

**THIRD DIVISION**

**[ G.R. No. 230704. March 15, 2023 ]**

**CORAZON C. REYES [SALARY GRADE 24], PETITIONER, VS. THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON AND FIELD INVESTIGATION OFFICE II, REPRESENTED BY ATTY. VIC T. ESCALANTE, RESPONDENTS.**

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

**GAERLAN, J.:**

Before this court is a Petition for *Certiorari*<sup>[1]</sup> dated April 10, 2017 filed by Corazon C. Reyes (petitioner) questioning the Resolution<sup>[2]</sup> dated June 30, 2016 and the Order<sup>[3]</sup> dated January 5, 2017 issued by respondent Office of the Ombudsman which found probable cause to indict petitioner, among other respondents *a quo*, for violating Section 3(e) of Republic Act (R.A.) No. 3019<sup>[4]</sup> in relation to Section 47 of the Implementing Rules and Regulation (IRR) Part-A of R.A. No. 9184<sup>[5]</sup> and which likewise recommended the filing of Information against her.

Facts

On February 26, 2015, the Field Investigation Office II of the Office of the Ombudsman filed a criminal and administrative Complaint dated December 18, 2014 against the officers and members of the Bids and Awards Committee (BAC) of the Municipality of Palauig, Zambales, namely: petitioner, as Vice-Chairman; Roel R. Corpus, as Chairman; and Emy A. Reyes, Vilma C. Abdon, Benjelyn L. Cacho, Edenia A. Fortin, as Members. The factual basis of the complaint was derived from the result of a post audit examination conducted by the Commission on Audit (COA).<sup>[6]</sup>

The Complaint lodged against respondents therein was for the commission of corrupt practices under Sections 3(e) and (i) of R.A. No. 3019 (Criminal Charge)<sup>[7]</sup> and for Grave Misconduct and Conduct Prejudicial to the Best Interest under Section 46(A)(2), (3) and (B)(8), Rule 10 respectively of the Civil Service Commission Resolution No. 1101502, otherwise known as the “Revised Rules on Administrative Cases in the Civil Service” (Administrative Charge).<sup>[8]</sup>

According to the Complaint, the Municipality of Palauig selected the alternative method of procurement through Canvass/Shopping for the procurement of office supplies and materials for the Calendar Year (CY) 2006.<sup>[9]</sup> The Canvass Sheets for Local Prices/Materials covering CY 2006 disclosed that several suppliers participated in the procurement activities for office supplies for the Municipality of Palauig. According to the respective Abstract of Bids for each procurement activity, Tabing Daan Mart emerged as the winning supplier by obtaining the lowest price bid and being the most advantageous to the government at the time of canvass.<sup>[10]</sup>

Thus, the Municipality of Palauig procured office supplies and materials for its various departments from Tabing Daan Mart, and disbursed a total amount of P804,678.00 covering various procurement activities.<sup>[11]</sup>

Thereafter, the COA conducted a post-audit examination of the transactions/procurements made by the Municipality of Palauig with Tabing Daan Mart for its office supplies and materials for CY 2006.<sup>[12]</sup> Accordingly, the COA issued Audit Observation Memorandum No. 008, wherein the following observations were made, notably: (1) the procurement was made without the Annual Procurement Plan (APP); (2) the purchase of the supplies was done using canvass/shopping which is a method of procurement not provided; and (3) a supplier, Tabing Daan Mart was favored against the other suppliers in the locality.<sup>[13]</sup> As certified by the Department of Trade and Industry, the owner of Tabing Daan Mart is a certain Teresita Reyes Lising (Lising), the sister of petitioner.<sup>[14]</sup>

According to the Complaint, petitioner violated Section 47 of the IRR of R.A. No. 9184, which required all bidders to disclose whether they are related, among others to any members of the BAC. Thus, as alleged in the Complaint, Tabing Daan Mart, owned by the sister of petitioner was favored over the other suppliers in the locality.<sup>[15]</sup>

In their Position Paper dated February 29, 2016, respondents *a quo*, countered that contrary to the findings of the COA and the allegations in the Complaint, the Municipality of Palauig had indeed an APP for CY 2006, which authorized the use of canvassing/shopping as an alternative method of procurement.<sup>[16]</sup> Moreover, respondents *a quo* highlighted that the APP for CY 2006 was in fact approved and signed by the Municipal Mayor. In addition, respondents *a quo* denied that they favored a particular supplier, *i.e.*, Tabing Daan Mart. Respondents *a quo* admit that although the owner of Tabing Daan Mart was the sister of petitioner, their relationship in fact worked to the advantage and benefit of the Municipality due to the reduced prices offered for the procurement of supplies, goods, and materials.<sup>[17]</sup>

Finally, respondents *a quo* argued that the requirement of disclosure of relationship of the bidder is required only in competitive bidding and not in shopping.<sup>[18]</sup>

### **Ruling of the Ombudsman**

In a Resolution<sup>[19]</sup> dated June 30, 2016, the Ombudsman found the existence of probable cause to indict the members of the BAC for violation of Section 3(e) of R.A. No. 3019 in relation to Section 47 of the IRR Part-A of R.A. No. 9184.<sup>[20]</sup>

**WHEREFORE**, there being probable cause to indict respondents Roel R. Corpus, Corazon C. Reyes, Emy A. Reyes, Vilma C. Abdon, Benjelyn Limbag-Cacho and Edenia A. Fortin for violation of Section 3(e) of Republic Act No. 3019 in relation to Section 47 of the Implementing Rules and Regulation Part-A of R.A. No. 9184, it is respectfully recommended that the attached Information be filed against them with the proper court.

The charge for violation of Section 3(i) of R.A. No. 3019 against respondents is, however, **dismissed** for lack of probable cause.

**SO ORDERED.**<sup>[21]</sup> (Emphases in the original)

In finding probable cause to indict respondents *a quo*, the Ombudsman made the following conclusions:

Based on record, respondent BAC members procured the office supplies from *Tabing Daan Mart* knowing that its owner, Lising, is the sister of respondent BAC member Reyes. Consequently, this Office finds probable cause to indict them for violation of Section 3(e) of R.A. No. 3019, in relation to R.A. No. 9184.

x x x x

Here, it was established that respondents acted with evident bad faith or manifest partiality in purchasing office supplies from *Tabing Daan Mart* despite being aware of the close relationship between respondent C. Reyes and the proprietor of *Tabing Daan Mart*, and yet they did not move to disqualify *Tabing Daan Mart* as bidder. Their argument that the disclosure of relation is not required in shopping is misplaced. This Office notes that the underlying

principles of R.A. No. 9184, among others, are transparency and equity in the procurement process. It is the policy of the government that the procurement of goods shall be competitive and transparent. Thus, to argue that disclosure of relation is not required in cases of alternative mode of procurement is not consistent with said principle. Such disclosure removes any advantage that a bidder may gain by reason of his/her relationship with a BAC member.

