

MANUEL C. ROXAS AND AHMED S. NACPIL, PETITIONERS, VS. HON. CONRADO M. VASQUEZ, OMBUDSMAN AND JOSE DE FERRER, DEPUTY SPECIAL PROSECUTOR, AND THE HONORABLE SANDIGANBAYAN, RESPONDE...

G.R. No. 114944. May 29, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Before us is the Motion for Reconsideration of petitioner Manuel C. Roxas seeking to set aside our Decision dated June 19, 2001 which dismissed the instant petition, anchored on the following arguments:

I

WITH ALL DUE RESPECT, THE INSTANT CASE DOES NOT ATTEMPT TO UNNECESSARILY AND EXCESSIVELY ENTANGLE THE HONORABLE COURT WITH THE TASK OF UNDULY REVIEWING OR INTERFERING WITH THE PROSECUTORIAL PREROGATIVES OF THE OMBUDSMAN.

II

WITH ALL DUE RESPECT, THERE EXIST MORE THAN SUFFICIENT REASONS FOR THE HONORABLE COURT TO FIND VIOLATION OF DUE PROCESS AND GRAVE ABUSE OF DISCRETION IN THE INSTANT CASE WHEN THE TOTALITY OF THE CIRCUMSTANCES IS TESTED IN THE CRUCIBLE OF FUNDAMENTAL FAIRNESS.

III

WITH ALL DUE RESPECT, THE DECISION HAS SERIOUS AND FAR-REACHING IMPLICATIONS IN THE ADMINISTRATION OF JUSTICE CONSIDERING THAT BECAUSE OF IT, NO DECISION OF THE OMBUDSMAN IN THE DETERMINATION OF PROBABLE CAUSE WILL EVER ACHIEVE FINALITY.[1]

Respondents were required to file their respective comments to the motion.[2] In its Comment,[3] the Office of the Special Prosecutor argued that the issues presented in the Motion for Reconsideration have already been raised, resolved and passed upon by this Court. On the other hand, the Solicitor General, in his Comment,[4] maintained that petitioner Roxas was not denied due process since he was no stranger to the proceedings; the reinvestigation was just a continuation of the investigation of the case where petitioner was a party-respondent.

In order to resolve the Motion for Reconsideration, it is helpful to restate the salient antecedent facts.

Manuel C. Roxas was the Chairman, while Ahmed S. Nacpil was a Member, of the Bids and Awards Committee of the Philippine Constabulary–Integrated National Police (PC-INP). The PC-INP invited bids for the supply of sixty-five units of fire trucks. After the public bidding, General Cesar P. Nazareno created a Technical Evaluation Committee, headed by General Mario Tanchanco, which was sent to Korea and Japan to conduct ocular

inspections of the plant facilities and equipment of the five qualified proponents. Thereafter, the Technical Evaluation Committee recommended for procurement the Morita Isuzu and Nikki-Hino fire trucks.

Meanwhile, the Bids and Awards Committee voted to recommend to Director General Cesar Nazareno the procurement of Ssangyong fire trucks. Instead of acting on this recommendation, Gen. Nazareno created a Review Committee headed by Gen. Gerardo N. Flores, which found that there was a failure to bid. Gen. Nazareno thus instructed the Bids and Awards Committee to reconsider its earlier recommendation and to conduct further evaluation of the proponents, but this time limiting itself to the two Japanese brands recommended by the Technical Evaluation Committee, namely, Morita Isuzu and Nikki-Hino. The Bids and Awards Committee subsequently voted to award the contract to the Tahei Co., Ltd., manufacturer of Nikki-Hino.[5]

Accordingly, the contract of sale of sixty-five units of Nikki-Hino fire trucks was executed between Gen. Nazareno, on behalf of the PC-INP, and Tahei Company, Ltd. The corresponding Purchase Order was prepared and signed by Col. Nicasio Custodio, Chief of the PNP Logistics Support Command; Major Obedio Espeña, Acting Chief, PNP Procurement Center; Gen. Cesar Nazareno; and DILG Secretary Luis Santos.

