

EXECUTIVE JUDGE OSCAR R. VICTORIANO, CFI NEGROS OCCIDENTAL, COMPLAINANT, VS. ABRAHAM B. ALVIER, CLERK III, OFFICE OF THE CLERK OF COURT, CFI NEGROS OCCIDENTAL, RESPONDENT.

A.M. No. P-1597. March 01, 1978

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is an administrative charge against Abraham B. Alvior, Clerk III, Administrative Staff, Office of the Clerk of Court, CFI Negros Occidental (hereinafter referred to as respondent) for dishonesty, neglect of duty, and misconduct in office, which was initiated by Executive Judge Oscar R. Victoriano, CFI Negros Occidental (hereinafter referred to as complainant) in a memorandum dated December 8, 1976.

The records of this case reveal that:

On July 28, 1976, upon instruction of Atty. Aquiles G. Java, officer-in-charge of the Office of the Clerk of Court, Court of First Instance of Negros Occidental, respondent prepared and signed Requisition and Issue Voucher (RIV) No. 443, requisitioning various office supplies for use of the administrative staff of the Court of First Instance. Said voucher, which was presented to and approved by Atty. Aquiles G. Java, was thereafter filed with the Office of the Provincial Canvass Committee. The latter body failed to act immediately on the matter due to the absence of a complete description opposite the items. As per testimony of Nelson Villaroza, Rural Development Technician of the Provincial Barangay Secretariat assigned to the Provincial Canvass Committee with specific duty to examine items or articles delivered as to quantity, quality, specifications and prices thereof, when RIV 443 was delivered to his office in July, 1976, he could not take any action thereon as there was no specification of the items in the voucher. Villaroza thereupon informed respondent through a certain Mr. Caponpon of the omissions. Villaroza further declared that someone got back the voucher for respondent sometime in the second week of October, and that subsequently, the said voucher was brought back to him (Villaroza) on October 19, 1976 by one Genaro Garbanzos, duly accomplished, together with the different requests for quotations already filled up, namely: request for quotation for Gella & Sons, for Lopue's Mercantile Company, for Ernado Commercial, and for Twin Supply.

After confirming the fact of delivery of the items covered by subject requisition voucher by Ernado Commercial, and the signing of the Abstract Quotation of Price, an inspection was made, and it was discovered that the 100 bundles of braided abaca twine (item No. 4) were overpriced at P12.00 per unit; and that as a result, Atty. Java was directed to inquire from the office of the Provincial Governor how such overpricing could have been sanctioned by the Provincial Canvass Committee.

Accordingly, the civil security unit of the office of the Provincial Governor of Negros Occidental conducted an investigation and submitted its written report dated November 22, 1976, finding that a possible substitution of inferior quality abaca twine may have been effected by Genaro Garbanzos (a representative or middleman of

Ernado Commercial, in whose favor the award was made), and requesting appropriate action with respect to herein respondent, who connived with the former (Genaro Garbanzos) in the commission of the fraud.

On the basis of the abovementioned report, Executive Judge Oscar R. Victoriano, CFI Negros Occidental, in a memorandum dated December 8, 1976, initiated an administrative charge against respondent for dishonesty, neglect of duty and misconduct in office, giving him a period of five (5) days from receipt within which to show cause in writing why he should not be disciplined for his involvement in the transaction, with option to have a formal administrative investigation. Respondent filed a written answer and requested for a formal administrative hearing, which Judge Victoriano conducted from January 17 until March 1, 1977.

In his answer, respondent denied having had any participation in the canvass of prices of the items covered by such requisition and issue voucher, claiming that it is the duty of the Provincial Canvass Committee to determine the reasonableness of the prices; that the abaca twine delivered by Garbanzos and accepted by him conformed to the specification in RIV 443 which he submitted and with a sample he had presented to Garbanzos before the delivery, and hence, there was no substitution; that all the items were first inspected and accepted by the representative of the Commission on Audit before they were received by him; and that the charge of his having received P200.00 from Garbanzos is absolutely false.

Investigation by Judge Victoriano revealed that Genaro Garbanzos manipulated the canvass to insure that Ernado Commercial which he represented would be declared the lowest bidder. Garbanzos admitted that respondent gave him the requisition and issue voucher after his assistance was requested together with the blank forms of the requests for quotations asking him to make the canvass of prices. He then placed the prices of the various items on the request for quotation for Ernado Commercial and signed it in behalf of Ernado Commercial. He asked for the prices of the items from Lopue's Mercantile Company which he placed on the request for quotation and had it signed by one of the salesgirls. He did the same thing with respect to the request for quotation of Gella & Sons. After filling up the requests for quotation, he left them on the table of Villaroza. Villaroza declared along the same lines, stating that on the third week of October, 1976 the requisition and issue voucher was returned to his office by Garbanzos with some of the items already complete with specifications and attached thereto were the requests for quotations of Lopue's Mercantile Company, Gella & Sons, Twin Supply, and Ernado Commercial, as well as the abstract of quotation of prices. He affixed his initial on the requests for quotations for Gella & Sons and Lopue's Mercantile Company and on the abstract of quotations which would indicate that the prices were exact and reasonable for the items although the presence of his initials did not mean that he was the one who had canvassed the prices of the various items. Ramonito Padilla, also a member of the Provincial Canvass Committee as representative of the Provincial Governor, declared that the requests for quotations were referred to him by Villaroza, after which he called respondent Alvior who allegedly informed him that he was the one who had made the canvass. Relying on respondent Alvior, who explained to him that the requisition was urgently needed, he (Padilla) directed Villaroza to scrutinize the prices based on previous quotations on file in the office. As the canvass was allegedly done by respondent who represented the requisitioner, a member of the Provincial Committee on Canvass, and considering that according to respondent the items had already been delivered, he (Padilla) decided to affix his signature on the request for quotations as well as on the abstract of quotations.