Further, there was unwarranted benefit given to Lising of *Tabing Daan Mart*. Despite being disqualified to participate to supply office items to the municipality, respondents still decided to transact with *Tabing Daan Mart* twenty-five (25) times in the total amount of P804,678.00. Respondents cannot shield from criminal liability based on the argument that the close relationship of Lising and respondent BAC member Reyes was more advantageous to the municipality as Lising agreed to reduce prices. It is clearly stated in the rules that relatives within the third civil degree of consanguinity or affinity of a BAC member shall automatically be disqualified from participating in the procurement of contracts of the procuring entity.

As to the non-compliance of posting required under Section 54.2 of IRR of R.A. No. 9184, this Office notes that such lapses cannot be a ground for criminal liability. If there was any infraction committed by respondent BAC members, it is more of administrative in nature.

There is, however, no probable cause to warrant respondents' indictment for violation of Section (i) of R.A. No. 3019. There is no showing that any of the respondents has material interest in *Tabing Daan Mart* or that they financially benefited from the award of the contracts of office supplies to said supplier.<sup>[22]</sup>

Thereafter, petitioner filed a Motion for Reconsideration dated December 6, 2016, which was eventually denied by the Ombudsman in its Order<sup>[23]</sup> dated January 5, 2017.

Hence, the present petition for *certiorari*.

Petitioner argues that the Ombudsman committed grave abuse of discretion in finding probable case against petitioner for violation of Section 3(e) of R.A. No. 3019, on the basis of the following grounds: (1) the Ombudsman retroactively applied Section 47 of the IRR Part-A of R.A. No. 9184 requiring the disclosure of relationship, despite the same not having

been enacted at the time of the procurement in question;<sup>[24]</sup> (2) assuming that Section 47 of the IRR Part-A of R.A. No. 9184 can be retroactively applied, the requirement of disclosure of relationship does not apply to procurements made using the alternative method of shopping and only covers the Head of the Procuring entity and does not extend to members of the BAC;<sup>[25]</sup> and (3) the Ombudsman failed to show that all the elements for a violation of Section 3(e) of R.A. No. 3019 are present to support a finding of probable cause.<sup>[26]</sup>

On June 27, 2017 the Ombudsman filed its Comment<sup>[27]</sup> of even date. The Ombudsman counters that the cited Section 47 of the IRR Part-A of R.A. No. 9184 (2003 IRR-A) was the 2003 IRR which took effect on October 8, 2003, prior to the subject procurements in 2006. Thus, the Ombudsman did not retroactively apply the provisions requiring the disclosure of relationship. Moreover, the Ombudsman argued that there was no grave abuse of discretion in finding probable cause for violation of Section 3(e) of R.A. No. 3019 against petitioner and her co-respondents *a quo*. The Ombudsman alleges that the members of the BAC acted with evident bad faith or manifest partiality in purchasing office supplies from Tabing Daan Mart despite the relationship of its owner with petitioner. The Ombudsman maintains that due to such close relationship, Tabing Daan Mart should have been disqualified to participate to supply office items to the Municipality of Palauig.<sup>[28]</sup>

## ISSUE

The sole issue to be resolved here is whether the Ombudsman gravely abused its discretion in finding probable cause against petitioner for violation of Section 3(e) of R.A. No. 3019.

## OUR RULING

We find the instant Petition impressed with merit.

***The Court has the Power to Review the Ombudsman's Discretionary Authority to Determine Probable Cause, when it is Tainted with Grave Abuse of Discretion.***

As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its investigatory and prosecutorial powers,<sup>[29]</sup> including its exercise of discretion in determining probable cause.<sup>[30]</sup> This policy of non-interference recognizes the wide latitude

bestowed on the Ombudsman in the exercise of its powers, and is anchored on constitutional, statutory and practical considerations.<sup>[31]</sup> The Constitution and R.A. No. 6770,<sup>[32]</sup> vest the Ombudsman with great autonomy<sup>[33]</sup> in the exercise of its mandate to investigate acts or omissions of public officials or employees which appear to be illegal, unjust, improper, or inefficient.<sup>[34]</sup> The Ombudsman's powers are plenary in nature, designed to insulate it from outside pressure and influence.<sup>[35]</sup>

Nevertheless, the plenary nature of the Ombudsman's powers does not place it beyond the scope of the Court's power of review.<sup>[36]</sup> Thus, while the Ombudsman's findings as to whether probable cause exists are generally not reviewable by this Court, where there is an allegation of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny under the Court's own constitutional power and duty "to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."<sup>[37]</sup>

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction.<sup>[38]</sup> This means that the Ombudsman must have exercised its investigatory and prosecutory powers in an arbitrary or despotic manner, which must be as patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law.<sup>[39]</sup> Thus, where there is an imputation of errors of jurisdiction proceeding from grave abuse of discretion, the special civil action of *certiorari* may be resorted to.<sup>[40]</sup>

**Guided by the foregoing precepts and after a circumspect review of the records, We find that the Ombudsman committed grave abuse of discretion in finding the existence of probable cause for violation of Section 3(e) of R.A. No. 3019 against petitioner and the other members of the BAC in connection with alleged irregularities of their use of shopping as an alternative method of procuring office supplies for the Municipality of Palauig.**

***The Ombudsman did not Retroactively Apply the Provisions of Section 47 of the IRR of R.A. No. 9184***

Petitioner vehemently contends that the Ombudsman incorrectly applied the provisions of Section 47 of the IRR of R.A. No. 9184 retroactively. Petitioner alleges that the cited provision only became effective in 2009 when it was published on August 3, 2009 and thus

could not have been observed and complied with in the questioned transactions which occurred in 2006. In support of its assertion, petitioner cites Resolution No. 03-2009 approved by the Government Procurement Policy Board on July 22, 2009, which allegedly introduced Section 47 of the IRR of R.A. No. 9184.

Petitioner's argument is completely bereft of any merit.

As already ruled upon by the Ombudsman in its Order dated January 5, 2017, the IRR cited in its Resolution which petitioner failed to observe was the 2003 IRR which took effect on October 8, 2003. In fact a cursory review of the Ombudsman's Resolution dated June 30, 2016 reveals that the quoted Section 47 of the IRR was approved by President Gloria Macapagal-Arroyo through Memorandum Order No. 119<sup>[41]</sup> dated September 18, 2003, which was published on September 23, 2003 and subsequently took effect on October 8, 2003.<sup>[42]</sup>

Accordingly, contrary to petitioner's protestations, the Ombudsman did not retroactively apply Section 47 of the IRR of R.A. No. 9184.

***Petitioner and the Other Members of the  
BAC did not Violate the Disclosure  
Requirement Under Section 47 of the IRR of  
R.A. No. 9184***

The procurement of services and goods are generally carried out through public bidding, which is a method of government procurement governed by the principles of transparency, competitiveness, simplicity, and accountability. Its aim is to protect public interest by giving the public the best possible advantages through open competition. It also seeks to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.<sup>[43]</sup>

However, Section 48 of R.A. No. 9184 provides for an exception and allows for the use of alternative methods of procurement which would enable dispensing with the requirement of open, public and competitive bidding, but only in highly exceptional cases and under the conditions set forth in R.A. No. 9184 and its IRR.<sup>[44]</sup> In all instances, the procuring entity shall ensure that the most advantageous price for the Government is obtained.<sup>[45]</sup>

In particular, Section 48 of R.A. No. 9184 allows the use of Shopping as an alternative method of procurement:

ARTICLE XVI

Alternative Methods of Procurement

**SECTION 48. *Alternative Methods.*** — Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

x x x x

(d) Shopping — a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualification; x x x

x x x x

In all instances, the Procuring Entity shall ensure that the most advantageous price for the Government is obtained.

