



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES
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Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **July 1, 2020**, which reads as follows:

“G.R. No. 219875 (Nelia A. Barlis, Atty. Michael M. Racelis, Avelino A. Orellana, Rodolfo I. Oliquino, Engr. Vicente A. Navarro, Peter B. Salonga, Sonia S. Laureta, Roderick F. Espina, Edwin T. Suitado, Eduardo D. Bautista, Glenn M. Santos, and Romeo M. Pucyutan, et al. v. Abel L. Sumabat). – This Petition for Review under Rule 45 of the Rules of Court challenges the February 16, 2015 Decision rendered by the Office of the Ombudsman in OMB-C-A-12-0205-E¹ which dismissed petitioners² from government service for Serious Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, as well as the Ombudsman’s Order dated June 30, 2015 which rejected petitioners’ Motion for Reconsideration.

On May 8, 2012, respondent Abel L. Sumabat (*Sumabat*), former Secretariat Head of the Bids and Awards Committee (*BAC*) of the City Government of Muntinlupa, filed a complaint with the Ombudsman against petitioners, some of whom were also members of the BAC, and other city government officials. He alleged that no public bidding was conducted for the local government’s purchase of 40,000 units of trolley bags worth Twenty-Two Million Pesos (P22,000,000.00). On the contrary, the bidding was done on paper only. Moreover, CLMP Trading, the supposed winning bidder, was a dummy company of Nelia A. Barlis and not legally, technically, and financially qualified to undertake the project. The purchase of the trolley bags

¹Rollo, pp. 58-79; entitled *Abel L. Sumabat v. Nelia A. Barlis, Aldrin L. San Pedro, Edwin T. Suitado, Romeo M. Pucyutan, Roberto M. Bunyi, Michael M. Racelis, Avelino A. Orellana, Rodolfo I. Oliquino, Vicente A. Navarro, Peter B. Salonga, Sonia S. Laureta, Roderick F. Espina, Eduardo D. Bautista, Glenn M. Santos, Elyra D. Tulay, Marissa B. Guerrerro, Allan Rey A. Camilon, Ma. Luisa A. Babaran-Echavez, Margarita Amythyst Patdu-Labios, Melchor R. Teves, Icasiano M. Dela Rea, Francis Ian T. Bagatsing, Mamerto T. Sevilla, Robert A. Abas, Joselito V. Arevalo, Vergel C. Ulanday, Rey E. Bulay, Cesar V. Pagkalinawan.*

²Nelia A. Barlis was absolved from the charges, so she should not have been included as petitioner in the case. Petitioner Romeo M. Pucyutan was found guilty of Simple Neglect of Duty only and meted the penalty of six (6) months suspension without pay.

was also unnecessary since it was not included in the Annual Procurement Plan for the year 2008, as observed by the Commission on Audit.³

On February 16, 2015, the Ombudsman rendered a Decision finding substantial evidence to hold petitioners Atty. Michael M. Racelis (*Racelis*), Avelino A. Orellana (*Orellana*), Rodolfo I. Oliquino (*Oliquino*), Vicente A. Navarro (*Navarro*), Peter B. Salonga (*Salonga*), Sonia S. Laureta (*Laureta*), Roderick F. Espina (*Espina*), Edwin T. Suitado (*Suitado*), Eduardo D. Bautista (*Bautista*) and Glenn M. Santos (*Santos*) guilty of Serious Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, and consequently imposed upon them the penalty of dismissal from the service or fine equivalent to one (1) year salary if dismissal can no longer be enforced, with the concomitant accessory penalties.

The Ombudsman found that no public bidding was conducted for the purchase of the trolley bags. There were indications that the supposed winning bidder, CLMP Trading, was given undue favor in blatant and deliberate disregard of the law. Sumabat's positive assertions were also supported by a suspicious chronology of events, as evinced by the documents submitted by the parties.⁴ Among others, the Ombudsman found the following defects in the procurement process:

(1) The Invitation to Apply for Eligibility and to Bid (*IAEB*), which ensures competition and transparency of the procurement process, was neither published in a newspaper of general circulation nor posted in PHILGEPS, the City website, or the bulletin board in the premises of the city government. As a result, CLMP Trading became the sole bidder;⁵

(2) Section 13 of Republic Act (*R.A.*) No. 9184⁶ requires the BAC to invite observers in all stages of the procurement process as a transparency measure, but none were invited in this case;⁷

(3) Petitioners were unable to produce several bidding documents and submitted only those prepared by Sumabat. However, in his complaint-affidavit, Sumabat confessed that he falsified the documents as instructed by the City Mayor;⁸

³ *Rollo*, pp. 60-61.

⁴ *Id.* at 66.

⁵ *Id.* at 68.

⁶ R.A. No. 9184, Sec. 13. Observers. – To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the Commission on Audit, at least two (2) observers to sit in its proceedings, one (1) from a duly recognized private group in a sector or discipline relevant to the procurement at hand, and the other from a non-government organization: Provided, however, That they do not have any direct or indirect interest in the contract to be bid out. The observers should be duly registered with the Securities and Exchange Commission and should meet the criteria for observers as set forth in the IRR.

⁷ *Rollo*, p. 69.

⁸ *Id.* at 69-70.

