



Republic of the Philippines  
Supreme Court  
Manila  
SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES  
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JOSIE CASTILLO-CO,  
Petitioner,

G.R. No. 184766

Present:

- versus -

CARPIO, J.  
Chairman,  
PERLAS-BERNABE,  
CAGUIOA,  
A. REYES, JR. and  
J. REYES, JR., \*JJ.

HONORABLE SANDIGANBAYAN  
(SECOND DIVISION), and PEOPLE  
OF THE PHILIPPINES,  
Respondents.

Promulgated:

15 AUG 2018

X-----*[Signature]*-----X

**DECISION**

**A. REYES, JR., J.:**

*When a local legislative board gives the local chief executive authority to perform a certain act or enter into a specific transaction, the latter ought to strictly abide by the express terms of such authority. Any deviation therefrom, to the detriment of the local government unit, constitutes an offense punishable under the Anti-Graft and Corrupt Practices Act, for which the chief executive must be held accountable.*

Before this Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court seeking to nullify (1) the Decision<sup>2</sup> dated April 28,

<sup>1</sup> Designated additional Member per Special Order No. 2587, dated August 28, 2018.  
<sup>2</sup> Rollo, pp. 8-81.

*Reyes*

2008 of the Sandiganbayan, which found the petitioner, Josie Castillo-Co (Gov. Co), Governor of the Province of Quirino, guilty of violating Section 3(g) of Republic Act (R.A.) No. 3019, and (2) the subsequent Resolution<sup>3</sup> dated September 24, 2008 denying her Urgent Motion for Reconsideration and Supplemental Motion for Reconsideration.

### **The Factual Antecedents**

On June 27, 1997, Junie E. Cua, (Rep. Cua) Representative of the Province of Quirino and the Chairman of the Committee on Good Government of the House of Representatives, filed a letter-complaint before the Office of the Ombudsman against the petitioner, Gov. Co, and the Provincial Engineer of the Province of Quirino, Virgilio Ringor (Engr. Ringor), for violations of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Acts, Frauds Against the Public Treasury, and Malversation of Public Funds.<sup>4</sup>

In the letter-complaint, Rep. Cua alleged that irregularities attended the purchase of heavy equipment by the Provincial Government of Quirino from Nakajima Trading Co., Ltd. (Nakajima Trading).<sup>5</sup>

According to Rep. Cua, prior to contracting with Nakajima Trading and in order to fund the purchase, Gov. Co entered into a loan agreement with the Philippine National Bank (PNB) by virtue of a resolution of the Sangguniang Panlalawigan of Quirino. The resolution authorized Gov. Co to obtain a loan to fund the purchase of brand new heavy equipment.<sup>6</sup>

However, on January 11, 1996, Gov. Co entered into an agreement to purchase reconditioned heavy equipment instead, with the Province of Quirino as the buyer and Nakajima Trading as the seller.<sup>7</sup>

The letter-complaint also alleged that Gov. Co agreed to advance 40% of the total purchase price before the delivery of the machinery would be effected, in violation of the prohibition on advance payments found in Section 338 of the Local Government Code of 1991.<sup>8</sup>

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<sup>2</sup> Penned by Associate Justice Edilberto Sandoval with Associate Justices Francisco H. Villaruz, Jr. and Samuel Martires concurring; *id.* at 97-108.

<sup>3</sup> *Id.* at 172-179.

<sup>4</sup> *Id.* at 82.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 13.

*Meyer*

Rep. Cua additionally averred that the equipment purchased by the Province of Quirino was overpriced. To substantiate this allegation, he presented quotations comparing the prices of the equipment furnished by Nakajima Trading and similar or equivalent models of the same machines from local suppliers.<sup>9</sup>

Lastly, Rep. Cua alleged that despite full payment of the purchase price, the Province of Quirino did not receive everything owing it under the agreement with Nakajima Trading.<sup>10</sup> According to Rep. Cua, Nakajima Trading failed to ship an Ingersol-Rand SP 100 Vibratory Road Roller and a set of tools and spare parts within the stipulated 90-day delivery period.<sup>11</sup> While the amount pertaining to the equipment was subsequently returned, Rep. Cua averred that Nakajima Trading did not refund the amount of interest pertaining to the refunded amount, to the prejudice of the province.<sup>12</sup>

