



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

FELIPE P. SABALDAN, JR.,
 Petitioner,

G.R. No. 238014

Present:

- versus -

PERALTA, C.J., *Chairperson*,
 CAGUIOA, *Working Chairperson*,
 REYES, J. JR.,
 LAZARO-JAVIER, and
 LOPEZ, JJ.

OFFICE OF THE OMBUDSMAN
 FOR MINDANAO and
 CHRISTOPHER E. LOZADA,
 Respondents.

Promulgated:

JUN 15 2020

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DECISION

REYES, J. JR., J.:

This is a Petition for *Certiorari*¹ under Rule 65 of the Rules of Court which seeks to set aside the Resolution² dated March 20, 2017 and the Joint Order³ dated October 13, 2017 of the Office of the Ombudsman (Ombudsman) in OMB-M-C-15-0392-D, which, respectively, found probable cause against Felipe P. Sabaldan, Jr. (petitioner) for violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as The Anti Graft and Corrupt Practices Act, and denied the motion for partial reconsideration thereon.

¹ Rollo, pp. 6-14.
² Id. at 17-31.
³ Id. at 62-64.

The Facts

On November 9, 2015, Christopher E. Lozada (Lozada) filed before the Office of the Deputy Ombudsman for Mindanao a Complaint-Affidavit⁴ accusing Mayor Librado C. Navarro (Mayor Navarro) of Bislig City, Surigao del Sur of the following: (1) failing to implement the Sikahoy-Pamaypayan Road rehabilitation project; (2) leasing a commercial building without the approval of the Sangguniang Panlungsod; (3) maintaining ghost employees in the City Government of Bislig; (4) failing to account for the ₱2,200,000.00 allotted for the construction of Poblacion Boulevard in Poblacion, Bislig City; (5) hosting radio and television programs that advance his personal interests; (6) distributing rice with substandard quality in the implementation of the City Social Welfare Development's feeding program; (7) allocating the amount of ₱400,000.00 for a poultry house livelihood project that did not materialize; (8) occupying two residential units under the housing project of the provincial government for his personal use; and (9) failing to observe the procurement rules in purchasing a hydraulic excavator.

Lozada alleged that the City Government of Bislig purchased from RDAK Transport Equipment, Inc. (RDAK) a Komatsu PC200-8 crawler-type hydraulic excavator worth ₱14,750,000.00. He maintained that the purchase was disadvantageous to the government since the bid price of the Kobelco SK200-8 model offered by JVF Commercial International Heavy Equipment Corp. (JVF) was substantially lower by ₱4,214,000.00. This notwithstanding, Mayor Navarro approved the recommendation of the Bids and Awards Committee (BAC) to award the contract to RDAK.

The Ombudsman included as respondents herein petitioner in his capacity as General Services Officer/BAC Member, City Administrator/BAC Chairman Charlito R. Lerog, City Treasurer/BAC Member Roberto V. Viduya, City Planning Development Coordinator/BAC Member Apropedicio A. Alba, Jr., Officer-in-Charge City Budget Office/BAC Member Belma K. Lomantas, Officer-in-Charge, City Engineer's Office/BAC Member Lorna S. Salgado, City Legal Officer/BAC Member Daisy A. Ronquillo, City Accountant/Technical Working Group (TWG) Chairperson Raquel L. Bautista, TWG Members Gilbert P. Abugan, Laila P. Manlucob and Estefa R. Mata, and Cesar B. Ner, authorized representative of RDAK Transport Equipment Inc. (RDAK), (collectively referred to as respondents *a quo*). In an Order dated November 23, 2015, petitioner and his co-respondents *a quo* were directed to submit their respective counter-affidavits, to which they complied.

Petitioner and his co-respondents *a quo* argued that the City Government of Bislig requested for an inspection of RDAK's hydraulic

⁴ Id. at 67-83.