In relation thereto, Section 52 of R.A. No. 9184 provides that Shopping as an alternative method of procurement may be resorted to: (a) when there is an unforeseen contingency requiring immediate purchase, provided the amount does not exceed P50,000.00; or (b) when procuring ordinary or regular office supplies and equipment not available in the Procurement Service involving an amount not exceeding P250,000.00.

In the instant case, it is beyond cavil that the resort and use of Shopping as an alternative method of procuring the various office supplies for the Municipality of Palauig was allowed and subject to the prior approval of the Mayor, as head of the procuring entity. Specifically, the Municipality of Palauig resorted to Shopping under Section 52(b) of R.A. No. 9184 as an alternative method of procuring ordinary or regular office supplies.

As observed by the Ombudsman in its Resolution dated June 30, 2016:

Here, respondents were able to present the APP for the year 2006 to disprove complainant's allegation that the Municipality of Palauig did not have one.

Consequently, it was also stated in said APP that shopping shall be resorted to as a mode of procurement for various office supplies. The production of the APP for the questioned year disproves violation of Section 7.1 Rule II of the IRR of R.A. No. 9184.

Similarly, the allegation of non-compliance with R.A. No. 9184 by respondent BAC members of resorting to canvass/shopping to purchase office supplies without the prior approval of the Mayor was belied by the fact that the latter signed the Purchase Requests and Purchase Orders in the procurement of office supplies.<sup>[46]</sup>

However, the Ombudsman concluded that petitioner and the other members of the BAC failed to observe the requirement under Section 47 of the 2003 IRR-A of R.A. No. 9184 (which took effect on October 8, 2003), requiring the disclosure of relations between the bidder and the head of the procuring entity or of its officers or employees having direct access to information that may substantially affect the result of the bidding, including members of the BAC. In support of its ruling, the Ombudsman ratiocinated that given the underlying principles of R.A. No. 9184, which includes transparency and equity in the procurement process, the disclosure of relation shall likewise cover alternative methods of procurement.

We take exception to this finding of the Ombudsman and demonstrate that its ruling is shorn of any legal footing.

After a review of the provisions of R.A. No. 9184 and the 2003 IRR-A, We find nothing therein which requires the declaration of relation or the submission of a sworn affidavit to that effect as a pre-requisite when resorting to Shopping as an alternative method of procurement.

In its pronouncement in *De Guzman v. Office of the Ombudsman*,<sup>[47]</sup> (De Guzman) the Court ruled that the provisions on the use of alternative methods of procurement should be read in conjunction with the other provisions of R.A. No. 9184 pertinent to the conduct of any procurement activity. In De Guzman, the National Printing Office resorted to the use of Limited Source Bidding and Negotiated Procurement to source the printing of accountable forms of the Land Transportation Office. We held that in addition to the respective requirements set forth in R.A. No. 9184 and the IRR, the following requirements should likewise be observed: (1) the conduct of pre-procurement and pre-bid conferences; (2) the

presence of observers throughout the whole bidding process; and (3) publication and or posting of the Invitation to Apply for Eligibility to Bid, and other notices.<sup>[48]</sup>

Section 54 of R.A. No. 9184 provides that the specific terms and conditions, including the limitations and restrictions, for the application of each of the alternative methods mentioned in this Article shall be specified in the IRR.

In this regard, Sections 52 and 54 of the 2003 IRR of R.A. No. 9184, provides for the specific terms and conditions for the use of Shopping as an alternative method of procurement:

**SECTION 52. *Shopping.*** —

Shopping is a method of procurement of goods whereby the **procuring entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualifications.** This method of procurement shall be employed only in any of the following cases:

- a) When there is an unforeseen contingency requiring immediate purchase: Provided, however, That the amount shall not exceed fifty thousand pesos (P50,000); or
- b) Procurement of ordinary or regular office supplies and equipment not available in the Procurement Service involving an amount not exceeding two hundred fifty thousand pesos (P250,000): Provided, however, That the procurement does not result in splitting of contracts, as provided in Section 54.1 of this IRR-A: Provided, further, That at least three (3) price quotations from bona fide suppliers shall be obtained.

The above amounts shall be subject to a periodic review by the [Government Procurement Policy Board] (GPPB). For this purpose, the GPPB shall be authorized to increase or decrease the said amount in order to reflect changes in economic conditions and for other justifiable reasons.

x x x x

**SECTION 54. *Terms and Conditions for the use of Alternative Methods.*** —

54.1. Splitting of Government Contracts is not allowed. Splitting of Government Contracts means the division or breaking up of Government Contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of law and this IRR-A, especially the necessity of public bidding and the requirements for the alternative methods of procurement.

54.2. In addition to the specific terms, conditions, limitations and restrictions on the application of each of the alternative methods specified in Sections 48 to 53 of this IRR-A, the following shall also apply:

x x x x

h) With respect to item (a) of Section 52 of the Act and this IRR-A while the procurement activity would still have to be posted in accordance with the provisions of Section 21.2.3 of this IRR-A, the period for posting required therein may be waived by the procuring entity concerned.

x x x x

Relatedly, Sections 21.2.3 and 21.2.4 of the 2003 IRR provides for the publication and posting requirements when resorting to Shopping as an alternative method of procurement:

*21.2. Advertising and Posting of the Invitation to Apply for Eligibility and to Bid*

x x x x

21.2.3. For contracts to be bid with an ABC costing two million pesos (P2,000,000.00) and below for the procurement of goods, and five million pesos (P5,000,000.00) and below for the procurement of infrastructure projects, the Invitation to Apply for Eligibility and to Bid shall be posted at least in the website of the procuring entity concerned, if available, the website of the procuring entity's service provider, if any, as provided in Section 8 of this IRR-A, the G-EPS, and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned, during the same period as above. For projects/contracts for consulting services with an ABC costing one million pesos

(P1,000,000.00) and below and/or those whose duration is four (4) months or less, the Invitation to Apply for Eligibility and to Bid shall be posted at least in the website of the procuring entity concerned, if available, the website of the procuring entity's service provider, if any, as provided in Section 8 of this IRR-A, the G-EPS, and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned, during the same period as above.

21.2.4. For alternative methods of procurement as provided for in Rule XVI of this IRR-A, advertisement in a newspaper as required in this Section may be dispensed with: Provided, however, That posting shall be made in the website of the procuring entity concerned, if available, the G-EPS, and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned, as certified by the head of the BAC Secretariat of the procuring entity concerned, during the same period as above.

Moreover, although Shopping is an alternative method of procurement, it must nevertheless comply with the rules on procurement planning and budgeting linkage which is mandated of all procurement activities.