Thereafter, Custodio, Espeña and Nazareno, together with the PNP Chief Accountant, Generosa Ramirez, prepared the disbursement vouchers, authorizing the payment to Tahei Co., Ltd. of the sum of P167,335,177.24, as marginal deposit for the sixty-five fire trucks.

The COA subsequently discovered that while the disbursement voucher indicated the bid price of Tahei Co., Ltd. to be only P2,292,784.00 per unit, the purchase order showed the unit price as P2,585,562.00, resulting in a discrepancy of P292,778.00 per unit of fire truck or a total of P19,030,570.00.

On February 12, 1993, DILG Secretary Rafael Alunan III filed a complaint with the Ombudsman for violation of Section 3 (e) of Republic Act No. 3019 against the following:

1. Dir. Gen. Cesar Nazareno, PNP
2. Dep. Dir. Manuel Roxas, PNP
3. Fire Marshal Mario Tanchanco
4. Fire B/Gen. Diosdado Godoy (Ret.)
5. P/Sr. Supt. Ahmed Nacpil, PNP
6. P/Supt. Juhan Kairan, PNP
7. CInsp. Reynaldo Osea, PNP
8. Dep. Dir. Gen. Gerardo Flores, PNP
9. Dir. Nicasio Custodio, PNP
10. Supt. Obedio Espeña, PNP
11. Former DILG Secretary Luis Santos
12. Ms. Generosa Ramirez

After preliminary investigation, the Deputy Ombudsman for the Military recommended the indictment of all respondents, except Generosa Ramirez.[6] On review, the Office of the Special Prosecutor recommended the dismissal of the complaints against Manuel Roxas, Ahmed Nacpil, Diosdado Codoy, Juhan Kairan and Generosa Ramirez.[7] This was approved by the Special Prosecutor and the Ombudsman in a Memorandum dated April 15, 1993.

Hence, formal charges were filed with the Sandiganbayan against Nazareno, Flores, Tanchanco, Custodio, Osia, Espeña and Santos, docketed as Criminal Case No. 18956.[8] Roxas, Nacpil, Codoy, Kairan and Ramirez were not included in the criminal information.

Flores and Tanchanco moved for a reinvestigation, which was granted. Thereafter, on October 19, 1993, the

Office of the Special Prosecutor recommended the dismissal of the charges against Flores and Tanchanco. In the same resolution, however, the Special Prosecutor made a sudden turnabout as regards Roxas, Nacpil and Kairan, and ordered their inclusion as accused in Criminal Case No. 18956. Deputy Special Prosecutor Jose de Ferrer voted for the approval of the recommendation. Special Prosecutor Aniano A. Desierto dissented. Ombudsman Conrado M. Vasquez approved the recommendation.

Roxas, Nacpil and Kairan filed a Motion for Reconsideration. The Review Committee of the Office of the Special Prosecutor recommended that the Motion for Reconsideration be granted and that the charge against the movants be dismissed. However, Deputy Special Prosecutor de Ferrer and Ombudsman Vasquez disapproved the recommendation. Accordingly, the Office of the Ombudsman filed an amended information with the Sandiganbayan impleading Roxas, Nacpil and Kairan as co-accused.[9]

Thus, Roxas and Nacpil filed with this Court the instant petition for certiorari and prohibition, seeking to annul the orders of the Ombudsman directing their inclusion as accused in Criminal Case No. 18956.

The petition was dismissed in our Decision dated June 19, 2001 on the ground that the Ombudsman did not lose jurisdiction over petitioners after the charges against them were dismissed, considering that the reinvestigation was merely a repeat investigation. Likewise, petitioners were not denied due process when the Ombudsman issued the assailed orders because they were able to file their counter-affidavits during the preliminary investigation.

After a careful and meticulous review of the case, we find merit in the Motion for Reconsideration.