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excavator from COA State Auditor III Cipriano C. Sumabat. In the Inspection Report for Equipment and Facilities dated March 7, 2012, State Auditors Santiago O. Burdeos and Celso U. Reyes and Chief Technical Audit Specialist Junrey E. Labatos stated that RDAK's hydraulic excavator conformed to the specifications provided in the approved purchase order. Thus, petitioner and his co-respondents were surprised that the COA made a conflicting report which was the basis for its issuance of the Notice of Disallowance. They then filed a Petition for Review with the COA to challenge said conflicting audit reports.⁵

In a Resolution dated March 20, 2017, the Ombudsman found probable cause for violation of Section 3(e) of R.A. No. 3019 in relation to the procurement of RDAK's hydraulic excavator against petitioner and his co-respondents *a quo*. The Ombudsman, however, dismissed the charges for violation of Section 3(g) of R.A. No. 3019 and for malversation of public funds. The Ombudsman held that RDAK did not comply with Section 25 of the Revised Implementing Rules and Regulations (IRRs) of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act which requires bidders to submit, among others, the technical specifications of the product they are offering. But despite this non-compliance, the BAC passed RDAK's bid and included it in the post-qualification.

Petitioner and his co-respondents filed their Joint Motion for Partial Reconsideration⁶ but the same was denied in a Joint Order dated October 13, 2017.

Hence, the instant petition for *certiorari* filed by petitioner ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Ombudsman in finding probable cause for violation of Section 3(e) of R.A. No. 3019.

Our Ruling

The petition is meritorious.

Sections 12 and 13, Article XI of the 1987 Constitution provide:

SEC. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and results thereof.

⁵ Id. at 21.

⁶ Id. at 32-59.

SEC. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

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Meanwhile, Section 15 of the Ombudsman Act of 1989 states:

SEC. 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of government, the investigation of such cases[.]

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It is clear from the foregoing legal provisions that the Ombudsman is given a wide latitude and discretion to act on criminal complaints against public officials and government employees.⁷ It has the constitutional and statutory mandate to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and to decide whether or not to file the corresponding information with the appropriate court.⁸ Thus, the Court has consistently refrained from interfering with the Ombudsman's determination of the existence of a probable cause. We have repeatedly explained:

[T]his Court's consistent policy has been to maintain non-interference in the determination of the Ombudsman of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. This observed policy is based not only on respect for the investigators and prosecutors powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the Court will be seriously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped with cases if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file

⁷ *Estrada v. Office of the Ombudsman*, G.R. Nos. 212761-62, 213473-74 & 213538-39, July 31, 2018.

⁸ *Esquivel v. Hon. Ombudsman* (Resolution), 437 Phil. 702, 711 (2002).

an information in court or dismiss a complaint by a private complainant.⁹
(Underscoring and citation omitted)

It is only when the finding of probable cause, or the lack of it, is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction can the Court step in and substitute our judgment for that of the Ombudsman. Conversely, absent a clear showing of grave abuse of discretion, the court cannot review and set aside the finding of the presence or absence of probable cause which is a task that properly belongs to the Ombudsman alone.

Petitioner stands charged for violation of Section 3(e) of R.A. No. 3019. The law provides:

SEC. 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of the offense are: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.¹⁰

The offense under Section 3(e) may be committed in three ways. There is "**manifest partiality**" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are."¹¹ **Evident bad faith**, on the other hand, pertains to bad judgment as well as palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse or ill will.¹² **Gross**

⁹ *Reyes v. Hon. Ombudsman*, 783 Phil. 304, 333 (2016) citing *Ciron v. Gutierrez*, G.R. Nos. 194339-41, April 20, 2015.

¹⁰ *Villarosa v. Hon. Ombudsman*, G.R. No. 221418, January 23, 2019.

¹¹ *Id.*

¹² *Albert v. Sandiganbayan*, 599 Phil. 439, 450-451 (2009).

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inexcusable negligence is that negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.¹³

The March 20, 2017 Resolution of the Ombudsman failed to sufficiently show that, more likely than not, petitioner in his capacity as BAC member acted with manifest partiality, evident bad faith or gross inexcusable negligence in recommending the award of the procurement contract to RDAK.

The Ombudsman declared:

It is worthy to note that respondent Ner of RDAK did not indicate in his bid the specifications unique to the Komatsu unit he was offering. He merely copied the procuring entity's product specifications as reflected in its Purchase Request (PR) and Request for Quotation (RFQ). For example, instead of stating the unit's exact operating weight of 19,500 kgs., RDAK merely stated "with an operating weight of no less than 19,000 kg." RDAK thus did not comply with Section 25 of the Revised Implementing Rules and Regulations of R.A. No. 9184 which clearly requires bidders to submit, among others, the technical specifications of the product they are offering. Despite this non-compliance, however, the BAC passed RDAK's bid and included it in the post qualification.

