

COL. ARTURO C. FERRER (RET.), PETITIONER, VS. HON. OFFICE OF THE OMBUDSMAN, ROMEO G. DAVID, FORMER ADMINISTRATOR, JOEMARI D. GEROCHI, ADMINISTRATOR, NATIONAL FOOD AUTHORITY (NFA...

G.R. No. 129036. August 06, 2008

Ponente: NACHURA, J.

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NACHURA, J.:

Before us is a petition for review on certiorari under Rule 45 of the Rules of Court seeking the reversal and nullification of the Evaluation Report[1] of the Office of the Ombudsman thru then Graft Investigation Officer (GIO) I Bienvenida A. Gruta, dated October 25, 1996, recommending the dismissal of the complaint of petitioner in OMB-0-96-1986, entitled "Arturo Ferrer v. Romeo David, et al.," and her Order[2] dated February 11, 1997, denying with finality petitioner's motion for reconsideration.

On April 6, 1993, then NFA Administrator respondent Romeo David (David) issued Special Order No. 04-07 on the basis of which the National Food Authority (NFA) Prequalification, Bids and Awards Committee (PBAC) for security services was formed. The PBAC was tasked to undertake the pre-qualification of prospective bidders, to evaluate the bids tendered, and to recommend to the Administrator the bids accepted for NFA's five areas of operation nationwide. The PBAC scheduled the pre-bidding conference and the bidding on June 4 and 18, 1993, respectively, but the same were reset to June 18 and 30, 1993 to give more time for participating bidders to comply with the documentary requirements.

Odin Security Agency (Odin), owned by petitioner, retired Col. Arturo C. Ferrer (Ferrer), opted to bid in NFA's Area III. Odin was disqualified during the accreditation or pre-qualification stage, but Odin protested and the disqualification was later reconsidered.

On June 21, 1994, the PBAC conducted the public bidding for the security services of NFA. Among the participants in the said public bidding were Metroguard and Protective Security Agency of the Philippines (Metroguard) and Davao Security and Investigation Agency, Inc. (DASIA). Metroguard and DASIA were admittedly "sister" agencies. On one hand, Metroguard selected Areas III and IV as its preferred areas, with Area V as its conditional area. DASIA, on the other hand, chose Area IV as its preferred area and Areas III and V as conditional areas.

Having perceived a collusion between DASIA and Metroguard, not only because of their identical bid price, but also for having respectively withdrawn their bid proposals in an area or areas in favor of the other (Metroguard withdrew its bid proposal in Area V in favor of DASIA, and DASIA also yielded its bid proposals in Areas III and IV in favor of Metroguard), the other participating bidders, including Odin, protested.

Respondent David sought an opinion from the Office of the Government Corporate Counsel (OGCC) regarding the alleged collusion between Metroguard and DASIA. In answer, the OGCC issued Opinion No. 324[3] dated

December 19, 1994 stating that the bid proposal of both Metroguard and DASIA should be rejected for being collusive as indicated by the identical bid cost, especially coming from "sister" agencies. This opinion was reiterated by the OGCC in its Opinion No. 056[4] dated March 2, 1995 and Opinion No. 081[5] dated March 28, 1995. Consequently, the bids of the two agencies were rejected by NFA.

Aggrieved after the denial of its request for reconsideration, DASIA sought judicial intervention by filing a complaint[6] against respondents David and Francisco G. Cordoba, Jr. (Cordoba), as NFA Administrator and PBAC Chairman, respectively, before the Regional Trial Court (RTC) of Davao City for the "Declaration of Disqualification of Plaintiff in the Public Bidding Illegal, with Prayer for Preliminary Injunction and for the Immediate Issuance of Temporary Restraining Order." Said case was docketed as Civil Case No. 23, 531-95.

After trial, the RTC rendered its Decision[7] on November 24, 1995 declaring the rejection of DASIA's bid invalid and illegal, in violation of its right to due process, and ordering David and Cordoba to consider its bid in determining the award of the contract for security services in NFA areas of operation nationwide.

David and Cordoba appealed the Decision of the RTC to the Court of Appeals (CA). During the pendency of the appeal, respondents proceeded to award the security service contracts to both Metroguard and DASIA.

This prompted petitioner to file on August 23, 1996 a Complaint-Affidavit against respondents before the Office of the Ombudsman, charging them with violations of Section 3(e)[8] and (g)[9] of Republic Act (R.A.) No. 3019 (Anti-Graft and Corrupt Practices Act). The complaint was docketed as OMB-0-96-1986.