(4) Petitioners exhibited evident bad faith when they signed the procurement documents fabricated by Sumabat, knowing for a fact that no public bidding actually took place or that CLMP Trading was not eligible to bid;⁹

(5) CLMP Trading did not possess the required qualification to transact with the government and did not submit documents to satisfy eligibility requirements;¹⁰

(6) Even if CLMP Trading passed the eligibility check, it should have failed the post-qualification stage since vital documents such as the Bidder's Bond, Performance Bond, Surety Bond, Notice of Award and Notice to Proceed and Disbursement Voucher were not signed by its proprietor;¹¹

(7) Instead of disqualifying CLMP Trading, BAC members and petitioners Racelis, Orellana, Oliquino, Navarro, Salonga, and Laureta signed the Abstract of Bids with the remark "passed;"¹²

(8) Likewise, Technical Working Group members and petitioners Espina, Suitado, Bautista, and Santos declared CLMP Trading as eligible in the Checklist of Eligibility Requirements;¹³

(9) Finally, then city mayor Aldrin L. San Pedro awarded the contract to CLMP Trading in spite of all the deficiencies.¹⁴

The Ombudsman concluded that petitioners and their co-respondents conspired to accommodate CLMP Trading by setting aside the requirements for public bidding, in clear violation of law.¹⁵

Petitioners¹⁶ filed a Motion for Reconsideration and Supplemental Motion for Reconsideration, but the Ombudsman denied them through its June 30, 2015 Order.¹⁷ Hence, the present Petition¹⁸ where petitioners attribute error on the part of the Ombudsman in, among others: (1) ruling that *res judicata* does not apply in relation to a criminal complaint involving the same issues which the Ombudsman dismissed;¹⁹ (2) dismissing petitioners

⁹ Id. at 70.

¹⁰ Id. at 70-71.

¹¹ Id. at 71-72.

¹² Id. at 72.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ With the exception of Barlis (who was absolved), Orellana, and Pucyutan.

¹⁷ *Rollo*, pp. 80-90.

¹⁸ Id. at 30-57.

¹⁹ Id. at 35, 38.

from government service even if Sumabat failed to prove conspiracy;²⁰ (3) upholding the credibility of Sumabat and admitting the secondary evidence he presented;²¹ and (4) finding that there was no public bidding conducted.²² Petitioners assert that their administrative liability, if any, should be for simple neglect only as they relied in good faith on the actions of Sumabat in the course of the bidding.²³ They invoke the Court to grant the petition and set aside the assailed Decision and Resolution of the Ombudsman, issue a Temporary Restraining Order (*TRO*) and/or a Writ of Preliminary Injunction to enjoin their implementation, and after granting the petition order their reinstatement and entitlement to backwages and other benefits.²⁴

We deny the petition for being a wrong mode of appeal.

The petition was filed under Section 27 of R.A. No. 6770, *The Ombudsman Act of 1989*,²⁵ the pertinent portion of which states:

Section 27. Effectivity and Finality of Decisions. — xxx

x xxx

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

However, the foregoing provision has been struck down as unconstitutional in the benchmark case of *Fabian v. Hon. Desierto (Fabian)*.²⁶ The Court held that the above provision cannot validly authorize an appeal to the Court from decisions of the Office of the Ombudsman in administrative disciplinary cases as it violates the proscription in Sec. 30, Article VI of the Constitution²⁷ against a law that increases the appellate jurisdiction of the Court without its advice and concurrence. Moreover, in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure (*Rules*), appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals (*CA*) under Rule 43.

²⁰ Id. at 35, 39.

²¹ Id. at 35, 40.

²² Id. at 41.

²³ Id. at 50.

²⁴ Id. at 51.

²⁵ Id. at 31, 34.

²⁶ 356 Phil 787 (1998).

²⁷ SECTION 30. No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

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In *Fabian* and the subsequent case of *Namuhe v. The Ombudsman*²⁸ the petitions were referred to the CA for final disposition and considered as Petitions for Review under Rule 43 of the Rules. However, on February 9, 1999, the Court promulgated A.M. No. 99-2-02-SC,²⁹ which states:

In light of the decision in *Fabian v. Ombudsman* (G.R. No. 129742, 16 September 1998), any appeal by way of petition for review from a decision or final resolution or order of the Ombudsman in administrative cases, or special civil action relative to such decision, resolution or order filed with the Court after 15 March 1999 shall no longer be referred to the Court of Appeals, but must be forthwith DENIED or DISMISSED respectively.

Since the Ombudsman Decision in question was rendered in an administrative case, it is reviewable by a Petition for Review filed with the CA under Rule 43 of the Rules. The petition wrongfully filed with the Court can no longer be referred to the CA pursuant to A.M. No. 99-2-02-SC.

WHEREFORE, the petition is **DENIED**.

SO ORDERED."

Very truly yours,

Misael Domingo C. Battung III
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 Division Clerk of Court
18/4/2020

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²⁸ 358 Phil. 781 (1998).

²⁹ Entitled "*In Re: Denial of Appeal From Any Decision or Final Resolution or Order of the Ombudsman in Administrative Cases and Dismissal of Special Civil Action Relative to Such Decision, Resolution or Order.*"