Section 7 of R.A. No. 9184 states:

SECTION 7. Procurement Planning and Budgeting Linkage. — **All procurement should be within the approved budget of the Procuring Entity and should be meticulously and judiciously planned by the Procuring Entity concerned.** Consistent with government fiscal discipline measures, only those considered crucial to the efficient discharge of governmental functions shall be included in the Annual Procurement Plan to be specified in the IRR.

**No government Procurement shall be undertaken unless it is in accordance with the approved Annual Procurement Plan of the Procuring Entity. The Annual Procurement Plan shall be approved by the Head of the Procuring Entity and must be consistent with its duly approved yearly budget. The Annual Procurement Plan shall be formulated and revised only in accordance with the guidelines set forth in the IRR.** In the case of Infrastructure Projects, the Plan shall include engineering design and acquisition

of right-of-way. (Emphases and underscoring supplied)

In connection therewith, Section 7 of the 2003 IRR similarly provides:

SECTION 7. Procurement Planning and Budgeting Linkage. —

7.1. All procurement should be within the approved budget of the procuring entity and should be meticulously and judiciously planned by the procuring entity concerned. **No government procurement shall be undertaken unless it is in accordance with an approved Annual Procurement Plan** (APP). x x x

7.2. Each procuring entity shall judiciously prepare, maintain and update an APP for all its procurement, that shall include, for each individual project, a Project Procurement Management Plan (PPMP). The APP shall bear the approval of the head of the procuring entity or second-ranking official designated by the head of the procuring entity to act on his behalf, and must be consistent with its duly approved yearly budget. Consistent with government fiscal discipline measures, only those considered crucial to the efficient discharge of governmental functions shall be included in the APP. For purposes of this IRR-A, a procurement shall be considered crucial to the efficient discharge of governmental functions if it is required for the day-to-day operations or is in pursuit of the principal mandate of the procuring entity concerned. In case of Infrastructure Projects, the Plan shall consider the appropriate timing/phasing of related project activities such as engineering design and acquisition of ROW to reduce/lower project costs.

x x x x (Emphasis and underscoring supplied)

Culled from the foregoing provisions, We summarize the requirements, limitations and restrictions on the use of Shopping as an alternative method of procurement.

Shopping is an alternative method of procurement whereby the procuring entity **simply requests for the submission of price quotations** for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualifications.<sup>[49]</sup> It may be resorted to either for unforeseen contingency requiring immediate purchase (Section 52.a); or for procurement of ordinary or regular office supplies

and equipment not available in the Procurement Service (Section 52.b).

In both methods, they shall be subject to the following: (1) within the approved budget of the procuring entity and in accordance with an approved Annual Procurement Plan;<sup>[50]</sup> (2) subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative resorting to Shopping as an alternative method of procurement;<sup>[51]</sup> (3) the amount involved in the procurement shall be within the respective limit set forth by the Government Procurement Policy Board;<sup>[52]</sup> (4) publication, advertising, and posting of the notice of procurement through shopping in the proper platform;<sup>[53]</sup> and (5) prohibition on the splitting of government contracts for the purpose of evading or circumventing the requirements of R.A. No. 9184 and its IRR.<sup>[54]</sup>

Moreover, with respect to Shopping as an alternative method of procuring ordinary or regular office supplies, the following additional requirements should be observed: (1) the supplies are not available in the Procurement Service; and (2) that at least three price quotations from *bona fide* suppliers shall be obtained.<sup>[55]</sup>

In all instances, the policy on the use of alternative method of procurement should likewise be of primordial consideration which is to promote economy and efficiency while ensuring that the most advantageous price for the Government is obtained.<sup>[56]</sup> Use of the alternative methods of procurement are resorted to only under exceptional cases, and are justified by the exigencies and conditions under the law.<sup>[57]</sup>

**Notably, after combing through R.A. No. 9184 and the 2003 IRR with a fine-tooth comb, We find nothing therein which requires the disclosure of relationship as a requirement when resorting to Shopping as an alternative method of procurement.**

Section 47 of R.A. No. 9184 requires that all bidding documents shall be accompanied by a sworn affidavit of the bidder that it is not related to the Head of the Procuring Entity by consanguinity or affinity up to the third civil degree, and that failure to comply with the provision shall be a ground for the automatic disqualification of the bid, *viz.*:

SEC. 47. Disclosure of Relations. — In addition to the proposed contents of the Invitation to Bid as mentioned under Section 21 of this Act, all bidding documents shall be accompanied by a sworn affidavit of the bidder that he or she or any officer of their corporation is not related to the Head of the Procuring Entity by consanguinity or affinity up to the third civil degree. Failure to comply

with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this Act.

Section 47 of the IRR expanded the covered procuring entity to include any of its officers or employees having direct access to information that may substantially affect the result of the bidding, such as, but not limited to, the members of the BAC, the members of the TWG, the BAC Secretariat, the members of the PMO, and the designers of the project:

SECTION 47. Disclosure of Relations. —

In addition to the proposed contents of the Invitation to Apply for Eligibility and to Bid as mentioned under Section 21 of this IRR-A, all bids shall be accompanied by a sworn affidavit of the bidder that it is not related to the head of the procuring entity by consanguinity or affinity up to the third civil degree. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this IRR-A. For this reason, relation to the head of the procuring entity within the third civil degree of consanguinity or affinity shall automatically disqualify the bidder from participating in the procurement of contracts of the procuring entity. On the part of the procuring entity, this provision shall also apply to any of its officers or employees having direct access to information that may substantially affect the result of the bidding, such as, but not limited to, the members of the BAC, the members of the TWG, the BAC Secretariat, the members of the PMO, and the designers of the project. On the part of the bidder, this provision shall apply to the following persons:

- a) If the bidder is an individual or a sole proprietorship, to the bidder himself;
- b) If the bidder is a partnership, to all its officers and members;
- c) If the bidder is a corporation, to all its officers, directors, and controlling stockholders; and

- 
- 
- 
- d) If the bidder is a joint venture, the provisions of items (a), (b) or (c) of this Section shall correspondingly apply to each of the members of the said joint venture, as may be appropriate.

However, We find the foregoing requirement for disclosure of relation inapplicable to procurements made through Shopping.

**First.** The policy behind the use of alternative method of procurement is predicated on economy and efficiency, while ensuring that the most advantageous price for the Government is obtained. It is a recognition that in certain exceptional cases when justified by the exigencies of the situation and the nature of the goods or services procured, the imposition of rigid and strict requirements in competitive bidding would be impractical,<sup>[58]</sup> ineffective and would cause delay.

Competitive bidding involves the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract.<sup>[59]</sup>

On the other hand, in Shopping, the procuring entity simply requests for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualifications.<sup>[60]</sup> Shopping is resorted to either for unforeseen contingency requiring immediate purchase or for procurement of ordinary or regular office supplies and equipment, both of which involve small procurements.

In Shopping, the procuring entity deviates from the protracted and rigorous procedures and guidelines strictly observed in competitive bidding. Thus, the procurement process is abridged and not all the requirements in competitive bidding are to be observed when resorting to Shopping as an alternative method of procurement.

**Second.** The wording of R.A. No. 9184 and the 2003 IRR, clearly indicates that the disclosure requirement applies to government procurements done through bidding and not shopping.