Meanwhile, Engr. Ringor was charged with conspiring with Gov. Co.<sup>13</sup> In his counter-affidavit, however, he interposed the defense that he merely recommended the purchase of reconditioned heavy equipment in place of brand new heavy equipment due to insufficiency of funds.<sup>14</sup>

After the letter-complaint was filed, the case was assigned to Graft Investigation Officer Germain G. Lim of the Office of the Ombudsman who, later on, recommended the prosecution of Gov. Co.<sup>15</sup> and the dismissal of the case against Engr. Ringor.<sup>16</sup> These recommendations were contained in the Ombudsman Resolution<sup>17</sup> dated September 1, 1998.

On September 2, 1998, an Information<sup>18</sup> was filed before the Sandiganbayan against Gov. Co for violation of Section 3(g) of R.A. No. 3019, the accusatory portion of which reads:

That on or about 11 January 1996, or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, then

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<sup>9</sup> Id. at 82.  
<sup>10</sup> Id. at 83.  
<sup>11</sup> Id.  
<sup>12</sup> Id. at 85.  
<sup>13</sup> Id. at 82.  
<sup>14</sup> Id. at 83.  
<sup>15</sup> Id. at 84.  
<sup>16</sup> Id.  
<sup>17</sup> Id. at 82-87.  
<sup>18</sup> Id. at 94-96.

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being the Governor of the Province of Quirino, committing the penal offense herein charged while in the performance of, in relation to, and taking advantage of her official position and functions as such did then and there willfully, unlawfully and criminally enter, on behalf of the Province of Quirino and the government as the buyer, into the Agreement dated 11 January 1996 with Nakajima Trading Co., Ltd. as the seller, for the purchase by the aforesaid buyer from the seller of overpriced reconditioned heavy equipment, spare parts, and tools, specified as follows:

1. One (1) unit Bulldozer CAT D6H Series II or equivalent;
2. One (1) unit Motor Grader Mitsubishi LG2H Blade 3.7M or equivalent;
3. One (1) unit Wheel Loader 3.5M3 Class CAT 936/Komatsu wa450 or equivalent;
4. One (1) unit Vibratory Road Roller Ingersol-Rand SP 100 or equivalent;
5. One (1) unit Backhoe Mitsubishi with 128 Flywheel HP Diesel Engine, track link type or equivalent;
6. Five (5) units LHD Dump Truck Isuzu CXZ 19/21 or equivalent;
7. One (1) lot Spare Parts for 2 yrs. fast moving;
8. One (1) unit Isuzu Water Tank Lorry w/ Sprinkle 10KL Cap w/ 6HEI Diesel Engine or equivalent;
9. One (1) Set Low Bed Trailer 40 tons, 10 Wheeler Tractor Head Isuzu EXZ 19/21 double diff.;
10. One (1) unit Toyota Hi-Lux, 4WD Double Cab 2.8 Diesel, FLD, Complete w/ Accessories; and
11. One (1) lot Tools.<sup>19</sup>

at a total contract price of Y160,425,000.00, Japanese currency, which contract is manifestly and grossly disadvantageous to the Province of Quirino and the government, as the same provides for the unlawful advance payment by the buyer to the seller of forty percent (40%) of the said contract price, in violation of Section 338 of the Local Government Code, and for the purchase by the buyer from the seller of reconditioned heavy equipments (*sic*) instead of brand new ones as expressly mandated by the Resolution No. 120 dated 20 October 1995 passed by the Province of Quirino, to the damage and prejudice of the Sangguniang Panlalawigan of the Province of Quirino and the government.

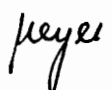
CONTRARY TO LAW.