The records show that the participation of petitioner Roxas in the transactions complained of is limited to the following:

- (1) He was the Chairman of the Bids and Awards Committee of the PC-INP.
- (2) He wrote a letter to Mrs. Carol de Jesus of Ssangyong Corporation informing her that her company had been selected as the supplier of fire trucks.
- (3) Upon the directive of Gen. Nazareno, he conducted an immediate review of the recommendation of the Bids and Awards Committee which awarded the supply contract to Ssangyong and, instead, adopted the findings and recommendation of the Review Committee, again upon specific orders of Nazareno.
- (4) He submitted a memorandum to Gen. Nazareno that Majority of the members of the Bids and Awards Committee have chosen the Nikki-Hino brand over Morita Isuzu.

Based on these established facts, the Review Committee of the Office of the Special Prosecutor, in a Memorandum dated April 15, 1993, recommended the dismissal of the charges against petitioner on the following considerations:

The action of [the Bids and Awards] Committee in choosing Ssangyong over Kanglim does not appear to have caused any damage to the Government or any party because it did not materialize. This action was nullified on order of Gen. Nazareno and upon recommendation of the Review Committee. Therefore, this does not merit a lengthy discussion. Suffice it to stay that the procedure followed by the committee which resulted in the choices of Ssangyong does not indicate any irregularity. Neither does it suggest an unwarranted choice considering that Ssangyong was the next lower bidder to V.G. Roxas-Kanglim.

What is of significance was the action of the INP BAC which chose Nikki-Hino as the final winning bidder. It is this action that resulted in the nullification of the previous action by the INP BAC and the purchase of 56 units of fire trucks at a price much higher than the prices for Kanglim or Ssangyong Fire Trucks.

Records show that Gen. Nazareno issued the Order directing this Committee to reconsider its previous actions. To this Order was attached the recommendation of Chairman Mario C. Tanchanco of the Technical Evaluation Committee for the consideration of the Japanese fire trucks only namely: Nikki Hino and Morita Isuzu. In other words, the authority of the INP BAC this time to conduct the bidding was limited to only Nikki Hino and Morita Isuzu by no less than the approving authority and the highest ranking commander of the INP.

This Committee's action, in the light of General Nazareno's order, appeared to be regular and proper because it chose the lowest bidder among the Japanese fire trucks supplied to them by General Nazareno. It could not possibly consider Ssangyong because its previous action choosing Ssangyong was precisely ordered set aside. Neither could it choose Kanglim because this was not recommended in the Tanchanco report which was appended by General Nazareno in the abovestated Order addressed to the INP BAC.

For the foregoing reasons, we find no reason to hold the members of the INP BAC liable for violation of the Anti-Graft Law. However, we make exception to respondent P/Supt. Reynold Osia because he was implicated by Supt. Concordio Apolonio in his sworn statement (page 73, Records) as the one who acted as liaison of General Nazareno in discreetly sending his messages to the members of the INP BAC to vote in favor of Nikki Hino. It can be said that respondent Osia cooperated with General Nazareno in the manipulative scheme to corner the award in favor of Tahei Co., Ltd. We therefore hold respondent Osia liable for violation of the Anti-Graft Law.[10]

The foregoing recommendation was unanimously approved by Deputy Special Prosecutor Jose De Ferrer, Special Prosecutor Aniano Desierto and Ombudsman Conrado M. Vasquez.

During the reinvestigation, however, the Office of the Special Prosecutor recommended the indictment of petitioners on the assumption that: "The said persons of the Bids and Awards Committee who voted for the Nikki-Hino perfected and awarded the contract to Nikki-Hino. Their cooperation was indispensable for the consummation of the contract which was irregular." [11]

Petitioners filed a motion for reconsideration. On February 10, 1994, the team of Special Prosecution Officer III Reynaldo L. Mendoza, Special Prosecution Officer II Luz L. Quiñones-Marcos and Special Prosecution Officer I Cornelio L. Somido recommended that petitioners' motion for reconsideration be granted, saying:

It appears that the charge against respondents Roxas, Nacpil and Kairan was previously dismissed by this Office by virtue of the approved resolution dated April 15, 1993. For this reason, as far as the said respondents are concerned, there being no motion or reconsideration filed by the complainant (underscoring supplied), the said respondents ceased to be parties in this case. Consequently, the mere filing of motions for reconsideration by those previously indicted, without questioning the dismissal of the charge against the said respondents, could not and should not be made the basis for impleading them as accused in this case without violating their right to due process.[12]

At first blush, it would appear that the findings of the Special Prosecution Officers on April 15, 1993 and February 10, 1994 are well supported by the evidence presented during the preliminary investigation. This notwithstanding, the Deputy Special Prosecutor and the Ombudsman, in their marginal notes, disapproved the recommendation on February 10, 1994.

