

MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 20

IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE ON JAIME
M. GELLOR, PRESIDENT, CENTRAL MINDANAO UNIVERSITY

This is an administrative complaint filed against Dr. Jaime M. Gellor, President, Central Mindanao University (CMU), Musuan, Bukidnon, and Engr. Liberato Balandra, Vice Chairman, Pre-qualification Bids and Awards Committee (PBAC) and Head of the Engineering Technical Committee, CMU, for alleged violation of Section 3 (e) and (g) of Republic Act (R.A.) No. 3019, as amended, otherwise known as the "Anti-Graft and Corrupt Practices Act".

The case arose out of the letter-complaint of Dr. Medino A. Yebron et al., dated November 24, 1994, initially filed with this Office, imputing on respondents acts constituting graft and corrupt practices in connection with various infrastructure projects inside the CMU campus. On January 19, 1995, this Office referred the letter-complaint to the Presidential Commission against Graft and Corruption (PCAGC) for appropriate action. Finding sufficient cause for an administrative investigation, the PCAGC, in an order of February 13, 1995, required respondents to file their respective counter-affidavits.

The factual milieu as recited by the PCAGC in its report, styled "RESOLUTION", dated March 20, 1998, is as follows:

"On February 13, 1995, finding sufficient basis for an administrative investigation, this Commission issued an order requiring respondents to: (a) file 'their respective counter-affidavits xxx xxx within a non-extendible period of five (5) days from receipt thereof; and (b) submit their respective Statements [of] Assets and Liabilities for the last three (3) years (1992, 1993 and 1994)"

"Other cases were earlier filed with the Presidential Anti-Crime Commission (PACC), with the Office of the Ombudsman (Mindanao), and with the Regional Trial Court, all charging respondent Gellor for violation of Republic Act 3019, as amended,"

"The respondents filed their 'Joint Counter-Affidavit' dated March 15, 1995 denying the charge of illegally awarding the contract for the improvement of the campus roads stating, among other things that; respondents believed in good faith that the award to FGW was in accordance with Presidential Decree 1594 because FGW had an on-going project inside the Central Mindanao University (CMU) campus,



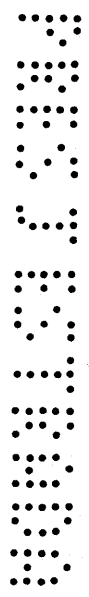
the Vet-Med Building (Animal Disease Diagnostic Laboratory); FGW did not incur any negative slippage; the costing and estimates in the concreting of the campus road projects; the ETPS estimate for the new project was P616,604.00, whereas, the negotiated contract cost CMU P600,000.00 only; and the complainants 'are disgruntled, dissatisfied professors or personnel of CMU'.

"The complainants, refuting the counter-affidavit, claim that: (a) respondents failed to mention that in response to the Invitation to Bid, twelve (12) contractors from Bukidnon and Misamis Oriental had already met with the PBAC in accordance with the schedule as mentioned in the invitation, and submitted thereby their pre-qualification documents and all were declared prequalified; (b) the concreting was done at nighttime without the use of any compacting equipment, and, without the presence of an inspector or auditor; (d) respondent Gellor abolished the Technical Committee and appointed respondent Balandra to inspect the projects for compliance with plans and specifications; (e) contrary to allegations of the counter-affidavit, FGW Construction, was blacklisted by the previous CMU administration; (f) the Veterinary Diagnostics Building could not be checked for compliance because there were no 'plans and specifications' and for that reason the Dean of the College refused to accept the building; (g) that the road concreting project was not adjacent to or contiguous with Veterinary Diagnostic Building; and (h) it was not true that the complaints were disgruntled CMU Officials and 'have an axe to grind against' respondents.

"Complainant Yebron for himself and the other complainants filed supplemental charges against respondents styled 'Manifestation' dated April 19, 1995, enumerating therein all the other charges including those already filed with the Office of the Ombudsman (Mindanao) and with the Presidential Anti-Crime Commission (PACC).

"On June 2, 1995, this Commission received a pleading denominated 'Counter-Reply and Motion to Dismiss' dated June 1, 1995, alleging, among other things, that the complaint be dismissed on the following grounds: (a) that the Reply filed by complainants were mere 're-in:statements of the allegations of their Joint Affidavit filed with the other investigating agencies of the government; and (b) that the negotiated contracts had already been passed in audit by the Office of the Regional Director, Commission on Audit (COA) under the Contract Review Report dated February 27, 1995.

"On June 5, 1995, the said 'Counter-Reply and Motion to Dismiss' was denied.



