DR. JUANITO RUBIO, PETITIONER, VS. THE HONORABLE OMBUDSMAN, HONORABLE SANDIGANBAYAN AND BAYANI MIRA, RESPONDENTS.

G.R. No. 171609. August 17, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Certiorari with Special Prayer for the Issuance of a Temporary Restraining Order[1] assailing the Resolution[2] dated August 1, 2005 and Order[3] dated December 7, 2005 of the Office of the Ombudsman in OMB-C-C-04-0345-G.

The facts are:

Dr. Juanito A. Rubio, petitioner, is the Assistant Secretary for Finance and Management of the Department of Health and the Executive Director of the Lung Center of the Philippines (Lung Center).

Bayani Mira, private respondent, on the other hand, is the Operations Officer of Merit Protection Investigation Agency (Merit), a domestic corporation engaged in the business of providing security and investigation services.

On July 10, 2003, the Lung Center, through its Bids and Awards Committee (BAC), conducted an open bidding for the purpose of determining the security service which will protect and guard its properties and installations and maintain peace and order within its premises.

On July 17, 2003, a pre-bid conference was held. It was attended by representatives from various security services. On July 24, 2003, the opening of the bids was conducted. The bid proposal/abstract of bids is summarized as follows:

Agency Bid Proposal
(Per Security Guard)

Merit Protection
Investigation
Agency

P12, 000.00

Star Special Watchman
and Detective Agency
P14, 000.00

Starforce Security and
Allied Services
P14, 000.00

Arm Corporate Security
Services P13, 630.00 (day);
P14, 709.90 (night)

On July 31, 2003, Starforce Security and Allied Services (Starforce) brought to the attention of petitioner that Merit failed to comply with Memorandum Circular NR. 1, Series of 2001 issued by the Philippine Association of Detective and Protective Agency Operators (PADPAO), Inc. providing for standard contract rate for security guard services.

On August 1, 2003, the BAC prepared and signed a Resolution recommending the award of the Lung Center's security service to Merit, the latter tendering the lowest bid at P12,000.00 as monthly salary for each guard which was deemed most advantageous to the government. On August 12, 2003, the BAC presented to petitioner its recommendation to award the security service to Merit.

However, petitioner noted that Merit's bid proposal was below the standard contract rate provided by the Memorandum Circular of PADPAO; and that the current rate of P11,530.00 monthly salary per guard of Starforce, the Lung Center's incumbent security agency, is more advantageous to the government.

On August 26, 2003, the BAC prepared and signed another Resolution awarding the security service of the Lung Center to Star Special Watchman and Detective Agency (Star Special). The BAC also forwarded to petitioner the Notice of Award to Star Special, but the same remained unsigned.

Sometime in September 2003, the Lung Center retained its security service contract with Starforce at the old rate at P11,530.00 per guard. On January 6, 2004, Starforce requested the Lung Center a retroactive adjustment of the contract rate from P11,530.00 to P14,000.00 to cover the period from January 2003 to December 2003. On January 12, 2004, the Lung Center's Management Committee granted the request for the adjustment of salary rate but to cover only the period from January 2004 to July 2004.

On January 23, 2004, the security service contract[4] providing the rate of P14,000.00 was signed by the Lung Center and Starforce.

On July 1, 2004, private respondent Bayani Mira of Merit filed with the Office of the Ombudsman a complaint[5] for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act (R.A. No. 3019) against petitioner.

The complaint alleges, among others, that petitioner, in disregarding the results of the public bidding and entering into a contract of security service with Starforce, caused undue injury to the government; and conferred to a private party unwarranted benefit, advantage or preference through manifest partiality, evident bad faith or gross excusable negligence.

In his counter-affidavit,[6] petitioner vehemently denied the allegations and countered that the complaint is a harassment suit from a losing bidder.

On August 1, 2005, the Office of the Ombudsman, through Prosecution Officer Rogelio A. Ringpis, issued a Resolution recommending the filing with the Sandiganbayan of an Information for violation of Section 3(e) of R.A. No. 3019 against petitioner.