Ordinarily, we will not interfere with the discretion of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probable guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.[13] However, we find that the case at bar falls under one of the recognized exceptions to this rule, more specifically, the constitutional rights of the accused are impaired and the charges are manifestly false.[14] In cases where the Ombudsman and the Special Prosecutor were unable to agree on whether or not probable cause exists, we may interfere with the findings and

conclusions.[15]

Be that as it may, we recognize that the power to investigate offenses of this nature belongs to the Ombudsman and the Special Prosecutor.[16] While the Ombudsman may have erred in disregarding the recommendations of the Special Prosecution Officers which appear to be substantiated by the record, he should be allowed an opportunity to review his decision and, where necessary, correct it.

Furthermore, it appears that petitioners were deprived of due process when the Special Prosecutor reinstated the complaint against them without their knowledge. Due process of law requires that every litigant must be given an opportunity to be heard. He has the right to be present and defend himself in person at every stage of the proceedings.[17]

Under Rule II, Section 7 of Administrative Order No. 07, i.e., the Rules of Procedure of the Office of the Ombudsman, motions for reconsideration or reinvestigation of an approved order or resolution of the Ombudsman or the Deputy Ombudsman must be filed within fifteen (15) days from notice thereof. It is significant to note in this case that no motion for reconsideration was filed from the resolution of the Ombudsman dismissing the charges against petitioners. Hence, petitioners had a right to consider the complaint against them as closed. Indeed, every litigation must come to an end; otherwise, it would become even more intolerable than the wrong and injustice it is designed to correct.[18]

For all intents and purposes, therefore, petitioners were no longer parties in the criminal action. Evidently, the Office of the Special Prosecutor thought so too. It did not give petitioners notice of the reinvestigation, which would have enabled them to participate in the proceedings. But when it later found probable cause against petitioners, it should have first given them notice and afforded them an opportunity to be heard before ordering their inclusion in Criminal Case No. 18956.

The finding of probable cause against petitioners in proceedings which they had neither knowledge of nor participation in violated their right to procedural due process. At the very least, they should have been notified that the complaint against them has not yet been finally disposed of; or that the fight was not yet over, so to speak. They should have been apprised of their possible implication in the criminal case to enable them to meet any new accusations against them head-on, and to prepare for their defense.

WHEREFORE, in view of the foregoing, the Decision dated April June 19, 2001 is RECONSIDERED and SET ASIDE. This case is ordered REMANDED to the Office of the Ombudsman for further proceedings for the determination of probable cause against petitioners Manuel C. Roxas and Ahmed S. Nacpil in OMB-AFP-CRIM-93-0016.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Austria-Martinez, JJ., concur.

[1] Rollo, p. 385.

[2] Ibid., p. 418.

[3] Id., pp. 431-446.

[4] Id., pp. 448-460.

[5] Id., p. 94.

- [6] Record, Vol. I, pp. 4-20.
- [7] Ibid., pp. 21-34.
- [8] Id., pp. 1-3.
- [9] Ibid., Vol. I-A, pp. 467-469.
- [10] Rollo, pp. 129-130.
- [11] Ibid., p. 65.
- [12] Id., pp. 71-72.
- [13] *Venus v. Desierto*, 298 SCRA 196, 214 [1998].
- [14] Ibid.
- [15] *Cabahug v. People, et al.*, G.R. No. 132816, February 5, 2002; *Venus v. Desierto*, *supra*.
- [16] *Uy v. Sandiganbayan*, G.R. Nos. 105965-70, March 20, 2001.
- [17] *People v. Hapa*, G.R. No. 125698, July 19, 2001.
- [18] *Provincial Government of Quezon v. Comelec*, G.R. No. 132885, October 11, 2001.

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