

THIRD DIVISION

G.R. No. 257723 — AURORA O. ARAGON-MABANG,* Petitioner, v. OFFICE OF THE OMBUDSMAN, Respondent.

Promulgated:

April 1, 2024

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CONCURRING OPINION

CAGUIOA, J.:

I concur with the *ponencia* that Commission on Audit (COA) Circular No. 2007-001 or the Revised Guidelines in the Granting, Utilization, Accounting and Auditing of the Funds Released to Non-Governmental Organizations (NGOs) or People’s Organizations is the applicable rule in this case, and not Government Procurement Policy Board (GPPB) Resolution No. 12-2007.¹

I reiterate my Concurring Opinion in *Sadain v. Office of the Ombudsman*² (*Sadain*) which clarified the applicability of GPPB Resolution No. 12-2007 in government-funded projects contracted out to NGOs.

Annex A of GPPB Resolution No. 12-2007 specifically limits its scope and application to situations where there is “an appropriation law or ordinance” that “specifically earmarks an amount for projects to be specifically contracted out to NGOs,” to wit:

2. SCOPE AND APPLICATION

These guidelines prescribe the allowable modes of selecting an NGO *in case an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs.*

....

4. GENERAL GUIDELINES

- 4.1 *When an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs, the procuring entity may select an NGO through competitive public bidding or negotiated procurement under Section 53 (j) of the IRR-A. (Emphasis supplied)*

* Also referred to as “Aurora A. Mabang” in some parts of the *rollo*.

¹ Amendment of Section 53 of the Implementing Rules and Regulations Part A of Republic Act 9184 and Prescribing Guidelines on Participation of Non-Governmental Organizations in Public Procurement, approved on June 29, 2007.

² G.R. No. 253688, February 8, 2023 [Per J. Inting, Third Division].

From the foregoing, it is clear that GPPB Resolution No. 12-2007 applies only when an appropriation law or ordinance earmarks an amount for projects specifically contracted out to NGOs.³ Thus, it is only in this instance that the selection of an NGO is required to be made through public bidding or negotiated procurement. If there is no appropriation law or ordinance specifically funding a project contracted out to an NGO, it is the provisions of COA Circular No. 2007-001 which apply:

4.5 Procedure for the Availment, Release and Utilization of Funds

.....

4.5.2 For each project proposal, the [Government Organization] shall accredit the NGO/PO project partners *through the Bids and Awards Committee (BAC), or a committee created for the purpose*, which shall formulate the selection criteria. The Committee shall perform the selection process, including the screening of the qualification documents, ocular inspection of the NGOs/POs business site, and evaluation of the technical and financial capability of the NGO/PO. (Emphasis supplied)

In this case, as pointed out by the *ponencia*, the 2012 General Appropriations Act (GAA) did not have a specific appropriation for NGOs similar to the situation in *Sadain*.⁴ The funds for the livelihood project implemented by the National Commission on Muslim Filipinos (NCMF), the Procuring Entity, were sourced from the Priority Development Assistance Fund (PDAF) of Congressman Simeon A. Datumanong (Cong. Datumanong) of the 2nd District of Maguindanao. Therefore, GPPB Resolution No. 12-2007 does not apply, and public bidding was not required.

Further, the selection of the NGO, Maharlikang Lipi Foundation, Inc. (MLFI), was done following NCMF Resolution No. 29, series of 2012,⁵ which provided the guidelines for accrediting NGOs in relation to the release of PDAF.⁶ Applying these guidelines, the records showed that MLFI was legitimate and capable of undertaking the livelihood project as supported by the documents and requirements submitted for its accreditation.⁷ Thus, there was compliance with COA Circular No. 2007-001 with respect to the accreditation of the NGO.

As to Cong. Datumanong's selection of MLFI as the implementing NGO, the Court has clarified in *Sadain* that the ruling in *Belgica v. Hon. Exec. Sec. Ochoa, Jr.*⁸ (*Belgica*) is prospective. The operative fact doctrine

³ *Id.* at 1–2. This pinpoint citation refers to the copy of the Separate Concurring Opinion uploaded to the Supreme Court website.

⁴ *Ponencia*, p. 9.

⁵ *Rollo*, pp. 81–82. Approved and signed by Secretary and Commissioner Mehol K. Sadain and Commissioners Bai Omera D. Dianalan-Lucman, Edilwasif T. Baddiri, Solaiman C. Mutia, Salem C. Demuna, Alladin I. Ampatuan, Raidah B. Maglangit, Mirkarl T. Allian, and Esmael W. Ebrahim.

⁶ *Ponencia*, p. 10.

⁷ *Id.*

⁸ 721 Phil. 416 (2013) [Per J. Perlas-Bernabe, *En Banc*].



mandates that until the judiciary declares the invalidity of a certain legislative or executive act, such acts are presumed constitutional and valid.⁹ The livelihood project in this case was implemented prior to *Belgica*, when it was a recognized practice that lawmakers participate in the identification of the project and selection of the beneficiaries of their PDAF. Thus, the NCMF or Aurora O. Aragon-Mabang (petitioner) cannot be faulted for giving effect to the request of Cong. Datumanong to implement his priority project through MLFI. More importantly, it was not shown that petitioner, as the Acting Chief of the Management Audit Division under the Finance Management Services of the NCMF, had a hand in the selection of MLFI as the implementing NGO.¹⁰

To conclude, I agree with the *ponencia* that petitioner cannot be held liable for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service since it was not established that she acted with corruption, willful intent to violate the law or to disregard established rules in the selection of MLFI and implementation of Cong. Datumanong's livelihood project. Furthermore, I concur with the *ponencia* that petitioner is liable for Simple Misconduct for her act of signing the Disbursement Vouchers which authorized the release of the funds to MLFI before the execution of the Memorandum of Agreement (MOA) between NCMF, Cong. Datumanong, and MLFI, in contravention of COA Circular No. 2007-001 which mandates that no funds shall be released to the NGO prior to the signing of the MOA.¹¹



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁹ *Id.* at 580.

¹⁰ *Ponencia*, p. 10.

¹¹ See Part 6.0 LIMITATIONS provides:

6.0 LIMITATIONS

- 6.1 No portion of the funds shall be released before the signing of the MOA. Checks issued by the [Government Organization] covering the release of fund to the NGO/PO shall be crossed for deposit to its savings or current accounts. (Emphasis in the original)