On August 3, 2005, the Office of the Ombudsman filed with the Sandiganbayan the corresponding Information which reads:

> The Tanodbayan (Ombudsman), through the undersigned Graft Investigation and Prosecution Officer II, accuses JUANITO RUBIO y ADIARTE of violation of Section 3, paragraph (e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, committed as follows:

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> That on or about January 23, 2004, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused JUANITO RUBIO y ADIARTE, a high ranking officer with Salary Grade 29, being then Assistant Secretary of the Department of Health and concurrent Officer-in Charge of the Lung Center of the Philippines (for brevity Lung Center), a government-owned hospital located at Quezon Avenue Extension, Quezon City, committing the offense herein charged in relation to, while in the performance and taking advantage of his official functions and duties as the then officer-in-charge of the Lung Center, did then and there, willfully, unlawfully and criminally cause undue injury to the Government (Lung Center) by causing the award to Starforce Security and Allied Services, Incorporated (for brevity STARFORCE), a private security agency, the contract of providing security services to Lung Center's properties and installation, covering the period of seven (7) months, from January 1, 2004 to July 31, 2004, inclusive, through manifest partiality and evident bad faith. Although fully knowing that STARFORCE, with its bid of P14, 000.00 monthly salary per guard for eight (8) hours daily duty, was not the lowest bidder, but that of Merit Protection Investigation Agency (MERIT) whose bid was only P12,000.00 per guard, thereby giving STARFORCE unwarranted benefit, advantage and preference, inasmuch as the Lung Center was compelled to pay STARFORCE additional amount of P2, 000.00 per guard per month or P82, 000.00 loss a month given the number of guards deployed at forty one (41) for each month served, to the damage and prejudice of the government in general and the Lung Center, in particular, in the estimated total amount of FIVE HUNDRED SEVENTY FOUR PESOS (P574,000.00), representing the total additional amount paid to STARFORCE for the whole period covered by the contract.
>
> CONTRARY TO LAW.[7]

On December 5, 2005, petitioner timely filed with the Office of the Ombudsman a motion for reconsideration of the latter's August 1, 2005 Resolution. However, in his Order[8] dated December 7, 2005, the Ombudsman denied the motion.

Hence, the present petition.

Petitioner contends that the Ombudsman acted with grave abuse of discretion amounting to lack or in excess of jurisdiction in filing an Information with the Sandiganbayan for violation of Section 3(e) of R.A. No. 3019 against him.

Private respondent counters that the petition lacks of merit.

Case law has it that this Court does not ordinarily interfere with the discretion of the Office of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts if necessary. Certainly, it has been the policy of this Court to vest upon the Office of the Ombudsman wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints.[9]

However, while it is the function of the Ombudsman to determine whether or not the petitioner should be subjected to the expense, rigors and embarrassment of trial, he cannot do so arbitrarily. This seemingly exclusive and unilateral authority of the Ombudsman must be tempered by the Court when powers of prosecution are in danger of being used for persecution.[10]

Section 3(e) of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act states:

> Sec. 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 x x x x x

> e. Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefit, 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 of government corporations charged with the grant of licenses or permits or other concessions.

To hold a person liable under this section, the concurrence of the following elements must be established beyond reasonable doubt by the prosecution:

> (1) that the accused is a public officer or a private person charged in conspiracy with the former;
>
> (2) that said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public positions;
>
> (3) that he or she causes undue injury to any party, whether the government or a private party; and
>
> (4) that the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.[11]

As may be noted, what contextually is punishable is the act of causing any undue injury to any party, or the giving to any private party unwarranted benefits, advantage or preference in the discharge of the public officer's functions.[12] The records disclose that Merit indeed tendered the lowest bid of Twelve Thousand Pesos (PP12,000.00) salary per month for every guard who will render eight hours of work per day. In fact, the BAC recommended to petitioner to award the security service contract to Merit. However, petitioner declined because Merit's bid price rate violates PADPAO's Memorandum Circular NR. 1, Series of 2001, the pertinent portion of which is reproduced hereunder:

MEMORANDUM CIRCULAR
NR 1, Series of 2001

> WHEREAS, PADPAO, in its efforts to professionalize the industry, is desirous of standardizing the contract rate for security guard services, which rate must be adequate and in conformity with current labor and social legislation;
>
> WHEREAS, the wages and other benefits due to a security guard are covered by the Labor Code of the Philippines, as amended by various laws and wage orders;
>
> WHEREAS, it is necessary to effect adjustments in the salaries of the security guards and in the contract rate for security guard services to be able to comply with the aforementioned laws;
>
> NOW, WHEREFORE, taking into account the wages and benefits due to a security guard as prescribed by the current wage orders, and adding thereto a reasonable allowance for overhead and margin and the Value Added Tax (VAT), the PADPAO has the minimum contract rate that should be adopted immediately and uniformly in the National Capital Region as follows:
>
> 5-Nov-01 1-Jan-02 4-Feb-02
>
> Contract rate per month per guard service of eight (8) hours duty per day
>
> P13,500.00
>
> P13,525.00
>
> P14, 000.00
>
> x x x

> Thus, in keeping with proper ethical procedures within the Security Industry and in the interest of unity within the organization, the members resolved and bound themselves collectively:
>
> 1. To observe, adhere and comply with the new minimum with the new standard rates referred to in the preceding paragraph, as the MINIMUM CONTRACT RATES, and to compensate the guards and employees in accordance with the provisions of the Labor Code, as amended by various laws and wage orders.
>
> 2. To adhere strictly with the provisions of Section 1, paragraphs C and (F) of the Rules and Regulations Implementing Republic Act No. 5487, as amended by Presidential Decree No. 1919, which, among others, authorize the Chief of the Philippine National Police to cancel the license of any security agency for their violation, as in the following cases:
>
> x x x (c) When a security agency has been found to engage in cut-throat competition by under cutting its contract rate for security services with its client for a price lower than the standard minimum rates for security services adopted by PADPAO, Inc. with the concurrence of the Chief of the Philippine National Police x x x
>
> (f) When a security agency or company security force has been found to be violating the minimum wage rates that should be lawfully granted to their private security/company guards x x x
>
> This Memorandum Circular shall be binding upon all private security and detective agencies existing presently and those to be licensed hereafter in accordance with law. This order shall take effect immediately.
>
> x x x[13]

Moreover, the Department of Health Guidelines on Public Bidding for Security Services states that bidders who do not conform to the PADPAO rate shall be disqualified, thus:

> 23.8 The government estimate which is based on the minimum wage and allowable benefits required by law, shall be the major basis for determining the responsiveness of the bid of qualified bidders. Strictly follow PADPAO rate. Non-conformity will be a ground for automatic disqualification of bid proposal. (Underscoring ours)[14]

It bears stressing that pursuant to PADPAO's Memorandum Circular, the monthly salary rate of each guard is P14,000.00 effective February 4, 2002. As Merit's bid was below the rate mandated by PADPAO, petitioner was justified in not awarding the security contract to the former albeit it tendered the lowest bid.

Since Starforce was the Lung Center's security service provider since 1999, it made sense that petitioner preferred it over Star Special and Merit. Moreover, the joint affidavit of the BAC's members dated August 6, 2004 shows that petitioner did not unilaterally decide to retain Starforce. What petitioner did was merely to explain why it was more advantageous for the government to retain Starforce. The joint affidavit reads:

JOINT AFFIDAVIT

> We, Buenaventura Medina, Albilio Cano, Julieta Mancelita, Angeline Rojas and Carol Manduriao, Filipinos, of legal age and all with office address at Lung Center of the Philippines, Quezon Avenue, Diliman, Quezon City, after having sworn to in accordance with law, hereby depose and state that:
>
> - We are all members of the Lung Center of the Philippines ("LCP" for brevity) Bids and Awards Committee ("BAC" for brevity) at the time it facilitated the public bidding for security services sometime in July 2003.
>
> - After receiving the bid documents, we determined that it was Merit Protection Investigation Agency, Inc. ("Merit" for brevity), the present complainant, Mr. Bayani Mira's employer, which offered the lowest calculated responsive bid.
>
> - The bid Merit offered was Twelve Thousand Pesos (Php12, 000.00) per month per guard for eight hours of

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daily duty and was initially chosen by BAC for the security contract.