### **Ruling of the Sandiganbayan**

In the April 28, 2008 Decision, which is now before this Court for review, the Sandiganbayan found Gov. Co guilty of entering into a transaction grossly and manifestly disadvantageous to the government, in

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<sup>19</sup> Id. at 94-95.



violation of Section 3(g) of R.A. No. 3019. The dispositive portion thereof reads:

Accordingly, We find the Accused, Josie Castillo-Co, GUILTY of violating Sec. 3(g) of R.A. 3019 and sentence her to an Indeterminate Penalty of imprisonment of Six Years and One Month as minimum to Nine Months as maximum with perpetual disqualification from public office. By way of civil liability, Accused Josie Castillo-Co is ordered to indemnify the Provincial Government of Quirino, the sum of P330,490.78 representing the interest paid to PNB by the Provincial Government on the 40% advance payment to Nakajima Trading.

SO ORDERED.<sup>20</sup>

The anti-graft court ruled that Gov. Co had entered into an agreement to purchase reconditioned heavy equipment when the authority given to her by the Sangguniang Panlalawigan of Quirino was for the purpose of obtaining a loan to fund the purchase of brand new equipment.<sup>21</sup> It held that she was not able to show that the Sangguniang Panlalawigan had ratified the purchase of reconditioned equipment, thus causing gross and manifest disadvantage to the province.<sup>22</sup>

In addition, the Sandiganbayan found that not only was an advance payment of 40% of the purchase price was effected in violation of Section 338 of the Local Government Code, but also that the remaining 60% was paid before complete delivery of all the subject equipment. The evidence of the prosecution showed that Nakajima Trading failed to deliver the vibratory road roller, tools, and spare parts within the 90-day delivery period stated in the agreement. To the Sandiganbayan, this too constituted gross disadvantage.<sup>23</sup>

Finally, the Sandiganbayan held that, while Nakajima Trading refunded the amount representing the value of the undelivered equipment, the Province of Quirino still suffered losses by reason of the interest it owed the PNB under the loan agreement because the amount returned by the Japanese company did not include the amount representing interest due. The Sandiganbayan also said, however, that the prosecution was unable to prove the exact amount of interest paid to the PNB.<sup>24</sup>

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<sup>20</sup> Id. at 108.

<sup>21</sup> Id. at 100.

<sup>22</sup> Id. at 101.

<sup>23</sup> Id at. 102.

<sup>24</sup> Id. at 104.

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Gov. Co filed her Urgent Motion for Reconsideration on May 8, 2008 and Supplemental Motion for Reconsideration on May 14, 2008. The Sandiganbayan, however, denied both in its Resolution dated September 24, 2008.<sup>25</sup>

Hence, the instant petition.

### The Issue

In her petition asking for the reversal of the Sandiganbayan's decision, Gov. Co raises issues that may be synthesized as:

WHETHER OR NOT THE SANDIGANBAYAN COMMITTED A REVERSIBLE ERROR IN RULING THAT GOVERNOR CO ENTERED INTO A TRANSACTION GROSSLY AND MANIFESTLY DISADVANTAGEOUS TO THE PROVINCIAL GOVERNMENT OF QUIRINO<sup>26</sup>

### The Court's Ruling

The petition is devoid of merit. The Sandiganbayan's decision, convicting Gov. Co of violating Section 3(g) of R.A. No. 3019 and sentencing her accordingly, must be affirmed.

R.A. No. 3019 was enacted to repress certain acts of public officers and private persons alike that constitute graft or corrupt practices or may lead thereto.<sup>27</sup>

Particularly, Section 3(g) of R.A. No. 3019, under which Governor Co was charged and found guilty, relevantly 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:

x x x x

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<sup>25</sup> Id. at 172-179.

<sup>26</sup> Id. at 44.

<sup>27</sup> *Reyes v. People*, 641 Phil. 91, 103 (2010).

*Meyer*

(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.