Section 47 of R.A. No. 9184 states that “**all bidding documents** shall be accompanied by a sworn affidavit of the bidder that he or she or any officer of their corporation is not related to the Head of the Procuring Entity by consanguinity or affinity up to the third civil degree. x x x.”<sup>[61]</sup>

Similarly, Section 47 of the 2003 IRR provides that “**all bids** shall be accompanied by a sworn affidavit of the bidder that it is not related to the head of the procuring entity by consanguinity or affinity up to the third civil degree. x x x.”<sup>[62]</sup>

“**Bidding documents** [r]efer to the documents issued by the procuring entity as the bases for bids, furnishing all information necessary for a prospective bidder to prepare a bid for the infrastructure projects, goods and/or consulting services required by the procuring

entity.”<sup>[63]</sup> While “**Bid** [r]efers to a signed offer or proposal to undertake a contract submitted by a bidder in response to and in consonance with the requirements of the bidding documents. x x x.”<sup>[64]</sup>

Evidently, the plain and ordinary meaning of the terms “bidding documents” and “bids” in Section 47 of R.A. No. 9184 and the 2003 IRR yields no other conclusion other than the disclosure requirement shall only be observed during competitive bidding, and not when resort to alternative methods of procurement are had.

If a statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.<sup>[65]</sup> The *verba legis* or plain meaning rule rests on the valid presumption that the words employed by the legislature in a statute correctly express its intent or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute.<sup>[66]</sup>

As correctly observed by petitioner, if the requirement on the disclosure of relation was intended to cover competitive bidding as well as the alternative methods of procurement, then the term “all procurement” should have been employed instead.

Thus, contrary to the position of the Ombudsman, the disclosure of relations should not be extended to cover other methods of procurement other than bidding, to do so would stretch the clear and plain meaning of Section 47.

**Third**, in furtherance of the foregoing discussion, a judicious and circumspect reading of the 2003 IRR reveals that the sworn affidavit under Section 47 is specifically required only during the submission of bids.

Section 25.3 of the 2003 IRR enumerates the required contents of the first bid envelope, which includes among others, the sworn affidavit of compliance with the Disclosure Provision under Section 47 of R.A. No. 9184.

Section 25 of the 2003 IRR specifically states:

SECTION 25. Submission and Receipt of Bids. —

25.1. Eligible bidders shall submit their bids through their authorized managing officer or their duly authorized representative (i) in the prescribed Bid Form,

including its annexes, as specified in the bidding documents, (ii) on or before the specified deadline, and (iii) in two (2) separate sealed bid envelopes, the first containing the technical component of the bid, and the second containing the financial component of the bid, with the name of the contract to be bid and the name of the bidder in capital letters, addressed to the BAC of the agency concerned. The bidder shall mark the two envelopes: "Do not open before (date and time of opening of bids)." Both envelopes shall then be sealed in an outer envelope which shall be addressed to the BAC and shall be marked as specified in the Instructions to Bidders.

25.2. Bids submitted after the deadline shall not be accepted by the BAC.

25.3. The first envelope (Technical Proposal) shall contain the following technical information/documents, at the least:

A. For the procurement of goods:

x x x x

**A sworn affidavit of compliance with the Disclosure**

9. **Provision under Section 47 of the Act in relation to other provisions of R.A. 3019; and**

10 Other documents/materials as stated in the Instructions to  
Bidders.

B. For the procurement of infrastructure projects:

x x x x

14 **A sworn affidavit of compliance with the Disclosure**

**Provision under Section 47 of the Act in relation to other provisions of R.A. 3019; and**

15 Documents/materials to comply with other non-discretionary  
criteria and requirements as stated in the Instructions to Bidders.

C. For the procurement of consulting services:

x x x x

**A sworn affidavit of compliance with the Disclosure**

8. **Provision under Section 47 of the Act in relation to other provisions of R.A. 3019; and**
9. Other information and/or documents specified in the bidding documents. (Emphases supplied)

Nowhere else under R.A. No. 9184 and its IRR is the disclosure of relations required.

**Fourth**, Section 54 of the 2003 IRR which pertains to the “Terms and Conditions for the use of Alternative Methods” enumerates the additional terms, conditions, limitations and restrictions on the use of alternative methods of procurement. Pertinently, as earlier discussed, Section 54.2 in relation to Section 21.2.4 still mandates the procuring entity resorting to alternative methods of procurement to still comply with the publication and posting requirements.

Section 54 makes no mention of compliance with the disclosure requirement under Section 47. Again, if the intention of the law was to include Section 47 as a condition and requisite in availing of alternative methods of procurement, then such requirement should have been explicitly included therein.

Given the foregoing disquisition, this Court takes the view that the disclosure requirement under Section 47 of R.A. No. 9184, and accordingly under Section 47 of the 2003 IRR do not apply to the alternative methods of procurement, in particular, Shopping. Thus, the failure to require the submission of a sworn affidavit of the bidder that they are not related to the Head of the Procuring Entity (or any member of the BAC) by consanguinity or affinity up to the third civil degree does not tantamount to a violation of procurement laws.

Accordingly, petitioner, as the vice-chair of the BAC and the other members of the BAC did not fail to observe the disclosure requirement under Section 47 considering that the provision finds no application to the questioned transactions.

***Petitioner and the other members of the BAC failed to comply with the posting requirements set forth in Section 54.2 of the IRR of R.A. No. 9184***

We concur with the findings of the Ombudsman that petitioner together with the other

members of the BAC failed to observe the publication and posting requirements mandated by R.A. No. 9184 and its IRR.

Non-compliance with the posting requirements is conceded by petitioner. However, petitioner maintains that the posting requirement is only needed in competitive bidding and not in Shopping.<sup>[67]</sup>

We beg to disagree.

As earlier discussed, Section 21.2.4 of the 2003 IRR explicitly states that for alternative methods of procurement, the advertising and posting requirements shall be made in the website of the procuring entity concerned, if available, the Government Electronic Procurement System or G-EPS (PhilGEPS), and posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned. The advertising and posting requirement is in keeping with the policy of competitiveness and transparency by extending equal opportunity to the public to allow qualified and *bona fide* suppliers to participate in the procurement activity.<sup>[68]</sup>

This, petitioner failed to do.

However, as correctly noted by the Ombudsman, non-compliance with the posting requirement cannot be a ground to charge petitioner and the other members of the BAC with criminal liability.<sup>[69]</sup>

Moreover, We find the non-compliance with the posting requirements not so egregious considering that petitioner and the other members of the BAC were able to canvass and secure the price quotations of fifteen (15) different local suppliers more than the three (3) required quotations under R.A. No. 9184 and its IRR. This is in keeping with the policy of competitiveness and transparency behind Section 21.

***There is no probable cause to indict and prosecute petitioner for violating Section 3(e) of R.A. No. 3019***

After a painstaking review of the records and judicious consideration of the merits of the Petition, this Court finds the Ombudsman's finding of probable cause to be tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. The Ombudsman committed a manifest and palpable error in finding probable cause to indict petitioner and

the other members of the BAC with violation of Section 3(e) of R.A. No. 3019.