The Office also notes the observation of COA Supervising TAS Dante M. Jabutay (Jabutay) and State Auditor Joey Z. Atazan (Atazan) as contained in their 28 June 2012 Evaluation Report and confirmed in their December 2015 Joint Affidavit, that had a thorough evaluation during post-qualification been made, the proposals of both RDAK and JVF would have been declared non-responsive. It was found that the unit of RDAK did not meet the City government's specification with respect to bucket capacity. It was also inferior to that of JVF in terms of engine power, bucket capacity and operating weight. JVF's unit, on the other hand, failed to meet the City government's required number of cylinders and bucket digging force, per the TWG's Post-Qualification and Evaluation Report (Report).

There was also an apparent manipulation of the Report to make it appear that RDAK had a responsive bid. The Report indicates that the unit of RDAK had a bucket capacity of 1.0 cubic meter, but based on the Specifications (brochure) of the delivered unit, it had only a capacity of 0.8 cubic meter. In fact, this was lower than the City Government's requirement of 1.0 to 1.5 cubic meter. The BAC, instead of declaring the bidding a failure, went ahead with the procurement and awarded the contract to RDAK.

¹³ *Plameras v. People*, 717 Phil. 303, 321 (2013).

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The TWG's manipulation of data in its Report; the award of the supply contract to RDAK despite that its representative, respondent Ner, did not truthfully present in his bid the Komatsu PC200-8's specifications, and despite that the bidding was a failure as neither RDAK's nor JVF's proposal was responsive; coupled with respondents going for RDAK's less superior unit notwithstanding its glaringly higher price, all show respondents' bad faith and manifest partiality toward the said supplier. By respondents' concerted acts clearly favoring RDAK, they accorded it the benefit, advantage and preference it did not deserve.¹⁴

The Ombudsman solely relied on the numerous irregularities that attended the procurement of the hydraulic excavator without carefully examining the sufficiency of the allegations and evidence presented *vis-a-vis* the elements of violation of Section 3(e) of R.A. No. 3019. Lozada anchored his charge against petitioner on the fact that he was a BAC member during the procurement process. But there was no clear showing how petitioner and the other BAC members exhibited manifest partiality, evident bad faith, or inexcusable negligence when the contract was awarded to RDAK. It may even be well to point out that petitioner's only participation in the procurement was to sign the abstract of bids which generally contains a summary of information on the procurement at hand, to wit: (1) the name of the contract and its location; (2) the time, date and place of bid opening; and (3) the names of bidders and their corresponding calculated bid prices arranged from lowest to highest, the amount of bid security and the name of the issuing entity.¹⁵ As aptly posited by petitioner, when he signed the abstract of bids, he merely attested to the truthfulness of the names of the bidders and their bid prices.¹⁶ Petitioner did not even affix his signature on the resolution declaring the lowest calculated bidder. Indubitably, the essential ingredients of manifest partiality, evident bad faith, or inexcusable negligence are wanting in this case.

More importantly, it must be emphasized that the instant case involves a finding of probable cause for a criminal case for violation of Section 3(e) of R.A. No. 3019, and not for violation of R.A. No. 9184. Hence, even granting that there may be violations of the applicable procurement laws, the same does not mean that the elements of violation of Section 3(e) of R.A. No. 3019 are already present as a matter of course. For there to be a violation under Section 3(e) of R.A. No. 3019 based on a breach of applicable procurement laws, one cannot solely rely on the mere fact that a violation of procurement laws has been committed. It must be shown that (1) the violation of procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage or

¹⁴ *Rollo*, pp. 26-28.

¹⁵ Section 32.5 of the Implementing Rules and Regulations of Republic Act No. 9184.

¹⁶ *Rollo*, p. 10.