In *Henry T. Go vs. Sandiganbayan*,<sup>28</sup> the elements of the offense defined in Section 3(g) of R.A. No. 3019 were enumerated, to wit:

- (1) that the accused is a public officer;
- (2) that he or she entered into a contract or transaction on behalf of the government; and
- (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.<sup>29</sup>

There is no debate as to the existence of the first two elements. That the petitioner is a public officer is settled. At the time of the commission of the act complained of, she was the Governor of Quirino Province.<sup>30</sup> There is also no disputing that the Agreement with Nakajima Trading was a contract or transaction that Gov. Co entered into on behalf of the Provincial Government of Quirino.<sup>31</sup> There is thus no doubt that the first two elements are present in the case at bar.

Gov. Co now contends that the third element cannot exist because, assuming that the province suffered disadvantage, the same was not gross and manifest.

This assertion, however, has no merit.

Section 3(g) of R.A. No. 3019 is intended to be flexible in order to give judges some latitude in determining whether the disadvantage to the government, occasioned by the act of a public officer in entering into a particular contract is, indeed, gross and manifest.<sup>32</sup> Otherwise stated, there is no hard and fast rule against which the disadvantageous acts complained of should be calibrated. The determination of whether the disadvantage caused was gross and manifest, as contemplated by Section 3(g), should be done on a case-to-case basis.

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<sup>28</sup> 549 Phil. 783 (2007).

<sup>29</sup> *Id.* at 795.

<sup>30</sup> *Rollo*, p. 94.

<sup>31</sup> *Id.* at 13.

<sup>32</sup> *Dans, Jr. v. People*, 349 Phil. 434, 463 (1998).

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“Gross” connotes something “glaring, reprehensible, flagrant, or shocking.”<sup>33</sup> On the other hand, “manifest” is defined as “evident to the senses, open, obvious, notorious, and unmistakable.”<sup>34</sup>

In this case, the Sandiganbayan finds, and that Court agrees, that the following acts caused gross and manifest disadvantage to the Province of Quirino:

*First*, entering into an agreement to purchase reconditioned heavy equipment, contrary to the terms of Sangguniang Panlalawigan Resolution No. 120, which authorized Gov. Co to purchase only brand new heavy equipment;

*Second*, advancing forty (40%) percent of the total contract price to Nakajima Trading, in violation of Section 338 of the Local Government Code, which explicitly prohibits advance payments; and

*Third*, paying the balance, or sixty (60%) percent of the total contract price, despite non-compliance by Nakajima Trading with a provision in the agreement, which provided that delivery had to be effected within ninety (90) days from payment.

*Anent the first act*, it was settled at the trial that on December 23, 1995, when the loan agreement with the PNB was entered into, and on January 11, 1996, when the sale with Nakajima Trading was contracted, Gov. Co possessed authority to purchase brand new equipment on behalf of the Province of Quirino. The local government unit granted her such authority through two resolutions enacted by its provincial legislative council or Sangguniang Panlalawigan. These resolutions were presented into evidence by the prosecution to prove Gov. Co’s want of authority to purchase reconditioned equipment.

The first resolution was Sangguniang Panlalawigan Resolution No. 120 dated October 20, 1995, which expressly authorized Gov. Co to negotiate with and obtain a loan from the PNB to fund the purchase of brand new machinery. The province manifested its intent to purchase heavy equipment through this resolution, which, in no uncertain terms, provided that such equipment had to be brand new, to wit:

<sup>33</sup> *Crucillo v. Ombudsman*, 552 Phil. 699, 724 (2007).

<sup>34</sup> *Sajul v. Sandiganbayan*, 398 Phil. 1082, 1105 (2000).

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RESOLUTION AUTHORIZING THE PROVINCIAL GOVERNOR TO REPRESENT THE PROVINCIAL GOVERNMENT OF QUIRINO TO NEGOTIATE AND ENTER INTO A CONTRACT TO OBTAIN A LOAN FROM THE PHILIPPINE NATIONAL BANK IN THE AMOUNT OF FORTY THREE (*sic*) MILLION FIVE HUNDRED THOUSAND PESOS (₱43,500,000.00) **FOR THE PURPOSE OF PURCHASING BRAND NEW HEAVY EQUIPMENT** AND TO SIGN THE LOAN AGREEMENT, THE PROMISSORY NOTES, AND OTHER DOCUMENTS CONTEMPLATED THEREBY.<sup>35</sup> (Emphasis and underscoring supplied)

Moreover, the Sandiganbayan found that on December 23, 1995, the PNB granted the loan to the province on the basis of the aforementioned resolution.<sup>36</sup>

The record also shows that subsequent resolutions of the Sangguniang Panlalawigan confirmed that the province indeed planned to purchase brand new, and not reconditioned, heavy equipment. The second resolution presented by the prosecution was Sangguniang Panlalawigan Resolution No. 06-A dated January 12, 1996. This resolution, which was enacted a day after the perfection of the agreement with Nakajima Trading, was likewise an unequivocal grant of authority to purchase brand new heavy equipment. In fact, the dispositive portion of Resolution No. 06-A reads:

RESOLVED, AS IT IS HEREBY RESOLVED x x x for the purpose of purchasing **brand new [h]eavy [e]quipment** x x x<sup>37</sup> (Emphasis and underscoring supplied)

The foregoing clearly shows that the Provincial Government of Quirino intended to acquire only brand new heavy equipment. Resolution No. 120 pre-dated the loan agreement and Resolution No. 06-A was enacted a day after the sale was perfected. Thus, during the periods prior and subsequent to both the loan and the sale, the Province of Quirino made manifest its intent to obtain brand new machinery.

This, however, failed to materialize.

Verily, Gov. Co never denied that she caused the purchase of reconditioned heavy equipment in contravention of the terms of the aforementioned resolutions, which expressly mentioned that the subject equipment had to be brand new. She postulated, however, that she did so

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<sup>35</sup> *Rollo*, pp. 99-100.

<sup>36</sup> *Id.* at 99.

<sup>37</sup> *Id.* at 100.

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only because Engr. Ringor, after informing her of the insufficiency of the loaned funds, recommended that the province procure reconditioned machinery instead. Therefore, the initial questions posed to the Court were:

*Was gross and manifest disadvantage caused to the Province of Quirino when Governor Co purchased reconditioned heavy equipment, contrary to Resolution No. 120 and Resolution No. 06-A?*<sup>38</sup>

*If in the affirmative, did Provincial Engineer Ringor's recommendation justify her deviation from the terms of the aforementioned resolutions?*<sup>39</sup>

On the first question, the Court rules in the affirmative; on the second, in the negative.

A resolution is a declaration of the will of a municipal corporation or local government unit on a given matter.<sup>40</sup> In the case at bar, **the inclination of the Province of Quirino, as shown by Resolution No. 120 and Resolution No. 06-A, was evidently to procure brand new heavy machinery. To its prejudice, however, Gov. Co caused the expenditure of public funds allotted for that purpose on reconditioned equipment instead.** Worse, she did so knowingly. When she entered into the loan with the PNB and the sale with Nakajima Trading, she was well aware of the existence and tenor of Resolution No. 120. She likewise knew, prior to the sale, that the subject equipment was merely reconditioned and not brand new as required by the Sangguniang Panlalawigan. Nonetheless, to the detriment of the province, she pushed through with the transaction. To the Court, this act clearly caused gross and manifest disadvantage to the government.

The record shows that even prior to the date of the loan, the Office of the Provincial Engineer had already informed Gov. Co that the province could not afford brand new equipment. In a letter<sup>41</sup> dated October 31, 1995, Engr. Ringor recommended that the province purchase reconditioned machinery due to insufficiency of funds, to wit:

As per quotation received by the Province from KITA SANGYO Ltd. of 1-7 Masago 4-Chome, Mihama-Ku, Chiba City, Chiba-ken, Japan, copy attached, for the supply of brand new heavy construction equipment x x x amounting to a total cost of JPY 283,155,000 and equivalent to more

<sup>38</sup> Id. at 36-43.

<sup>39</sup> Id.

<sup>40</sup> *Masculana v. Provincial Board of Negros Occidental*, 169 Phil. 385, 391 (1977).

<sup>41</sup> *Rollo*, p. 158.