The Office of the Ombudsman dismissed outright the complaint for lack of merit based on the Evaluation Report of GIO Gruta dated October 25, 1996. The said report was approved by then Ombudsman Aniano A. Desierto on November 27, 1996. Ratiocinating on her recommendation for the dismissal of the Complaint-Affidavit, GIO Gruta said -

Curiously, a phrase, "RELATED (TO) OMB-0-96-1552" is written on the first page of the original complaint-affidavit. A thorough comparative study of the instant complaint and that of OMB-0-96-1552 which is entitled "Eugenio M. Revita vs. Romeo G. David, et al., reveals the following observations:

- 1). the two cases have identical respondents;
- 2). they have identical issues as enumerated above;
- 3). the complainants are different persons although both represent security agencies which participated in the bidding conducted by NFA for security services last June 21, 1994;
- 4). a preliminary investigation was already completed on OMB-0-96-1552 and a resolution consisting of 13 pages dismissing the complaint was submitted for review.

The pertinent findings of Atty. Roline M. Ginez-Jabalde in her Resolution dated October 16, 1996, are reproduced below, to wit:

"In our appreciation of the facts involved in this case, we found out that respondent Acting NFA Administrator Gerochi and the Chairman as well as the members of the PBAC for Security Services cannot be faulted for awarding the security services to DASIA for Area III; Metroguard for Area IV; and ACD Security & Investigation Agency for Area V.

The issue on collusion between DASIA and Metroguard has been resolved by the Regional Trial Court Branch 17 of Davao City, thus any hindrance brought about by the opinion of OGCC about the issue of collusion had been put to rest. XXX" (page 10, 4[th] & 5[th] par.)

On the issue of giving undue preference to ACD Security & Investigation Agency which was awarded a

contract despite alleged lack of valid bid bond, Atty. Jabalde finds, to wit:

"x x x The bid of ACD was conditionally accepted as it was able to submit the original endorsement from the GSIS stating the effect that the original bid bond has been extended and the amount of coverage increased subject however to its submission of the original bid bond or a photocopy thereof on or before nine o'clock in the morning of the following day which it did." (page 11, 2[nd] par.)

The undersigned concurs with the above findings which have also settled the three issues raised in the instant complaint.[10]

Petitioner moved to reconsider the dismissal of his Complaint-Affidavit.[11] Respondents David,[12] Joemari D. Gerochi (Gerochi),[13] then Acting NFA Administrator, Cordoba, Evangeline V. Anago (Anago), Benjamin D. Javier (Javier) and Celia Z. Tan (Tan)[14] opposed the motion for reconsideration.

In an Order dated February 11, 1997, the Office of the Ombudsman, thru GIO Gruta, denied with finality the motion for reconsideration. To explain the denial, the said Order stated that -

It is interesting to note that the grounds enumerated by the movant do not contain any true issue on which may be based reconsideration of the resolution in this case. But for the sake of discussion, undersigned investigator chooses to tackle the second and eight[h] grounds advanced by the movant.

Movant cited that there are different facts and circumstances attending his complaint. One of these facts being that Odin was initially disqualified by the NFA-PBAC. The reason for this is the robbery incident at Fort Bonifacio Warehouse of NFA which involved Odin's security guards (Joint comments dated January 30, 1997). On motion for reconsideration, the new set of PBAC members prequalified Odin to participate in the bidding for security agencies scheduled last June 30, 1993.

Movant also mentioned that undersigned investigator failed to make an inquiry about his charge for violation of Section 4, R.A. 5487 as amended which is penalized by cancellation of license to operate security agency.

Clearly, the Office of the Ombudsman has no authority to investigate charges of violation of R.A. 5487, otherwise known as Private Security Agency Law.

Relative to the assertion that undersigned investigator abdicated her sworn duty to evaluate a complaint on its own merit, it should be emphasized that the undersigned spent precious hours studying the complaint and its attached documents before she arrived at the conclusion that the case and Revita's complaint have identical charges and issues arising from the same bidding participated in by the complainants. Movant himself accepted the fact that the two cases are similar having identical respondents, issues and charges. When there are no more legal or factual issues to be resolved, there is no need to conduct preliminary investigation.[15]

Hence, this petition raising the following issues -

6.1 Whether or not petitioner's complaint (OMB-0-96-1986) may be dismissed on the basis of a resolution in another complaint (OMB-0-96-1552) filed by another complainant (Eugenio M. Revita).

6.2. Whether or not the decision of the RTC-Davao, Br. 17, in Civil Case No. 23, 531 may be validly used as the basis by respondents for the award of the contracts for security services in favor of Metroguard and DASIA, notwithstanding the pendency of the appeal of the decision with the Court of Appeals, and despite the opinion of the OGCC that Metroguard and DASIA must be disqualified from the public bidding on the ground of collusion between them.

6.3 Whether or not the Office of the Ombudsman has no authority to investigate charges of violation of Republic Act 5487, otherwise known as the Private Security Agency Law, to determine the criminal liability of respondents.[16]

The petition must fail.

First. Petitioner contends that in issuing the questioned Evaluation Report, GIO Gruta failed to consider the merits of his complaint but simply adopted the Resolution of GIO Ginez-Jabalde in OMB-0-96-1552 which is tantamount to a violation of his right to due process. We disagree.

Under Rule II, Section 2 of Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman), the investigation officer, upon evaluation of the complaint, shall recommend whether it may be:

- a) dismissed outright for want of palpable merit;
- b) referred to respondent for comment;
- c) indorsed to the proper government office or agency which has jurisdiction over the case;
- d) forwarded to the appropriate office or official for fact-finding investigation;
- e) referred for administrative adjudication; or
- f) subjected to a preliminary investigation.

Therefore, the prerogative as to whether or not a complaint may be given due course belongs exclusively to the Office of the Ombudsman, through its assigned investigation officer, who in this case was GIO Gruta. It is apparent that GIO Gruta had carefully studied the complaint which, indeed, raised the very same arguments as in OMB-0-96-1552 pertinent to the alleged collusion between Metroguard and DASIA in the very same public bidding held by NFA on June 21, 1994 and the purported unwarranted benefits given to these security agencies by respondents when they were awarded the security service contracts for the NFA areas of operations said agencies tendered their bids for. Concurring with the recommendation of GIO Ginez-Jabalde in OMB-0-96-1552 to dismiss the complaint, similarly approved by then Ombudsman Desierto, does not necessarily indicate that GIO Gruta did not exercise her independent judgment in this case in concluding that the complaint lodged by petitioner lacks merit. To conduct a preliminary investigation when deemed unnecessary as the same issues being raised had already been resolved would be superfluous.

As regards petitioner's allegation of denial of his right to due process, it should well be remembered that the essence of due process in administrative proceedings is an opportunity to explain one's side or to seek reconsideration of the action or ruling complained of. The requirements thereof are satisfied when the parties are afforded a fair and reasonable chance to air their side of the controversy at hand. Deprivation of due process cannot be successfully invoked where a party was given an opportunity to be heard on his motion for reconsideration.[17]

Second. Petitioner argues that the Office of the Ombudsman was mistaken when it did not see the error on the part of the Administrator and the PBAC of NFA in awarding to Metroguard and DASIA the security service contracts on the basis of the Decision of the RTC, Branch 17, Davao City despite the pendency of its appeal and despite the opinions of the OGCC that there was collusion between the said security agencies. The argument does not persuade.

It bears mentioning that the Decision of the RTC, Branch 17, Davao City already passed upon the opinions of the OGCC and ruled that there was no collusion between Metroguard and DASIA. During the pendency of the appeal before the CA, this Court promulgated its Decision on February 9, 1996 in G.R. Nos. 115121-25 entitled "National Food Authority v. Court of Appeals," declaring illegal and abhorrent the negotiated security service contracts awarded by NFA to several private security agencies in default of a public bidding.

Relevant to the said ruling, the NFA, in 1993, decided to conduct a public bidding for security services in its various areas of operations upon the expiration of the then existing security service contracts. The then incumbent security agencies failed to pre-qualify so that they filed different cases with the RTCs of Quezon City questioning

their disqualification and prayed for the issuance of temporary restraining orders (TROs). The RTCs issued the TROs prayed for and later issued writs of preliminary injunction preventing NFA from proceeding with the bidding. Notices were given to the incumbent security agencies that their extended contracts would not be renewed beyond August 16, 1993 and that then NFA Administrator David contracted the services of new security agencies in the interim to protect the properties and offices of NFA nationwide. The incumbent security agencies filed separate complaints with the RTCs of Quezon City praying that the NFA be prevented from terminating their security services and from implementing the monthly negotiated security service contracts with the new security agencies. The RTCs issued separate orders granting these reliefs. These orders were elevated to the CA in a petition for certiorari with prayer for the issuance of a writ of preliminary injunction and/or TRO to enjoin the RTCs from enforcing their writs in favor of the incumbent security agencies. The CA set aside the writs of preliminary injunction insofar as they ordered the NFA to desist from implementing the termination of the expired security service contracts but declared them legal insofar as they enjoined the NFA from awarding the negotiated security service contracts to the new agencies. After denial of its motion for reconsideration, the NFA went to this Court to question the finding of legality of the writs of preliminary injunction relevant to the award of the new security service contracts. This Court issued a TRO enjoining the implementation of the decision of the CA but directed the NFA to proceed with the restrained bidding. Later, this Court declared the negotiated contracts void.

Thus, with the directive of this Court to proceed with the restrained public bidding for the security services contracts and the declaration that the existing negotiated contracts were illegal, together with the Decision of the RTC, Branch 17, Davao City that there was no collusion between Metroguard and DASIA, which had not been reversed by a higher court, David deemed it fit to award the contracts to Metroguard and DASIA for the areas they bid on, considering that their bids were found by the PBAC as the most advantageous in order to protect the NFA facilities.

Since the CA had not reversed and set aside the decision of the RTC, Branch 17, Davao City at the time GIO Gruta reviewed petitioner's complaint for alleged violation of Section 3(e) and (g) of R.A. No. 3019, the RTC Decision remained controlling. Thus, GIO Gruta was correct in dismissing the charge for lack of merit.

Third. Petitioner posits that the Office of the Ombudsman erred in ruling that it had no jurisdiction to investigate charges of violation of R.A. No. 5487 (Private Security Agency Law) for purposes of determining the probable criminal liability of respondents who were officials of NFA. This is erroneous.

The jurisdiction of the Office of the Ombudsman to investigate and prosecute criminal cases pertains to violations of R.A. No. 3019, as amended, R.A. No. 1379,[18] as amended, R.A. No. 6713,[19] Title VII, Chapter II, Section 2 of the Revised Penal Code, and such other offenses committed by public officers and employees in relation to office.[20]

On the other hand, in R.A. No. 5487, it is the Philippine National Police (PNP) that exercises general supervision over the operation of all private detective and watchman security guard agencies.[21] It has the exclusive authority to regulate and to issue the required licenses to operate security and protective agencies.[22]

In this case, in the absence of a declaration from the PNP that a violation of the said law was committed by Metroguard and DASIA, the act of the NFA officials in awarding the security service contracts to the said agencies after a showing that their bids were the most advantageous to the government is presumed to be valid.

Verily, the Court has almost always adopted, and quite aptly, a policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers. The Ombudsman has the power to dismiss a complaint outright without going through a preliminary investigation. To insulate the Office of the Ombudsman from outside pressure and improper influence, the Constitution, as well as R.A. No. 6770,[23] saw fit to endow that office with

a wide latitude of investigatory and prosecutory powers, virtually free from legislative, executive, or judicial intervention. If the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings unless tainted with grave abuse of discretion. The Ombudsman has discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. It is basically his judgment call.[24]

This rule is also practical. The work of the courts will be seriously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman in regard to the complaints filed before it, in much the same manner that the courts would be swamped with numerous cases if they are compelled to review the exercise of discretion on the part of fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint.[25]

Grave abuse of discretion is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.[26] No such circumstance obtains in this case.

WHEREFORE, the petition is DENIED for lack of merit. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Rollo, pp. 35-37.

[2] Id. at 39-43.

[3] Id. at 85-91.

[4] Id. at 93-94.

[5] Id. at 96-100.

[6] Id. at 102-113.

[7] Id. at 115-128.

[8] Section 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[9] (g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

[10] Rollo, pp. 36-37.

[11] Id. at 141-147.

[12] Id. at 149-150.

[13] Id. at 153-159.

[14] Id. at 158-168.

[15] Id. at 40-41.

[16] Id. at 16-17.

[17] *Ledesma v. Court of Appeals*, G.R. No. 166780, December 27, 2007, 541 SCRA 444, 452-453; *Paat v. Court of Appeals*, 334 Phil. 146, 156 (1997).

[18] An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefor.

[19] Code of Conduct and Ethical Standards for Public Officials and Employees.

[20] Rule II, Section 1, Administrative Order No. 07.

[21] Section 11. Supervision of the Philippine Constabulary (now PNP). - Upon approval of this Act, the Philippine Constabulary (now PNP) shall exercise general supervision over the operation of all private detective and watchman or security guard agencies.

[22] Section 6. License Necessary. - No person shall engage in the business of, or act either as a private detective, or detective agency; and either engage in the occupation, calling or employment of watchman or in the business of watchman's agency without first having obtained the necessary permit from the Chief, Philippine Constabulary (now PNP) which permit as approved is prerequisite in obtaining a license or license certificate x x x.

[23] The Ombudsman Act of 1989.

[24] *Soriano v. Marcelo*, G.R. No. 163017, June 18, 2008.

[25] *Albay Accredited Constructors Association, Inc. v. Desierto*, G.R. No. 133517, January 30, 2006, 480 SCRA 520, 536.

[26] *Feliciano Galvante v. Hon. Orlando C. Casimiro, et al.*, G.R. No. 162808, April 22, 2008.

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