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preference; and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence. We therefore apply the case of *Sistoza v. Desierto*:¹⁷

Clearly, the issue of petitioner Sistoza's criminal liability does not depend solely upon the allegedly scandalous irregularity of the bidding procedure for which prosecution may perhaps be proper. For even if it were true and proved beyond reasonable doubt that the bidding had been rigged, an issue that we do not confront and decide in the instant case, this pronouncement alone does not automatically result in finding the act of petitioner similarly culpable. It is presumed that he acted in good faith in relying upon the documents he signed and thereafter endorsed. To establish a prima facie case against petitioner for violation of Sec. 3, par. (e), RA 3019, the prosecution must show not only the defects in the bidding procedure, a circumstance which we need not presently determine, but also the alleged evident bad faith, gross inexcusable negligence or manifest partiality of petitioner in affixing his signature on the purchase order and repeatedly endorsing the award earlier made by his subordinates despite his knowledge that the winning bidder did not offer the lowest price. Absent a well-grounded and reasonable belief that petitioner perpetrated these acts in the criminal manner he is accused of, there is no basis for declaring the existence of probable cause.¹⁸ (Emphasis and underscoring supplied)

The case of *Caunan v. People*¹⁹ is likewise *apropos*:

We are not unmindful of the fact that petitioners failed to conduct the requisite public bidding for the questioned procurements. **However, the lack of public bidding alone does not automatically equate to a manifest and gross disadvantage to the government.** As we had occasion to declare in *Nava v. Sandiganbayan*, the absence of a public bidding may mean that the government was not able to secure the lowest bargain in its favor and may open the door to graft and corruption. **However, this does not satisfy the third element of the offense charged, because the law requires that the disadvantage must be manifest and gross.** After all, penal laws are strictly construed against the government.²⁰ (Emphasis and underscoring supplied; citation omitted)

Verily, since the elements of Section 3(e) of R.A. No. 3019 must still be established to warrant conviction under the said law despite findings of violations of applicable procurement laws, the instant case must be carefully examined through the lens of these elements. This is true despite the fact that the case only deals with a finding of a probable cause.

¹⁷ 437 Phil. 117 (2002).

¹⁸ Id. at 133.

¹⁹ 614 Phil. 179 (2009).

²⁰ Id. at 196.

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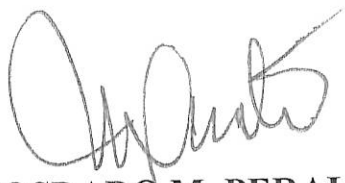
A final note. R.A. No. 9184 and R.A. No. 3019 are distinct laws with distinct requisites for violation. A violation of one does not *ipso facto* result in a violation of the other.

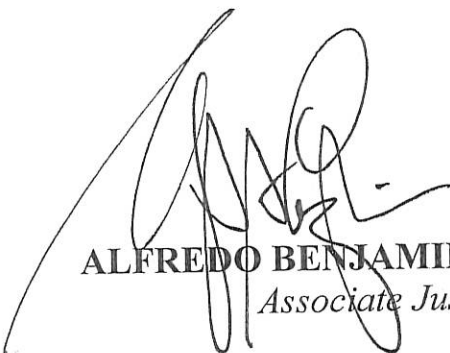
WHEREFORE, the petition is **GRANTED**. The Resolution dated March 20, 2017 and the Joint Order dated October 13, 2017 of the Office of the Ombudsman are hereby **REVERSED** and **SET ASIDE**. The complaint against Felipe B. Sabaldan, Jr. for violation of Section 3(e) of Republic Act No. 3019 is hereby **DISMISSED** for lack of probable cause.

SO ORDERED.

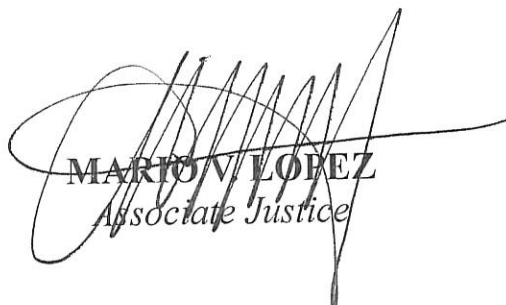

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Chief Justice
Chairperson

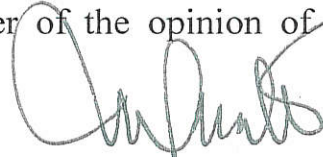

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice

