

ROLANDO E. SISON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. Nos. 170339, 170398-403. March 09, 2010

Ponente: CORONA, J.

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CORONA, J.:

The requirements of the law on government procurements should never be taken for granted because grave consequences await those who violate them.

Petitioner Rolando E. Sison was the municipal mayor of Calintaan, Occidental Mindoro, a fourth-class municipality,[1] from July 1, 1992 to June[2] 30, 1995, while Rigoberto de Jesus was the municipal treasurer. On July 18, 1994, state auditor Elsa E. Pajayon conducted a post-audit investigation which revealed that during petitioner's incumbency, no public bidding was conducted for the purchase of a Toyota Land Cruiser, 119 bags of Fortune cement, an electric generator set, certain construction materials, two Desert Dueler tires, and a computer and its accessories. Pajayon also found out that there were irregularities in the documents supporting the acquisitions.

Thus, on June 4, 1998, petitioner and de Jesus were indicted before the Sandiganbayan in seven separate Informations[3] for seven counts of violation of Section 3(e) of Republic Act (RA) 3019.[4]

On June 24, 1999, petitioner pleaded not guilty to all the Informations. Accused de Jesus has remained at large.

Trial on the merits ensued. Pajayon was the lone witness for the prosecution. She narrated the State's version of the facts as above stated. The prosecution thereafter rested its case and formally offered its exhibits.

When it was the turn of the defense to present evidence, petitioner was called to the witness stand where he admitted that indeed, no public bidding was conducted insofar as the purchases he was being accused of were concerned. When asked how the purchases were made, he answered that they were done through personal canvass. When prodded why personal canvass was the method used, he retorted that no public bidding could be conducted because all the dealers of the items were based in Manila. It was therefore useless to invite bidders since nobody would bid anyway. The defense thereafter rested its case and formally offered its exhibits.

On November 14, 2005, the Sandiganbayan found petitioner guilty as charged.[5] As such, he was meted in each Information an imprisonment term ranging from six years and one month as minimum to ten years as maximum and perpetual disqualification from holding public office. The Sandiganbayan also ordered that an alias warrant of arrest be issued against accused de Jesus.

Petitioner appealed[6] to this Court, praying for an acquittal because his guilt was allegedly not proven beyond reasonable doubt.

We dismiss the appeal.

NON-COMPLIANCE WITH THE

REQUIREMENTS OF PERSONAL CANVASS

RA 7160[7] explicitly provides that, as a rule, "acquisitions of supplies by local government units shall be through competitive bidding." [8] By way of exception, no bidding is required in the following instances:

- (1) personal canvass of responsible merchants;
- (2) emergency purchase;
- (3) negotiated purchase;
- (4) direct purchase from manufacturers or exclusive distributors and
- (5) purchase from other government entities.[9]

Since personal canvass (the method availed of by petitioner) is an exception to the rule requiring public bidding, Section 367 of RA 7160 provides for limitations on the resort to this mode of procurement:

Sec. 367. Procurement through Personal Canvass.--Upon approval by the Committee on Awards, procurement of supplies may be affected after personal canvass of at least three (3) responsible suppliers in the locality by a committee of three (3) composed of the local general services officer or the municipal or barangay treasurer, as the case may be, the local accountant, and the head of office or department for whose use the supplies are being procured. The award shall be decided by the Committee on Awards.

Purchases under this Section shall not exceed the amounts specified hereunder for all items in any one (1) month for each local government unit:

xxx

Municipalities:

First Class

--One hundred fifty thousand pesos (P150,000.00)

Second and Third Class

--Forty thousand pesos (P40,000.00)

Fourth Class and Below

--Twenty thousand pesos (P20,000.00) (emphasis supplied)

In relation thereto, Section 364 of RA 7160 mandates:

Section 364. The Committee on Awards.--There shall be in every province, city or municipality a Committee on Awards to decide the winning bids and questions of awards on procurement and disposal of property.

The Committee on Awards shall be composed of the local chief executive as chairman, the local treasurer, the local accountant, the local budget officer, the local general services officer, and the head of office or department for whose use the supplies are being procured, as members. In case a head of office or department would sit in a dual capacity a member of the sanggunian elected from among its members shall sit as a member. The Committee on Awards at the barangay level shall be the sangguniang barangay. No national official shall sit as member of the Committee on Awards. (emphasis supplied)

Note that the law repeatedly uses the word "shall" to emphasize the mandatory nature of its provisions.

This Court is not a trier of facts. The resolution of factual issues is a function exercised by lower courts, whose findings on these matters are received with respect and are in fact binding on the Court except only where it is shown that the case falls under the accepted exceptions.[10] Petitioner failed to establish that his case falls under those exceptions. Hence, we have no other option but to uphold the Sandiganbayan's factual findings.

Insofar as the purchase of the Toyota Land Cruiser[11] is concerned, the Sandiganbayan found that the personal canvass was effected solely by petitioner, without the participation of the municipal accountant and petitioner's co-accused de Jesus, the municipal treasurer. Worse, there was no showing that the award was decided by the Committee on Awards. Only an abstract of canvass supported the award, signed by petitioner and de Jesus, without the required signatures of the municipal accountant and budget officer.

To reiterate, RA 7160 requires that where the head of the office or department requesting the requisition sits in a dual capacity, the participation of a Sanggunian member (elected from among the members of the Sanggunian) is necessary. Petitioner clearly disregarded this requirement because, in all the purchases made, he signed in a dual capacity--as chairman and member (representing the head of office for whose use the supplies were being procured). That is strictly prohibited. None of the regular members of the Committee on Awards may sit in a dual capacity. Where any of the regular members is the requisitioning party, a special member from the Sanggunian is required. The prohibition is meant to check or prevent conflict of interest as well as to protect the use of the procurement process and the public funds for irregular or unlawful purchases.

The same flaws attended the procurement of 119 bags of Fortune cement,[12] electric power generator set,[13] various construction materials,[14] two Desert Dueler tires[15] and a computer and its accessories.[16]

With the kind of items purchased by petitioner, he also clearly spent more than P20,000--or beyond the threshold amount per month allowed by Section 367 of RA 7160 as far as purchases through personal canvass by fourth-class municipalities (like Calintaan) are concerned.

Violation of Section 3(e) of RA 3019

Section 3(e) of RA 3019 provides:

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:

xxx

(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 impartiality, evident bad faith or gross inexcusable negligence. xxx. (emphasis supplied)

To be found guilty under said provision, the following elements must concur:

(1)

the offender is a public officer;

(2)

the act was done in the discharge of the public officer's official, administrative or judicial functions;

(3)

the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and

(4)

the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[17] (emphasis supplied)

It is undisputed that the first two elements are present in the case at bar. The only question left is whether the third and fourth elements are likewise present. We hold that they are.

The third element of Section 3 (e) of RA 3019 may be committed in three ways, i.e., through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) of RA 3019 is enough to convict.[18]

Explaining what "partiality," "bad faith" and "gross negligence" mean, we held:

"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 wilfully 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." [19] (citations omitted)

In the instant case, petitioner was grossly negligent in all the purchases that were made under his watch. Petitioner's admission that the canvass sheets sent out by de Jesus to the suppliers already contained his signatures because he pre-signed these forms[20] only proved his utter disregard of the consequences of his actions. Petitioner also admitted that he knew the provisions of RA 7160 on personal canvass but he did not follow the law because he was merely following the practice of his predecessors.[21] This was an admission of a mindless disregard for the law in a tradition of illegality. This is totally unacceptable, considering that as municipal mayor, petitioner ought to implement the law to the letter. As local chief executive, he should have been the first to follow the law and see to it that it was followed by his constituency. Sadly, however, he was the first to break it.

Petitioner should have complied with the requirements laid down by RA 7160 on personal canvass, no matter how strict they may have been. *Dura lex sed lex*. The law is difficult but it is the law. These requirements are not empty words but were specifically crafted to ensure transparency in the acquisition of government supplies, especially since no public bidding is involved in personal canvass. Truly, the requirement that the canvass and awarding of supplies be made by a collegial body assures the general public that despotic, irregular or unlawful transactions do not occur. It also guarantees that no personal preference is given to any supplier and that the government is given the best possible price for its procurements.

The fourth element is likewise present. While it is true that the prosecution was not able to prove any undue injury to the government as a result of the purchases, it should be noted that there are two ways by which Section 3(e) of RA 3019 may be violated--the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a distinct offense,[22] an accused may be charged under either mode or both.[23] 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.[24]

Aside from the allegation of undue injury to the government, petitioner was also charged with having given

unwarranted benefit, advantage or preference to private suppliers.[25] Under the second mode, damage is not required.

The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized[26] or without justification or adequate reason.[27] "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action.[28] "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.[29]

In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions. Petitioner did just that. The fact that he repeatedly failed to follow the requirements of RA 7160 on personal canvass proves that unwarranted benefit, advantage or preference was given to the winning suppliers. These suppliers were awarded the procurement contract without the benefit of a fair system in determining the best possible price for the government. The private suppliers, which were all personally chosen by respondent, were able to profit from the transactions without showing proof that their prices were the most beneficial to the government. For that, petitioner must now face the consequences of his acts.

PROPRIETY OF THE PENALTY

Any person guilty of violating Section 3 (e) of RA 3019 is punishable with imprisonment for not less than six years and one month nor more than fifteen years and perpetual disqualification from public office.[30] Thus, the penalty imposed by the Sandiganbayan which is an imprisonment term ranging from six years and one month as minimum to ten years as maximum and perpetual disqualification from holding public office for each count of the offense, is in accord with law.

WHEREFORE, the petition is hereby DENIED. Petitioner Rolando E. Sison is hereby found guilty of seven counts of violation of Section 3(e) of RA 3019. As such, he is hereby sentenced for each count of the offense with imprisonment of six years and one month as minimum to ten years as maximum and perpetual disqualification from holding public office.

Costs against petitioner.

SO ORDERED.

Velasco, Jr., Nachura, Peralta and Mendoza, JJ., concur.

[1] http://en.wikipedia.org/wiki/Calintaan,_Occidental_Mindoro. (accessed on May 25, 2009).

[2] Erroneously stated in the records as July.

[3] In Criminal Case No. 24666, petitioner and co-accused de Jesus were charged as follows:

That in or about February to March 1993, or sometime prior or subsequent thereto, in Calintaan, Occidental Mindoro, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, then being the Mayor and Treasurer, respectively, of Calintaan, Occidental Mindoro, conspiring and confederating with one another, committing the offense in relation to their office, taking advantage of their positions and acting with manifest partiality, evident bad faith and/or inexcusable negligence did then and there wilfully, unlawfully and criminally cause undue injury to the government and give unwarranted benefit, advantage or preference to a private supplier by effecting the purchase and payment of a Toyota Land Cruiser without public bidding and proper documentation and without complying with the

legal procedure/steps for effecting purchase of government supplies and equipment.

CONTRARY TO LAW.

Petitioner and co-accused de Jesus were also charged in six other informations similar to the above except as to the item purchased and date of commission of the offense.

[4] Otherwise known as The Anti-Graft and Corrupt Practices Act.

[5] Decision penned by Justice Efren N. de la Cruz and concurred in by Justices Godofredo L. Legaspi (retired) and Norberto Y. Geraldez. Rollo, pp. 28-60.

[6] Under Rule 45 of the Rules of Court. Id., pp. 10-27.

[7] Otherwise known as The Local Government Code of 1991.

[8] Section 356, RA 7160. The term "supplies" as used by the law "includes everything, except real property which may be needed in the transaction of public business or in the pursuit of any undertaking, project or activity, whether in the nature of equipment, furniture, stationary materials for construction or personal property of any sort, including non-personal or contractual services such as the repair and maintenance of equipment and furniture, as well as trucking, hauling, janitorial, security, and related services." (Section 357(c), id.) Thus, there is no question that the purchases in the instant case are covered by RA 7160.

[9] Section 366, id.

[10] FNCB Finance v. Estavillo, G.R. No. 93394, 20 December 1990, 192 SCRA 514, 517.

[11] Subject of Criminal Case No. 24666.

[12] Subject of Criminal Case No. 24667.

[13] Subject of Criminal Case No. 24668.

[14] Subject of Criminal Case No. 24669 & 246670.

[15] Subject of Criminal Case No. 246671.

[16] Subject of Criminal Case No. 246672.

[17] Bautista v. Sandiganbayan, G.R. No. 136082, 12 May 2000, 332 SCRA 126.

[18] Fonacier v. Sandiganbayan, G.R. No. 50691, 5 December 1994, 238 SCRA 655.

[19] Id., pp. 687-688.

[20] TSN, 21 June 2004, p. 32.

[21] Id., p. 34.

[22] Santiago v. Garchitorena, G.R. No. 109266, 2 December 1993, 228 SCRA 214.

[23] Cabrera v. Sandiganbayan, G.R. Nos. 162314-17, 5 October 2004, 441 SCRA 377.

[24] Quibal v. Sandiganbayan, G.R. No. 109991, 22 May 1995, 244 SCRA 224.

[25] See note 1.

[26] Webster, Third International Dictionary (Unabridged), p. 2514.

[27] Words and Phrases (Permanent Edition), Vol. 43-A 1978, Cumulative Annual Pocket Part, p. 19.

[28] Webster, Third International Dictionary (Unabridged), p. 30.

[29] Id., p. 1787.

[30] See Section 9, RA 3019.

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