*Meyer*

less P65.0 M. It is informed that the Province may not be able to purchase the 13 units of equipment and spare parts and tools.

In this connection and in order that the proposed loan of the province amounting to more or less P43.0 M would be sufficient, it is recommended that the Province will purchase Japan reconditioned equipment which would still be of good quality.

Very truly yours,

VIRGILIO A. RINGOR  
Provincial Engineer<sup>42</sup>

Given the foregoing recommendation of Engr. Ringor, Gov. Co was duty-bound to inform the Sangguniang Panlalawigan that the funds allotted by the province were insufficient for brand new heavy equipment. She was likewise obliged to defer contracting with Nakajima Trading until the province had given her the appropriate authority to purchase reconditioned equipment. However, in defiance of the unequivocal will of the province, she proceeded with the sale.

In her defense, Gov. Co turned to Engr. Ringor's recommendation. Gov. Co posited that she bought reconditioned equipment because the provincial engineer raised the insufficiency of the sum loaned from the PNB and recommended that the province acquire reconditioned machinery. Invoking *Arias vs. Sandiganbayan*,<sup>43</sup> she argued that her reliance on his statement should serve as a basis for exoneration. She stated that when the allegedly disadvantageous agreement reached her, the same was already prepared and that it was prepared at the Office of the Provincial Engineer. She thus maintained that she should not be faulted for her good faith reliance on Engr. Ringor's recommendation.

Her argument is bereft of merit.

Under the *Arias* doctrine, all heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations.<sup>44</sup>

However, in *Rivera vs. People*,<sup>45</sup> the Court held:

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<sup>42</sup> Id.

<sup>43</sup> 259 Phil. 794, 805 (1989).

<sup>44</sup> *People v. Sandiganbayan (2<sup>nd</sup> Division), et al.*, 765 Phil. 845, 853 (2015).

<sup>45</sup> 749 Phil. 124 (2014).



To clarify, the *Arias* doctrine is not an absolute rule. It is not a magic cloak that can be used as a cover by a public officer to conceal himself in the shadows of his subordinates and necessarily escape liability. Thus, **this ruling cannot be applied to exculpate the petitioners in view of the peculiar circumstances in this case which should have prompted them, as heads of offices, to exercise a higher degree of circumspection and, necessarily, go beyond what their subordinates had prepared.**<sup>46</sup> (Emphasis and underscoring supplied)

In this case, the Court finds that Resolution No. 120 should have prompted Gov. Co to be more circumspect in transacting with Nakajima Trading. To reiterate, the resolution clearly directed her to procure brand new heavy equipment. Notwithstanding the tenor of the resolution, however, she contracted with Nakajima Trading for reconditioned equipment and effected the consequent expenditure of public funds thereon. All this, to the prejudice of the Province of Quirino.

Gov. Co cannot now plead her innocence by simply shifting the blame to Engr. Ringor.<sup>47</sup> Knowing that the resolution explicitly granted her authority to purchase brand new equipment, she should have dealt with Nakajima Trading more prudently. Between the Sangguniang Panlalawigan, which authorized her to purchase brand new equipment, on one hand and the Office of the Provincial Engineer, which recommended reconditioned equipment due to insufficiency of funds, on the other, she owed obedience to the former, the same being the legislative branch of the local government unit of which she was the chief executive.

In another attempt to escape liability, Gov. Co introduced into evidence Sangguniang Panlalawigan Resolution No. 205, which, according to her, ratified the contract with Nakajima Trading and showed that the Sangguniang Panlalawigan approved the change from brand new to reconditioned machinery.<sup>48</sup>

Nevertheless, the Sandiganbayan found that Resolution No. 205 was not a ratification of the sale by the Sangguniang Panlalawigan. According to the anti-graft court, the said resolution merely re-appropriated the unutilized portion of the loan proceeds for payment of loan amortizations, insurance and registration fees of the acquired equipment, and personnel services benefits for casual employees of the province. Nowhere in the resolution did it appear that the loan was for the purchase of reconditioned equipment.<sup>49</sup>

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<sup>46</sup> Id. at 151-152.