"On June 6, 1995, finding sufficient basis to conduct administrative investigation of the supplemental charges, respondents Gellor and Balandra were required to file their respective counter-affidavits.

"On June 22, 1995, respondents filed motion for reconsideration of the order of this Commission dated June 5, 1995 denying the motion to dismiss; and before the Commission could rule on the motion for reconsideration, on the same day of June 22, 1995, 'Motion to Set Aside Order and to Dismiss Supplemental Charges' dated June 21, 1995 was filed by respondents.

"On June 26, 1995, this Commission denied for lack of merit, both the said motion for reconsideration and the motion to dismiss.

"Because of the repeated refusal of respondents to file their answer, complainants presented their evidence and on August 3, 1995, filed their 'Formal Offer of Exhibits and Evidence' dated July 24, 1995.

"On August 4, 1995, respondents filed their 'Answer to Supplemental Charges.

"Despite the opposition of complainants for the admission of the 'Answer to Supplemental Charges', the same was admitted and respondents were allowed to present testimonial evidence.

"Successive motions to dismiss and motions for reconsideration on identical (sic) grounds were repeatedly filed by respondents. All of them were denied for lack of merit.

"On January 3, 1996, this Commission resolving the respondents' Motion to Dismiss the Supplemental Complaint ordered the dismissal of all the charges except the following: (a) Concreting the 250-meter campus road for P630,500.00; (b) Construction of Student Ladies' Dormitory for P2,683,021.69; (c) Construction of Student Center for P1,795,000.00; (d) Construction of Veterinary Med. Building Phase I for P2,498,349.04; (e) Construction of Veterinary Med. Building Phase IIb for P1,080,258.25; (f) Construction of the Veterinary Med. Building Phase III for P998,075.00; and (g) Construction of Veterinary Med. Building Phase III for P324,718.91, all through negotiated contracts."

Against the foregoing backdrop, the PCAGC recommended the dismissal of the complaint against respondent Liberato Balandra on jurisdictional ground, the latter not being a presidential appointee. On the other hand, the PCAGC upon the following basic set of facts, principal issues and the differing positions assumed by the parties, to wit:



"In brief, the indisputable facts involved are as follows: (a) that an invitation to pre-qualify and bid was published by the [CMU] with the Daily Post; (b) that twelve (12) construction firms responded to the invitation submitting thereby pre-qualifications documents/papers; and (c) that the infrastructure projects were instead awarded by negotiated contracts.

The complainants claimed that awarding the projects to FGW by negotiated contracts and not through public bidding as earlier announced was contrary to law.

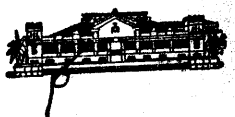
On the other hand, the respondents claimed that resort to negotiated contracts as a mode of awarding the projects to FGW was in consonance with Presidential Decree No. 1594.

Clearly, therefore, the only issues to be resolved . . . are: (a) Whether or not the award of the above-mentioned infrastructure projects of the . . . (CMU) in favor of FGW Construction was in accordance with law; and (b) Whether or not the respondents were guilty of violating Sec. 3 (e) of [R.A.] 3019, as amended,"

recommended that respondent Jaime C. Gellor, be found guilty as charged, on the strength of the following observations and premises:

"Respondents' claim for the legitimacy of entering into negotiated contracts in the construction of the infrastructure projects on the university hinges on the following: (1) that the contractor FGW Construction had an on-going construction contract with the university contiguous to the new projects; (b) that the cost is lower than the agency cost estimate; (c) that the contractor had no negative slippage; and (d) that representatives of the Commission on Audit who prepared the Contract Review Report found the construction projects to be in order or 'reasonable'.

"Complainants' evidence, however, showed: (a) that the actual cost of the concreting of the 250-meter campus road was P630,500.00 and not P600,000.00 as claimed by the respondents; (b) that the representatives of COA visited the projects only once and failed to verify if the materials used were as specified in the plans and specifications; (c) that FGW Construction had been 'blacklisted' by the previous university administration; (d) that the Technical Committee whose function was to inspect compliance of contractors with the plans and specifications of infrastructure projects was abolished by respondent Gellor and



appointed in its place Balandra; and (e) that Balandra was installed as a one-man team to perform all of the following: prepare plans and specifications of infrastructure projects of the university, approve agency estimates, Chairman of the PBAC, negotiate, inspect constructions, and recommend payments, etc.