- On 12 August 2003, BAC held a meeting with Dr. Juanito A. Rubio, Officer-in-Charge of LCP, where all, except one, members of the committee were present.

- During the said meeting, Dr. Rubio inquired why Merit was the one selected by the BAC. We justified our choice by pointing out that the bid submitted by it was the lowest at Php12,000.00 per guard.

- Dr. Rubio commented that in view of the committee's justification for the choice of Merit, then the current monthly rate (Eleven Thousand Five Hundred Thirty - Php11,530.00 per guard) with the then security agency, Star Force Security Services, is lower than the rate offered by merit and is even more advantageous to the LCP.

A copy of the BAC Minutes of Meeting - 12 August 2003, LCP Conference Room is attached here as Annex A.

- For the reasons cited by Dr. Rubio, LCP then decided to just renew the contract with Star Force at the rate of P11,530.00 per guard until July 2004.

- We are executing this Joint Affidavit to attest to the truth of the foregoing allegations and for the purpose of corroborating the Counter-Affidavit executed by Dr. Rubio in his Answer to the Affidavit-Compliant dated July 1, 2004 filed against him by Merit through Mr. Mira.

x x x (Underscoring supplied)[15]

As regards the increase of the rate of Starforce from P11,530.00 to P14,000.00 per guard, the records disclose that the same was a collective and unanimous decision of the Lung Center's Management Committee. This is evidenced by the joint affidavit of the members of the said committee dated August 6, 2004, hereunder reproduced, thus:

JOINT AFFIDAVIT

We, Dina V. Diaz, Raoul C. Villarete, Rey A. Desales, Sullian Sy-Naval, Joseph Leonardo Obusan, Nelia Tan-Lui, Albilio C. Cano, Elvira N. Baura, Angeline Rojas and Cesario Yangat, Filipinos, of legal age and all with office address at Lung Center of the Philippines, Quezon Avenue, Diliman, Quezon City, after having sworn to in accordance with law, hereby depose and state that:

- We, in our capacities as heads of various departments of the Lung Center of the Philippines ("LCP" for brevity), are all members of its Management Committee.

- During our Committee's Special meeting held last January 12, 2004, Dr. Juanito A. Rubio, LCP's Officer-in-Charge, brought to our attention the concerns of the hospital's incumbent security service provider, Star Force Security and Allied Services, Inc. (Star Force fir brevity), stated in a letter dated January 6, 2004 of the agency's Executive Vice President and General manager, Mr. Jun Ismael A. Manalo.

- Star Force was requesting for a possible retro-adjustment of its existing contract rate in the amount of Eleven Thousand Five Hundred Thirty Pesos (Php11,530.00) to Fourteen Thousand Pesos (Php14, 000.00).

- Star Force entered its plea for an increase in the contract price on what it stated as "the new PADPAO mandated Labor Wage Order No. NCR-09 in the amount of P14, 000.00 per guard per month at 8 hours duty that took effect last February 1, 2002." It likewise referred to "suffering from financial setback due to poor economic political conditions prevailing in the country" at that time. It consequently asked for a possible retro-adjustment for the months of January to December 2003.

