received compensation in the form of BAC Honoraria contrary to the provisions of Republic Act 9184 (Government Procurement Act) and Republic Act 3019 (The Anti-Graft and Corrupt Practices Act).

The following amounts were received by petitioners:

Period	Amount	Total
January 2007	P6,000.00 each	P48,000.00
February 2007	P6,000.00 each	P48,000.00
March 2007	P10,000.00 each	P80,000.00
April 2007	P7,000.00 each	P56,000.00
May 2007	<u>P5,000.00 each</u>	<u>P40,000.00</u>
Total	P34,000.00 each	P272,000.00 <sup>[12]</sup>

Attached to the complaint are copies of the Allotment and Obligation Slips (ALOBS)<sup>[13]</sup> and payrolls<sup>[14]</sup> to support the disbursement.

On March 24, 2008, finding sufficient basis to proceed with the criminal/administrative investigation, the public respondent Office of the Ombudsman (Visayas) ordered petitioners to file their respective Counter-Affidavits.<sup>[15]</sup>

Petitioners on their behalf responded that they constituted themselves as members of the BAC pursuant to R.A. 7160, otherwise known as the Local Government Code of 1991 and Circulars from the Commission on Audit (COA), particularly the Government Accounting and Auditing Manual (GAAM). During their incumbency as BAC members, they were of the belief that R.A. 9184 otherwise known as Government Procurement Act and its implementing rules were not yet fully implemented.<sup>[16]</sup>

Petitioners denied any intention of violating R.A. 9184. They merely proceeded with the honest belief that the said law is not yet in effect. Petitioners manifest, assuming there were any procedural lapses or inadvertent misapplication of pertinent laws regarding the grant of their honoraria as BAC members and should the Commission on Audit disallow the same, they are willing to reimburse the

amounts received.<sup>[17]</sup>

On February 10, 2009, the Office of the Ombudsman found substantial evidence against petitioners for administrative charges of Serious Dishonesty.<sup>[18]</sup>

In reaching the above conclusion, the Office of the Ombudsman looked into the Municipal Payroll<sup>[19]</sup> to determine the compensation of petitioners for the period of June 1-15, 2007. Viz:

	NAME	Monthly Pay	Rate	ofAmount Accrued for the Period
xxx				
3.	Arturo M. Ecija -		P17, 326.00	P8,663.00
4.	Luzviminda G. Bibar		14,874.00	7,437.00
5.	Meonilo C. Reforzado		7,374.00	3,687.00
6.	Ricardo M. Efren -		6,288.00	3,144.00
7.	Alfredo P. Canonigo		4, 227.00	2,113.50

Pursuant to Section 15 of R.A. 9184<sup>[20]</sup>, petitioners as members of the BAC are merely entitled to 25% of their basic monthly salary as their monthly honoraria in the following amounts:

xxx		
3.	Arturo M. Ecija -	P4,331.50
4.	Luzviminda G. Bibar -	3,718.50
5.	Meonilo C. Reforzado -	1,843.50
6.	Ricardo M. Efren -	1,572.00
7.	Alfredo P. Canonigo -	1, 056.75 <sup>[21]</sup>

Hence, for a period of five (5) months dating from January to May 2007, petitioners are only entitled to the following amounts:

xxx		
3.	Arturo M. Ecija -	P21, 657.50
4.	Luzviminda G. Bibar -	18,592.50
5.	Meonilo C. Reforzado -	9,217.50
6.	Ricardo M. Efren -	7,860.00
7.	Alfredo P. Canonigo -	5,283.75 <sup>[22]</sup>

The Office of the Ombudsman found no merit in petitioners' claim that they were merely mistaken in thinking that the applicable law R.A. 9184 and its implementing rules were not yet implemented. The public respondent found petitioners' claim that

they had no intention of violating the law self-serving.

In holding so, public respondent declared that petitioners cannot feign ignorance on the effectivity of the law since it has been in existence from the time of its approval on January 2003 while Its Implementing Rules (IRR-A) took effect on October 8, 2003.

The public respondent likewise noted that by virtue of their work as public officials, they ought to have been aware of such development.