"Having chosen 'negotiated contract' as the mode to pursue the infrastructure projects of the university to a favored contractor, FGW Construction, totally ignoring the publication of the notice to pre-qualify and bid and the fact that 12 contractors responded to the said notice, respondent Gellor, President of the Central Mindanao University (CMU) entered into contracts, on behalf of the government, manifestly and grossly disadvantageous to the university (Sec. 3 (g) of Republic Act 3019, as amended), and giving a private entity 'unwarranted benefits, advantage or preference in the discharge of his official, administrative xxx functions through manifest partiality, evident bad faith or gross inexcusable negligence' (Sec. 3 (e) of Republic Act 3019, as amended).

"Going back to the Order of February 13, 1995, giving due course to the letter-complaint, this Commission required respondents to file their respective Statements of Assets and Liabilities for the last three years 1992, 1993 and 1994.

"An examination of the said statements disclosed that respondent Gellor had an 'excessive Cash on Hand and in Banks': for 1992 - P1.2 million; 1993 - P1.6 million; 1994 - P1.8 million, and an almost equivalent amount of loans.

"Respondent Gellor explained that he had the actual capacity to acquire such amount considering his 'financial stature and his sources of income' enumerating for this Commission all his properties, both acquired and inherited. He claimed that in declaring his cash position he should be appreciated because of his honesty.

"In like manner, respondent Gellor was also required to explain his loans and for the purpose, he filed with this Commission, the following:

Annex "A" Promissory Note dated February 11, P500,000
1991 in favor of Mrs. Ruth Acosta of
Acosta Milling and Grains Store.

Annex "D" Statement of Accounts P210,00 } P210,000
representing unpaid rentals for heavy
equipment of Limbo Corporation fated
March 20, 1991.



- Annex "D-1" *Billing charges of December 31, 31, P510,500
1992 for sand and gravel from
Lagumbay Construction*
- Annex "D-2" *Affidavit executed by Mrs. Lilia G. P200,00
Abao, attesting to the fact of loan of
respondent Gellor dated August 9,
1997, for a loan incurred allegedly in
1992.*

"A closer scrutiny of the papers/documents submitted by respondent Gellor indicates that the same were falsifications. The papers on which the documents were printed were new not of the 1992 vintage papers, which should be yellowish at this point in time (six years, hence).

"Understandably, in his eagerness to explain his excessive wealth, beyond his capacity to earn, and to extricate himself from apparent inconsistencies, he resorted to a graver offense - falsification of public and/or commercial documents defined and penalized by the Revised Penal Code" (Underscoring added)

The findings and conclusions of the PCAGC, supported as they are by, or at least reasonably inferable from, substantive evidence on record commend themselves for concurrence.

But by way of observation, I am at a loss to understand why one has to resort, as respondents did, to negotiation when a score of bidders have responded to a published notice to pre-qualify and bid for the projects in question. Save perhaps in furtherance of a scheme to accommodate a favored contractor - the FGW Construction, in this case - most likely for valuable consideration, respondent Gellor's action of choosing negotiation over bidding as a mode of contract award admits of no other logical explanation. And given that Gellor had not satisfactorily explained what the PCAGC termed as his "*excessive Cash on Hand and in Bank*" reflected in his 1992, 1993 and 1994 Statement of Assets and Liabilities, it may not be farfetched to state that his excess cash was obtained thru means less than honest.

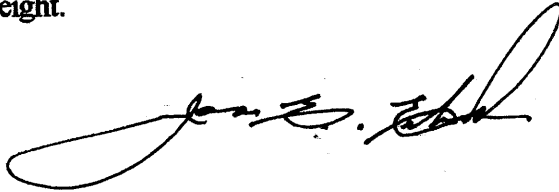
Heads of institutions of learning, like respondent Gellor, are supposed to be models of honesty and uprightness, they being shapers of young minds and molders of characters. But far from setting right examples, respondent Gellor did, under the premises, the exact opposite. And with the view I take of the situation, respondent Gellor's dishonest act/s subject of this case is not an isolated incident, what with the documented fact that he is facing in other fora charges for violation of the Anti-Graft Law. Needless to state, he is undeserving to remain in the service.



FOR ALL THE FOREGOING, Jaime M. Gellor is hereby found guilty as charged. Accordingly, and as recommended by the PCAGC, he is hereby DISMISSED from the service, with all the accessory penalties attached to the penalty of dismissal, effective upon his receipt of this order.

For reasons stated in the report of the PCAGC, the case against Liberato Balandra is hereby DISMISSED, without prejudice, however, to the refilling of the same case to the appropriate body.

Done in the City of Manila, this 23rd day of September, in the year of Our Lord, nineteen hundred and ninety eight.



By the President:



RONALDO B. ZAMORA
Executive Secretary