The Court has recently ruled that alleged irregularities in procurement or violations of procurement laws, rules and regulations, on their own, do not *ipso facto* lead to a violation of Section 3(e) of R.A. No. 3019. Rather, the prosecution must still prove beyond reasonable doubt the essential elements to sustain a conviction under Section 3(e) of R.A. 3019.<sup>[70]</sup>

In ***Sistoza v. Desierto***<sup>[71]</sup> (*Sistoza*), petitioner- then Director of the Bureau of Corrections was charged with violation of Section 3(e) of R.A. No. 3019 in connection with several irregularities in the award and procurement of the supply of tomato paste. The finding of probable cause was anchored on the fact the winning bidder failed to comply with the original specifications and did not abide by several provisions of the bid announcement. However, upon reaching the Supreme Court the finding of probable cause was reversed and set aside.

We ruled in ***Sistoza*** that to establish a *prima facie* case for a violation of Sec. 3, par. (e), R.A. 3019, the prosecution must show not only the defects in the bidding procedure, but also the alleged evident bad faith, gross inexcusable negligence or manifest partiality of the public officer:

**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.<sup>[72]</sup> (Emphasis and underscoring supplied)

In ***Sabaldan, Jr. v. Ombudsman***<sup>[73]</sup> (***Sabaldan, Jr.***) petitioner therein was a member of the BAC of the City Government of Bislig, who recommended to award the contract for the supply of a hydraulic excavator to a bidder, despite its non-compliance with Section 25 of the Revised IRR of R.A. No. 9184 requiring the submission of the technical specification of its product. The Ombudsman found probable cause to charge petitioner therein for violation of Section 3(e) of R.A. No. 3019 due to the numerous irregularities that attended the procurement of the hydraulic excavator. This Court eventually reversed and set aside the finding of the Ombudsman and dismissed the criminal complaint against petitioner for lack of probable cause.

We maintained our pronouncement in ***Sabaldan, Jr.***, that violations of procurement laws alone do not necessarily and automatically result to a finding of probable cause under Section 3(e) of R.A. No. 3019:

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-à-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. 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. 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 preference; and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.** x x x.<sup>[74]</sup> (Emphasis and underscoring supplied; italics in the original; citations omitted)

Pertinently, in *Duque v. Ombudsman and Fact-Finding Investigation Bureau*,<sup>[75]</sup> we held that mere participation by a public officer in an imperfect procurement process does not automatically serve as basis for his criminal indictment for the violation of Section 3(e) of R.A. No. 3019:

**Mere participation by a public officer in an imperfect procurement process does not automatically serve as basis for his criminal indictment for the violation of Section 3 (e) of R.A. No. 3019.** The finding of probable cause for the offense of giving unwarranted benefits, advantage or preference in favor of a private party, or causing undue injury to any party, including the Government, through manifest partiality, or evident bad faith, or gross inexcusable negligence must still rest on established facts showing that the public officer committed some act or omission directly causing the defective procurement. **Without such established facts, the charge should be dismissed in order to uphold the objective of preliminary investigation to secure the innocent against hasty, malicious and oppressive prosecution, and spare the innocent from the trouble, expense and anxiety of a public trial.** Indeed, the Court must not sanction the contravention of such objective.<sup>[76]</sup>

(Emphasis supplied)

In more recent vintage, this Court has had occasion to re-examine the above pronouncement.

In *Martel v. People*,<sup>[77]</sup> the Court *En Banc* reiterated that a violation of procurement laws, its IRR, and guidelines should not be the sole basis for a criminal charge under Section 3(e) of R.A. No. 3019. Irregularities in procurement committed by public officers, findings of violations of procurement laws, rules, and regulations, on their own, do not automatically lead to the conviction of the public officer under the said special penal law. Thus, it is still incumbent on the prosecution to show that all the essential elements of Section 3(e) of R.A. No. 3019 are present to sustain a finding of probable cause.<sup>[78]</sup>

It is in light of the foregoing jurisprudential metric that we determine if the Ombudsman committed grave abuse of discretion in finding probable cause to indict petitioner for violation of Section 3(e) of R.A. No. 3019 in connection with the alleged anomalies in the purchase of office supplies from Tabing Daan Mart.

Section 3(e) of R.A. No. 3019 requires the concurrence of the following essential elements, namely: (1) the accused is a public officer discharging administrative, judicial or official functions; (2) accused must have acted with manifest partiality, or evident bad faith, or gross inexcusable negligence in the discharge of his functions; and (3) accused's action caused undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.<sup>[79]</sup>

There is no dispute that the **first element** is present in the instant case. Petitioner was then a Municipal Assessor of the Municipality of Palauig and was the vice chair of the BAC.

**However, the second and third elements are manifestly lacking in the instant case.**

***The second element of Section 3(e) of R.A.***

***No. 3019 is absent in the instant case.***

The second element enumerates the three modes of committing the violation of Section 3(e), specifically by: (a) manifest partiality; (b) evident bad faith; or (c) gross inexcusable negligence.<sup>[80]</sup>

In *Fonacier v. Sandiganbayan*,<sup>[81]</sup> the Court defined "partiality," "bad faith," and "gross

negligence,” to wit:

“**Partiality**” is synonymous with “bias” which “excites a disposition to see and report matters as they are wished for rather than as they are.” “**Bad faith**” does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.” **Gross negligence** has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property. x x x.<sup>[82]</sup> (Emphasis supplied; citations omitted)

However, mere bad faith or partiality and negligence *per se* are not enough for one to be held liable under Section 3(e) of R.A. No. 3019 since the act of bad faith or partiality must in the first place be evident or manifest, respectively, while the negligent deed should both be gross and inexcusable.<sup>[83]</sup>

Otherwise stated, “**manifest partiality**” is present when there is a showing of clear, notorious, or plain inclination or predilection to support one side or person rather than another. On the other hand, “**evident bad faith**” connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.<sup>[84]</sup>

In the instant case, the Ombudsman found probable cause and indicted petitioner and the other members of the BAC for violation of Section 3(e) of R.A. No. 3019 for having acted with evident bad faith and manifest partiality when the Municipality of Palauig procured the office supplies from Tabing Daan Mart owned by Lising, petitioner’s sister. The Ombudsman reasoned that Tabing Daan Mart should have been disqualified to participate given the close relationship of its owner to a member of the BAC, herein petitioner in violation of Section 47 of R.A. No. 9184 and its IRR.<sup>[85]</sup> However, a review of the facts does not support the Ombudsman’s conclusion.

At the onset as earlier discussed, resort to the use of Shopping as an alternative method of procurement is not prohibited but is sanctioned under R.A. No. 9184 for exceptional cases and justified conditions.

To this Court's mind, the BAC properly resorted to and complied with the requirements under R.A. No. 9184 and the 2003 IRR.

**First.** The APP of the Municipality of Palauig for the year 2006 expressly stated that Shopping shall be resorted to as an alternative method of procurement for various office supplies.<sup>[86]</sup>

**Second.** The use of Shopping as a method of procurement was subject to the prior approval of the Mayor of Palauig as evidenced by his signature on the Purchase Requests and Purchase Orders.<sup>[87]</sup>

**Third.** In accordance with Section 52 of R.A. No. 9184, the BAC was able to secure and obtain at least three price quotations from *bona fide* suppliers. In fact, the BAC was able to canvass and secure price quotations from 15 *bona fide* suppliers.