Investigation further revealed that Ramon Mayoga, Assistant Chief of Division, Office of the Provincial Auditor, stated that between 11:00 and 12:00 o'clock in the morning of October 25, 1976, Garbanzos requested him to inspect the items covered by RIV 443. The requisition and issue voucher, the requests for quotations, the certificate of acceptance, the abstract of bids on quotation of prices and taxpayer's certificate were presented to him, and on the basis of these documents, he inspected the items in the Office of the Clerk of Court in the presence of respondent Alvior and Genaro Garbanzos and found them to be in order as to specifications, quality

and quantity. He then certified on the requisition and issue voucher and on the invoice of Ernado Commercial that the items had been inspected as shown by the stamp mark duly initialed by him. The same stamp mark appears on the certificate of acceptance signed by respondent Alvior. He did not, however, check on the reasonableness or the propriety of the prices as he claims that this was the duty of the Provincial Canvass Committee. After the delivery of the items, Garbanzos prepared the provincial voucher for the amount of P4,128.00 in payment of the supplies delivered by Ernado Commercial, duly approved by Branch Clerk of Court Antonio Pura, since at that time the officer-in-charge, Atty. Aquiles G. Java, was in Manila.

Considering the foregoing findings of facts, Judge Victoriano made the following conclusions and recommendations:

"1. There is no clear nor direct evidence of collusion or connivance between Genaro Garbanzos and respondent Abraham Alvior or Ramonito Padilla and Nelson Villaroza of the Provincial Canvass Committee or Ramon Mayoga of the office of the Provincial Auditor in the overpricing of the abaca twine from which Garbanzos admittedly obtained an 'overprice' of P800.00 on that item alone;

"2. There was definite laxity bordering on negligence on the part of the Provincial Canvass Committee of Negros Occidental, particularly Ramonito Padilla as representative of the Provincial Governor, and Nelson Villaroza, detailed as Canvasser, and Ramon Mayoga, Assistant Division Chief, Office of the Provincial Auditor of Negros Occidental, with duty to inspect deliveries of supplies, which made possible and/or facilitated the subject 'overpricing' of the abaca twine. It is recommended that a copy of this report be authorized by the Supreme Court to be furnished the Provincial Governor and the Provincial Auditor of Negros Occidental for such remedial and disciplinary measures they may deem proper to take warranted by the circumstances.

"3. Respondent Abraham Alvior was likewise negligent or neglectful of duty to a lesser degree in soliciting the assistance of Genaro Garbanzos, a private person having no official connection with the provincial government, and who represented a competing bidder or supplier, to facilitate or expedite approval of the requisition, and in accepting delivery of the abaca twine notwithstanding he was chargeable with knowledge that the price of the article was excessive or exorbitant. He is also chargeable with misconduct in office for having received money from Genaro Garbanzos as token of gratitude in connection with performance of official duty. The charge of dishonesty is not borne out by the evidence.

"Considering that evidence is wanting that he connived with Garbanzos in the overpricing of the subject abaca twine and that he may have been impelled only by a desire to expedite early approval and acquisition of the supplies subject of the requisition urgently needed by the office of the Clerk of Court, and considering that this is the first instance of official misfeasance or malfeasance incurred by respondent who has thus far been in the government service for fifteen (15) years, it is believed - and the undersigned so recommends - that a penalty of suspension for thirty (30) days without pay would be sufficient with admonition that in the future he should observe greater care and prudence in the discharge of his official duties.

"4. With respect to Genaro Garbanzos and Ernado Commercial, it is recommended that they be permanently debarred from transacting business with the provincial government in the matter of procurement of supplies

and materials, without prejudice to considering the possible prosecution of Genaro Garbanzos under existing law for fraudulent and illegal acts committed by him" (pp. 23-25, rec.).

WE agree with the findings of Judge Victoriano but not without modification. Indeed, the overpricing of the abaca twine by Garbanzos could not have been perpetrated were it not for the laxity or negligence of the Provincial Canvass Committee, particularly Ramonito Padilla and Nelson Villaroza. This is apparent from Section 13 of Presidential Decree No. 526 which makes it incumbent on members of the Canvass Committee to personally undertake the canvass of prices. The procedure observed by Garbanzos, therefore, was not only highly irregular but clearly contrary to law.