<sup>47</sup> *Rollo*, p. 70.

<sup>48</sup> Id. at 43.

<sup>49</sup> Id. at 101

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To encapsulate, by purchasing reconditioned instead of brand new heavy equipment in contravention of the terms of her authority, Gov. Co entered into a contract grossly and manifestly disadvantageous to the Province of Quirino. Such **disadvantage was brought about because the province had set aside public funds for brand new heavy machinery only to receive used albeit reconditioned equipment.** Now, she cannot lay the blame on Engr. Ringor by arguing that her actions were precipitated by his recommendation. The evidence distinctly revealed that Gov. Co was well aware of the terms of her authority and of the fact that Nakajima Trading was offering only reconditioned equipment.<sup>50</sup> Nevertheless, she pushed through with the transaction to the prejudice of the province. For this, she must be held accountable.

Thus, on this ground alone, Gov. Co's petition must fail.

*Anent the second act*, the evidence of the prosecution showed that the telegraphic transfer of 40% of the total contract price was effected on January 24, 1996, while the heavy equipment was initially delivered on April 10, 1996. Thus, the Provincial Government of Quirino paid public funds to Nakajima Trading before the latter delivered to it the heavy machinery subject of the contract. The prosecution argued that this advance payment, which violated Section 338 of the Local Government Code,<sup>51</sup> caused gross and manifest disadvantage.<sup>52</sup> The said provision prohibits local government units from making payments for goods not yet delivered and services not yet rendered, to wit:

**Section 338. Prohibitions Against Advance Payments.** - No money shall be paid on account of any contract under which no services have been rendered or goods delivered.

Gov. Co in fact admitted that this advance was made. However, in her defense, she maintained that she made the payment only after consulting Atty. Primitivo Marcos (Atty. Marcos), her private lawyer, who was not at that time in the employ of the province. Atty. Marcos advised Gov. Co that Section 338 did not apply to the transaction with Nakajima Trading because the advance was necessary for the Japanese supplier to begin reconditioning the equipment. She argued, once again on the basis of *Arias*, that her reliance in good faith on the opinion of Atty. Marcos should exonerate her

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<sup>50</sup> Id. at 38.

<sup>51</sup> LOCAL GOVERNMENT CODE, Book II, Title Five, Chapter 4, Sec. 338.

<sup>52</sup> *Rollo*, p. 102.

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from the charge of making an advance payment.<sup>53</sup> Thus, the next questions posed to the Court were:

*Did the advance of forty (40%) percent of the total contract price, in violation of Sec. 338 of the Local Government Code, cause manifest and gross disadvantage to the Province of Quirino?*<sup>54</sup>

*If in the affirmative, did Governor Co have the right to rely on the legal opinion of Atty. Marcos, her private counsel?*<sup>55</sup>

Again, the Court rules in the affirmative on the first question and in the negative on the second.

Notably, this is not the first time that the Court has adjudged an advance payment of public funds, made in violation of an express provision of law, to be commensurate with a violation of R.A. No. 3019.

In *Plameras vs. People*,<sup>56</sup> Provincial Governor Jovito C. Plameras was held liable for a violation of R.A. No. 3019 after he made an advance payment of ₱5,666,600.00 on behalf of Antique Province to answer for desks needed by the province's public schools. In that case, Governor Plameras signed a Purchaser-Seller Agreement with CKL as supplier and the provincial government as buyer. To fund the purchase, he applied for an Irrevocable Domestic Letter of Credit in the amount of ₱5,666,600.00 on behalf of the Provincial School Board. The application was approved and a letter of credit was issued in favor of the supplier. Full payment was effected soon after. Nonetheless, the province only received 1,838 out of the 5,246 desks that CKL agreed to deliver. Governor Plameras was therefore charged by the Office of the Deputy Ombudsman for the Visayas, which found probable cause to indict him for a violation of Section 3(e) of R.A. No. 3019. The Deputy Ombudsman particularly noted that payment was made before the desks were delivered, in violation of existing rules and regulations. After trial on the merits, the Sandiganbayan convicted Governor Plameras of violating Section 3(e) of R.A. No. 3019. He appealed his conviction to this Court. After assessing his arguments, the Court ruled to deny his appeal, holding that the Sandiganbayan did not err in convicting him, to wit:

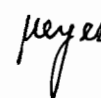
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<sup>53</sup> Id. at 46-49.