The Office of the Ombudsman also took note that as early as March 23, 2004, the Department of Budget and Management (DBM) has issued Budget Circular (BC) No. 2004-5 entitled "Guidelines on the Grant of Honoraria to Government Personnel Involved in Government Procurement" in relation with Sec. 15, R.A. 9184. In the said Budget Circular, the DBM identified the funding source for the BAC Members' Honoraria.<sup>[23]</sup>

The public respondent likewise took notice of the issuance of Budget Circular No. 2004-5A amending the Budget Circular No. 2004-5. This time, the Budget Circular limited the payment of honoraria to procurement which involves competitive bidding. The OMB then observed that nothing in the records would demonstrate that petitioners received their honoraria in accordance with the guidelines above. Neither is there any showing that petitioners, as members of the BAC engaged in competitive bidding which would entitle them to an honoraria.<sup>[24]</sup>

The OMB also found peculiar the fact that petitioners each received an honorarium twice as much as the monthly salary appropriated for the municipal Mayor. Curious even to the OMB is the presence of petitioner Alfredo Canonigo in the composition of the BAC. Canonigo, holding the item of a utility worker, was receiving an honorarium sixfold his basic monthly salary.<sup>[25]</sup>

Thus, the public respondent disposed:

WHEREFORE, premises considered, finding substantial evidence that the administrative infraction of Serious Dishonesty has been committed, the following officials and employees of the Municipality of Tabontabon, Leyte are hereby meted the penalty of DISMISSAL FROM THE SERVICE with the accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits and disqualification from re-employment in the government service:

- |                         |   |  |
|-------------------------|---|--|
| 1. Edgardo E. Cinco     | - | Municipal Planning and Development Coordinator |
| 2. Arturo M. Ecija      | - | Municipal Budget Officer                       |
| 3. Luzviminda G. Bibar  | - | Municipal Treasurer                            |
| 4. Luz D. Yulo          | - | Municipal Auditor                              |
| 5. Meonilo C. Reforzado | - | Municipal Accountant                           |
| 6. Ricardo M. Efren     | - | Revenue Collection Officer                     |
| 7. Alfredo P. Canonigo  | - | Utility Worker I                               |

xxx<sup>[26]</sup>

On the same day, the public respondent likewise resolved to file Informations with the Sandiganbayan against petitioners for five (5) counts of Violation of Sec 3 (e) of R.A. 3019, as amended.<sup>[27]</sup>

From the above Decision, petitioners filed an Omnibus Motion for Reconsideration<sup>[28]</sup> as well as a Supplemental Motion for Reconsideration.<sup>[29]</sup>

On June 1, 2010, the public respondent found no cogent reason to disturb its earlier Decision and denied the motions for reconsideration of petitioners.<sup>[30]</sup>

On August 12, 2010, petitioners wrote the Incumbent Mayor Priscila R. Justimbaste expressing their intent to return the honoraria they received while serving as BAC Members. In the said letter, petitioners proposed a payment scheme of two thousand pesos (P2,000.00) payable in eighteen monthly installments to commence on August 2010. Petitioners however qualified that such decision should not however be considered as an indication or admission of guilt on their part. <sup>[31]</sup>

As recourse to their failed Omnibus Motion for Reconsideration, petitioners now come before this Court armed with several grounds.

Petitioners assert, the February 10, 2009 Decision and June 1, 2010 Order of the Office of the Ombudsman (Visayas) are tainted with grave and serious errors which are contrary to evidence, law, and settled jurisprudence.

Petitioners assert that their act of receiving honoraria in accordance with the provisions of the Local Government Code and with the imprimatur of the Commission on Audit fail to constitute Serious Dishonesty. Petitioners stress, they have no deliberate intent to commit falsehood. In fact, they were candid enough to admit of their shortcoming in constituting themselves as members of the BAC under R.A. 7160.<sup>[32]</sup>

Petitioners emphasize that they merely relied in good faith in receiving their honoraria pursuant to the 1981 National Budget Circular (NBC) No. 338.<sup>[33]</sup> Petitioners argue, if NBC No. 338 were controlling, the honoraria they received would well be within the limit imposed.

Petitioners also raise that a representative of the COA was even present during the biddings conducted and did not object to the release of the honoraria to them.

Petitioners maintain that their actions were done in good faith without any ill motive to enrich themselves or willfully violate any existing laws.<sup>[34]</sup> Their good faith is demonstrated by the fact of return of the received honoraria.<sup>[35]</sup>

Petitioners argue that the penalty of dismissal is too severe for the unintentional lapses committed by them. Petitioners invoke their claim of lack of deliberate intent to commit falsehood and the number of years of service to the Municipality of Tabontabon to mitigate their liability.<sup>[36]</sup>