Respondent Alvior's responsibility, however is more serious than mere negligence. Respondent herein should be held liable for gross neglect of duty notwithstanding that the evidence is wanting as to direct connivance between him and Garbanzos. This is also a clear case of misconduct in office as well as dishonesty, which warrant a criminal prosecution for indirect bribery under Article 211 of the Revised Penal Code.

Anent respondent's gross neglect of duty, even assuming arguendo that respondent had no actual participation in the canvass and thus, had nothing to do with the manipulation of the price quotations effected by Garbanzos, there is not a scintilla of doubt that it was not proper for him (respondent Alvior) as requisitioner to have solicited the assistance of Garbanzos to facilitate the approval of the requisition, thereby affording the latter the opportunity to manipulate the prices to insure that Ernado Commercial, which he represented, would be declared the lowest bidder.

Moreover, respondent Alvior perused the requests for quotations and even signed the abstract of bids which admittedly showed the prices of the items as awarded to Ernado Commercial. He could not have failed to notice that the unit price of the abaca twine described as "big" was patently excessive at P12.00 per unit for each bundle of the braided type, which he actually received. He could not have shut his eyes to the reality that is the apparent overpricing of the abaca twine on the mere excuse that the primary responsibility for determination of the reasonableness of the price lies with the Canvass Committee. Respondent could have either refused acceptance of the items, or at the very least, he could have called the attention of either the Provincial Auditor or the Canvass Committee. His failure to resort to either manifested not the slightest concern for the interests of the government.

The charge against respondent Alvior for misconduct in office for having received money, in connection with the performance of his official duty, from Garbanzos, as token of the latter's gratitude, is clearly meritorious. Respondent's acceptance of money under the circumstances is a dishonest act. In his report, after conducting the investigation (pp. 21-22), Judge Victoriano stated:

"x x x That he was chargeable with knowledge that Garbanzos would realize no little profit from the transaction must also be assumed. For Garbanzos declared under oath that he gave respondent P200.00 in token of his gratitude. He was grateful because respondent gave him the opportunity to make such a big profit when requested to help facilitate or expedite the requisition. Or, probably because respondent did not make any fuss regarding the price of the abaca twine. At any rate, it was improper for respondent to have received any gift or any amount from Garbanzos in connection with the performance of official duties. Respondent vehemently insists that no credit should be accorded Garbanzos' testimony on this score. But the record shows no plausible reason or motive why Garbanzos would wittingly make such imputation against respondent if it were not true, considering that in the course of his testimony he also made damaging admissions against himself. The suggestion that Garbanzos tried to implicate respondent in an attempt to save himself can hardly merit credence. For, as already adverted to, his having admitted giving sums of money as part of his 'rapport', not only to respondent but also to Villaroza and Mayoga, equally implicate him and places him in a bad light.

There is no evidence of misunderstanding, previous altercation, or differences between respondent and Garbanzos as to constitute sufficient motive for the latter to incriminate him. On the contrary, Garbanzos gave the amount to respondent impelled by a feeling of gratitude for him."

Being a public officer, and having accepted a gift in the form of money which was offered to him by reason of his office, herein respondent Alvior is chargeable with indirect bribery punishable under Article 211 of the Revised Penal Code. The fact that the evidence is wanting as to direct connivance between Alvior and Garbanzos is of no moment since in indirect bribery "it is not necessary that the officer should do any particular act or even promise to do an act, as it is enough that he accepts gifts offered to him by reason of his office" (See: L.B. Reyes, The Revised Penal Code, Book II [Rev. Ed. 1971], p. 309; underlining supplied).

WHEREFORE, RESPONDENT ABRAHAM B. ALVIOR IS HEREBY DISMISSED FROM THE SERVICE WITH FORFEITURE OF ALL RETIREMENT PRIVILEGES AND WITH PREJUDICE TO RE-INSTATEMENT IN THE NATIONAL AND LOCAL GOVERNMENT AS WELL AS IN ANY GOVERNMENT INSTRUMENTALITY OR AGENCY INCLUDING GOVERNMENT-OWNED OR - CONTROLLED CORPORATIONS.

A COPY OF THIS DECISION IS LIKEWISE HEREBY FURNISHED:

(A) THE OFFICE OF THE PROVINCIAL FISCAL FOR FURTHER INVESTIGATION REGARDING THE CRIMINAL PROSECUTION OF RESPONDENT ALVIOR FOR INDIRECT BRIBERY;

(B) THE HONORABLE PROVINCIAL GOVERNOR AS WELL AS THE PROVINCIAL AUDITOR, PROVINCE OF NEGROS OCCIDENTAL, FOR WHATEVER REMEDIAL AND DISCIPLINARY MEASURES THEY MAY DEEM PROPER TO TAKE UNDER THE CIRCUMSTANCES; AND

(C) THE RECORDS SECTION TO BE ENTERED IN THE 201 FILE OF RESPONDENT ABRAHAM B. ALVIOR.

SO ORDERED.

Castro, C.J., Fernando, Teehankee, Barredo, Antonio, Muñoz Palma, Aquino, Concepcion, Jr., Santos, Fernandez, and Guerrero, JJ., concur.

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