- After a meticulous and painstaking discussion on the merits of Star Force's request, we unanimously resolved to grant it. We added, however, that any amendment in the price must apply prospectively and not retroact to

> the preceding year.
>
> - Our foremost justification for taking such course of action is that the adjusted fee is indeed a mere compliance with the minimum rate fixed by law based on a valid Wage Order.
>
> A copy of the Minutes of the Management Committee Special meeting is attached hereto as Annex A and made an integral part hereof.
>
> - The re-adjustment, hence, was just an attempt on our part to modify the rate and harmonize it with what justice, law and equity prescribes under the circumstances.
>
> - We are executing this Joint Affidavit to attest to the truth of the foregoing allegations and for the purpose of corroborating the Counter-Affidavit executed by Dr. Rubio in his Answer to the Affidavit-Complaint dated July 1, 2004 filed against him by Merit through Mr. Mira.
>
> x x x (Underscoring ours)[16]

In addition, no undue injury could have been suffered by the government when the Lung Center retained the service of Starforce. As aptly stated in the Investigation Report conducted by the Committee composed of the Information Management Service, Health Human Resource Development Bureau, and Legal Services Division of the Department of Health, the rate of P14,000.00 for each guard's monthly salary is justified, thus:

> Upon further evaluation of the documents and after interviewing the officers involved in this matter, this Committee has ascertained however that indeed, the government had advantage of having saved a considerable amount from the service contract with Starforce from September to December 2003. That Dr. Rubio acceded to the request of Starforce therefore for re-adjustment of their current rate clearly below the PADPAO rate of Php11,530/guard, into the PADPAO rate of Php14, 000.00/guard in January is justified, and did not put the government at a disadvantage. The Php14,000.00/guard is within the PADPAO rate, and not a centavo more than the ceiling. One way to look at it would be that such action of re-adjusting the rate is a way of rectifying the non-compliance of LCP with the PADPAO rate and other labor laws and legislations, which incidentally, were not complied with by LCP in all years prior to the readjustment of the rate in January 2004. x x x[17]

It bears stressing that it was the BAC which resolved to renew the Lung Center's security service contract with Starforce, while it was the Lung Center's Management Committee which decided to increase the salary rate for each guard. For his part, petitioner merely implemented the collegial decisions of the BAC and the Management Committee.

In sum, we hold that there is no indication that petitioner violated Section 3(e) of R.A. No. 3019 to warrant his criminal prosecution. Clearly, in filing with the Sandiganbayan the Information for such violation against petitioner, the Ombudsman acted with grave abuse of discretion.

WHEREFORE, the petition is GRANTED. The assailed Resolution and Order of the Office of the Ombudsman dated August 1, 2005 and December 7, 2005, respectively in OMB-C-C-04-0345-G are SET ASIDE. The Sandiganbayan is ordered to forthwith DISMISS Criminal Case No. 28414, entitled People of the Philippines v. Dr. Juanito Rubio y Adiarte.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

[1] Filed under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

[2] Annex "C" of the Petition, rollo, pp. 84-99.

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[3] Annex "I" of the Petition, id., pp. 190-193.

[4] Id., pp. 69-73.

[5] Annex "A" of the Petition, id., pp. 67-68.

[6] Annex "B" of the Petition, id., pp. 76-79.

[7] Annex "D" of the Petition, id., pp. 100-102.

[8] Supra, footnote 3.

[9] Fuentes, Jr. v. Office of the Ombudsman, G.R. No. 164865, November 11, 2005, 474 SCRA 779, 789, citing Venus v. Desierto, G.R. No. 130319, 298 SCRA 196 (1998), and Presidential Commission on Good Government v. Desierto, G.R. No. 132120, 397 SCRA 171 (2003).

[10] Cabahug v. People, G.R. No. 132816, February 5, 2002, 376 SCRA 113.

[11] Llorente, Jr. v. Sandiganbayan, G.R. No. 122166, March 11, 1998, 287 SCRA 382, 398, citing Ponce de Leon v. Sandiganbayan, 186 SCRA 745, 754 (1990).

[12] Santos v. People, G.R. No. 161877, March 23, 2006, 485 SCRA 185, 194.

[13] Rollo, pp. 132-135.

[14] Id., pp. 136-137.

[15] Annex "G" of the Petition, id., pp. 148-149.

[16] Annex "H" of the Petition, id., pp. 150-151.

[17] Supra, footnote 3, id., pp. 177-189.

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