**Fourth.** The BAC was able to acquire the most advantageous price for the Municipality of Palauig. It is not disputed by the COA and the Ombudsman that Tabing Daan Mart obtained the lowest price bid and was the most advantageous to the government at the time of canvass, considering that it was the only supplier that had enough inventory to accommodate the needs of the Municipality.<sup>[88]</sup>

**Fifth.** As exhaustively discussed earlier, Section 47 of R.A. No. 9184 and Section 47 of the 2003 IRR requiring suppliers to submit a sworn affidavit disclosing their relation to, among others, members of the BAC, find no application to Shopping. Verily, non-observance thereof does not constitute an irregularity or violation of the procurement laws or its rules, regulations and guidelines.

Neither has the Ombudsman proffered any compelling legal basis and reason to justify its ruling that mere close relation of the supplier to a member of the BAC disqualifies the former from participating in the procurement activity done through Shopping.

**Sixth.** Although petitioner and the other members of the BAC admittedly failed to comply with the posting requirement in Section 21.2.4 of the 2003 IRR, such failure does not show manifest partiality or evident bad faith. To repeat, the BAC was still able to canvass and

secure the price quotations of fifteen (15) different local suppliers more than the three (3) required under the law. This more than signifies that the procurement activity was compliant with the law's policy and principle on competitiveness and transparency under Section 21.

**Evidently, petitioner and the other members of the BAC substantially complied with the requirements for the resort and conduct of Shopping as an alternative method of procurement. Accordingly, since the procurement was done above board and beyond reproach, it totally negates the Ombudsman's finding that petitioner acted with manifest partiality or evident bad faith.**

***The third element of Section 3(e) of R.A. No. 3019 is likewise not present.***

Anent the third and last element, jurisprudence instructs that in order to be held liable for violation of Section 3(e) of R.A. No. 3019, the law requires that the act constituting the offense consists of either: (1) causing undue injury to any party, including the government; or (2) giving any private party any unwarranted benefits, advantage or preference in the discharge by the accused of his official, administrative or judicial functions.<sup>[89]</sup> Although neither mode constitutes a distinct offense, an accused may be charged under either mode or both. The use of the disjunctive "or" connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction.<sup>[90]</sup>

Under the **first mode**, "**causing undue injury**" means actual injury or damage which must be established by evidence. The word "**undue**" denotes "more than necessary, not proper, or illegal"; while "**injury**" means "any wrong or damage done to another, either in his person, rights, reputation or property; the invasion of any legally protected interest of another." Actual damage, in the context of these definitions, is akin to that in civil law.<sup>[91]</sup>

Under the **second mode**, case law has polished and refined the meaning of the words "unwarranted," "advantage" and "preference," to wit:<sup>[92]</sup>

The word "**unwarranted**" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "**Advantage**" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "**Preference**" signifies priority or higher evaluation or desirability; choice or estimation above

another.<sup>[93]</sup> (Emphasis supplied; citations omitted)

Furthermore, it is not enough that unwarranted benefits were given to another or that there was damage to the government as a result of a violation of a law, rule or regulation. The acts constituting the elements of a violation of R.A. No. 3019 must be effected with corrupt intent, a dishonest design, or some unethical interest.<sup>[94]</sup>

In the instant case, the Ombudsman concluded that there was unwarranted benefit given to Lising of Tabing Daan Mart since she was allowed to participate, and with whom the BAC ultimately transacted with, despite the alleged disqualification due to her close relation to petitioner.

The Court however adopts a different view.

We again echo our previous discussion that the required disclosure of relation under Section 47 of R.A. No. 9184 and its IRR, finds no application to alternative methods of procurement, specifically Shopping. Thus, although Lising, as the owner of Tabing Daan Mart is the sister of petitioner, who is the vice-chair of the BAC and no disclosure was made regarding their relation, it does not *ipso facto* mean that Lising was given unwarranted benefits.

It was not disputed by the Ombudsman that Tabing Daan Mart provided the lowest price quotation among the 15 local suppliers that participated in the procurement activity done through Shopping. Moreover, aside from acquiring the most advantageous price for the Municipality of Palauig, Tabing Daan Mart was the only supplier who had sufficient inventory to accommodate the needs of the Municipality, and who was willing to sell the supplies on credit.<sup>[95]</sup>

Simply put, the BAC merely followed and complied with the procurement guidelines and requirements and determined based on the criteria set forth under R.A. No. 9184 and the 2003 IRR that Tabing Daan Mart was the best supplier who can provide the most advantageous price to the Municipality of Palauig.

Culled from the foregoing circumstances, We find no justifiable reason or basis to conclude that Lising was given any unwarranted, unjustified, or unauthorized benefit or preference.

Accordingly, We find no probable cause to indict petitioner for violation of Section 3(e) of R.A. No. 3019.

As a final note, although We generally stay Our hands from interfering with the investigatory and prosecutorial powers of the Ombudsman, We nevertheless shall not hesitate to exercise our power of review if such findings by the Ombudsman are tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

**WHEREFORE**, premises considered, the Petition for *Certiorari* dated April 10, 2017 is hereby **GRANTED**.

The Resolution dated June 30, 2016 and Order dated January 5, 2017 issued by the Office of the Ombudsman insofar as they found probable cause to indict petitioner Corazon C. Reyes for violating Section 3(e) of Republic Act No. 3019, are hereby **REVERSED** and **SET ASIDE**.

Accordingly, the criminal Complaint for violation of Section 3(e) of Republic Act No. 3019, is **DISMISSED** for lack of probable cause.

**SO ORDERED.**

*Caguioa (Chairperson), Inting, Dimaampao and Singh, JJ., concur.*

---

<sup>[1]</sup> *Rollo*, pp. 3-42.

<sup>[2]</sup> *Id.* at 54-62; penned by Graft Investigation and Prosecution Officer II Maxlen C. Balanon and approved by Deputy Ombudsman for Luzon Gerard A. Mosquera.

<sup>[3]</sup> *Id.* at 46-53.

<sup>[4]</sup> ANTI-GRAFT AND CORRUPT PRACTICES ACT; approved on August 17, 1960.

<sup>[5]</sup> Otherwise known as the "GOVERNMENT PROCUREMENT REFORM ACT"; approved on January 10, 2003.

<sup>[6]</sup> *Rollo*, pp. 7-8 and 67.

<sup>[7]</sup> *Id.* at 67.

<sup>[8]</sup> *Id.*

<sup>[9]</sup> *Id.* at 69.

<sup>[10]</sup> *Id.* at 69-70.

<sup>[11]</sup> *Id.* at 70-71.

<sup>[12]</sup> *Id.*

<sup>[13]</sup> *Id.* at 71-72.

<sup>[14]</sup> *Id.* at 76.

<sup>[15]</sup> *Id.* at 76-77.

<sup>[16]</sup> *Id.* at 85-86.

<sup>[17]</sup> *Id.* at 87-88.

<sup>[18]</sup> *Id.* at 88.

<sup>[19]</sup> *Id.* at 54-62.

<sup>[20]</sup> *Id.* at 59-60.

<sup>[21]</sup> *Id.* at 61.

<sup>[22]</sup> *Id.* at 59-61.

<sup>[23]</sup> *Id.* at 46-53.

<sup>[24]</sup> *Id.* at 12-19.

<sup>[25]</sup> *Id.* at 20-23.

<sup>[26]</sup> *Id.* at 24-31.

<sup>[27]</sup> *Id.* at 128-140.

<sup>[28]</sup> *Id.* at 133.

<sup>[29]</sup> **Casing v. Hon. Ombudsman**, 687 Phil. 468, 475 (2012).

[30] **Imingan v. Office of the Honorable Ombudsman, G.R. No. 226420**, March 4, 2020, 934 SCRA 437, 454.

[31] **Pontejos v. Office of the Ombudsman**, 518 Phil. 251, 262-263 (2006).

[32] THE OMBUDSMAN ACT OF 1989; approved on November 17, 1989.

[33] **Gov. Garcia, Jr. v. Office of the Ombudsman**, 747 Phil. 445, 457 (2014).

[34] **Public Attorney's Office vs. Office of the Ombudsman**, 821 Phil. 286, 295 (2017).

[35] **Judge Angeles v. Ombudsman Gutierrez**, 685 Phil. 183, 195 (2012).

[36] **Department of Finance-Revenue Integrity Protection Service v. Enerio, G.R. No. 238630**, May 12, 2021.

[37] **Camp John Hay Development Corp. v. Office of the Ombudsman, G.R. No. 225565**, January 13, 2021; citing **Casing v. Hon. Ombudsman**, 687 Phil. 468, 475-476 (2012).

[38] **Pontejos v. Office of the Ombudsman**, *supra* note 31, at 264.

[39] **Imingan v. Office of the Honorable Ombudsman**, *supra* note 30.

[40] *Id.*

[41] Memorandum No. 199 in the *rollo*.

[42] *Rollo*, p. 58.

[43] **Villafuerte, Jr. v. Commission on Audit, G.R. No. 246053**, April 27, 2021.

[44] **Subic Bay Metropolitan Authority v. Commission on Audit, G.R. No. 230566**, January 22, 2019, 891 SCRA 141, 159-160.

[45] IMPLEMENTING RULES AND REGULATION, Section 48.

[46] *Rollo*, p. 58.

[47] 821 Phil. 681 (2017).

<sup>[48]</sup> *Id.* at 694.

<sup>[49]</sup> The 2003 IRR, Section 52.

<sup>[50]</sup> REPUBLIC ACT NO. 9184, Section 7; see also Section 7 of the 2003 IRR.

<sup>[51]</sup> R.A. No. 9184, Section 48; see also Section 48 of the 2003 IRR.

<sup>[52]</sup> R.A. No. 9184, Section 52; see also Section 52 of the 2003 IRR.

<sup>[53]</sup> The 2003 IRR, Sections 21.2.3 and 21.2.4.

<sup>[54]</sup> The 2003 IRR, Section 54.1.

<sup>[55]</sup> The 2003 IRR, Section 52.

<sup>[56]</sup> The 2003 IRR, Section 48.1.

<sup>[57]</sup> The 2003 IRR, Section 48.2.

<sup>[58]</sup> **Pabillo vs. Commission on Elections**, 758 Phil. 806, 875 (2015).

<sup>[59]</sup> R.A. No. 9184, Section 5(e).

<sup>[60]</sup> The 2003 IRR, Section 52.

<sup>[61]</sup> Emphasis supplied.

<sup>[62]</sup> Emphasis supplied.

<sup>[63]</sup> The 2003 IRR, Section 5(f). Emphasis supplied.

<sup>[64]</sup> The 2003 IRR, Section 5(d). Emphasis supplied.

<sup>[65]</sup> **Osea v. Malaya**, 425 Phil. 920, 926 (2002).

<sup>[66]</sup> **Southern Cross Cement Corporation v. The Philippine Cement Manufacturers Corp.**, 478 Phil. 85, 134 (2004).

<sup>[67]</sup> *Rollo*, p. 20.

<sup>[68]</sup> R.A. No. 9148, Sec. 21 and Sec. 3 (b).

<sup>[69]</sup> *Rollo*, p. 60.

<sup>[70]</sup> **Renales v. People, G.R. Nos. 231530-33 and 231603-08**, June 16, 2021; **Martel v. People, G.R. Nos. 224720-23 and 224765-68**, February 2, 2021; **Sabaldan, Jr. v. Ombudsman, G.R. No. 238014**, June 15, 2020, 938 SCRA 17, 29.

<sup>[71]</sup> 437 Phil. 117 (2002).

<sup>[72]</sup> *Id.* at 133.

<sup>[73]</sup> *Supra*.

<sup>[74]</sup> *Id.* at 28-29.

<sup>[75]</sup> **G.R. Nos. 224648 & 224806-07 and 225188 & 225277**, August 28, 2019, 915 SCRA 547.

<sup>[76]</sup> *Id.* at 573.

<sup>[77]</sup> *Supra* note 70.

<sup>[78]</sup> **Renales v. People, G.R. No. 231530-33**, June 16, 2021; **Chung v Office of the Ombudsman, G.R. No. 239871**, March 18, 2021.

<sup>[79]</sup> **Duque v. Ombudsman and the Fact-Finding Investigation Bureau**, *supra* note 75.

<sup>[80]</sup> **Roy III v. Ombudsman, G.R. No. 225718**, March 4, 2020, 934 SCRA 392, 402.

<sup>[81]</sup> 308 Phil. 660 (1994).

<sup>[82]</sup> *Id.* at 693-694.

<sup>[83]</sup> **Sistoza v. Desierto**, 437 Phil. 117, 130 (2002)

<sup>[84]</sup> **Uriarte v. People**, 540 Phil. 477, 494 (2006).

<sup>[85]</sup> *Rollo*, pp. 58-60.

<sup>[86]</sup> *Id.* at 58.

<sup>[87]</sup> *Id.*

<sup>[88]</sup> *Id.* at 31.

<sup>[89]</sup> **Villarosa v. People**, G.R. Nos. 233155-63, June 23, 2020, 939 SCRA 502, 540.

<sup>[90]</sup> **People v. Naciongayo**, G.R. No. 243897, June 8, 2020, 937 SCRA 48, 56), citing **Coloma, Jr. v. Sandiganbayan**, 744 Phil. 214, 231-232 (2014).

<sup>[91]</sup> **Giangan v. People**, 767 Phil. 738, 746 & 748 (2015).

<sup>[92]</sup> **Sison v. People**, 628 Phil. 573 (2010).

<sup>[93]</sup> *Id.* at 585.

<sup>[94]</sup> **Macairan v. People**, G.R. Nos. 215104, 215120 & 215147, 215212, 215354-55, 215377 & 215923, and 215541, March 18, 2021, citing **Martel v. People**, *supra* note 70.

<sup>[95]</sup> *Rollo*, p. 31.

---