<sup>54</sup> Id. at 44-56.

<sup>55</sup> Id.

<sup>56</sup> 717 Phil. 303 (2013).



As correctly observed by the Sandiganbayan, **certain established rules, regulations, and policies of the Commission on Audit and those mandated under the Local Government Code of 1991 (R.A. No. 7160) were knowingly sidestepped and ignored** by [Governor Plameras] which enabled CKL x x x to successfully get full payment for the school desks and armchairs, despite non-delivery—an act or omission evidencing bad faith and manifest partiality. (Emphasis and underscoring supplied)

One of the rules transgressed in *Plameras*, as well as in this case, was the prohibition against advance payments found in Section 338.

In the case at bench, Gov. Co effected the payment of ₱15,881,115.50, or 40% percent of the total contract price, before delivery by Nakajima Trading. The prosecution maintained that the advance payment was a clear and unequivocal breach of Section 338 of the Local Government Code.<sup>57</sup> The Sandiganbayan, for its part, held that this constituted gross and manifest disadvantage to the government.<sup>58</sup>

The Court finds no reason to deviate from the Sandiganbayan's ruling.

As correctly pointed out by Gov. Co herself, **the purpose of the prohibition against advance payments is to ensure the receipt of goods or the performance of services.**<sup>59</sup> Section 338 of the Local Government Code seeks to prevent situations where private suppliers can easily abscond with public funds. When a local government unit makes an advance payment, it risks pecuniary loss in the event of non-delivery or non-performance by the party with which it contracts. Such advances directly place the government at a disadvantage by effectively putting the supplier in control of the transaction, thus opening up the possibility that the latter will not make good its obligations ultimately leading to the pilferage of the public coffers.

Gov. Co also maintained that the prohibition against advance payments does not apply to cases where the government contracts with foreign suppliers. It was her position that these suppliers would naturally require earnest money as proof that the buyer was serious about pursuing with the transaction.<sup>60</sup>

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<sup>57</sup> *Rollo*, p. 95.

<sup>58</sup> *Id.* at 102.

<sup>59</sup> *Id.* at 49.

<sup>60</sup> *Id.* at 105.

*Heyer*

However, contrary to Gov. Co's stance, **the consequences of making an advance payment are even more dire when, as in this case, the government contracts with a foreign supplier.** Unlike local suppliers, which may be made subject of coercive processes issued by Philippine courts, foreign suppliers may readily abscond with impunity. There would be no way to recover, through domestic channels, the funds disbursed in favor of foreign entities; local government units would thus be left without recourse against suppliers without any presence or assets in the Philippines. This is without a doubt disadvantageous to the government.

The Court finds that, here, the mere risk of losing such a substantial amount of money (*i.e.*, ₱15,881,115.50) caused gross and manifest disadvantage to the Province of Quirino.

Public office is a public trust.<sup>61</sup> To maintain inviolate the public trust reposed in them, public officers must, in the performance of their duties, exercise the diligence of a good father of a family. This entails, *inter alia*, that **they observe relevant laws and rules as well as exercise ordinary care and prudence in the disbursement of public funds.**<sup>62</sup> Public funds, after all, are the property of the people and must be used prudently at all times with a view to prevent dissipation and waste.<sup>63</sup>

In this regard, Gov. Co failed miserably. As mentioned earlier, she advanced public funds in the amount of ₱15,881,115.50 in favor of Nakajima Trading, blatantly disregarding Section 338 of the Local Government Code. She neglected to abide by the law, which she, as a public officer, is bound to uphold. Thus, the Court holds that the Sandiganbayan did not err when it ruled that the advance of 40% of the total purchase price caused gross and manifest disadvantage to the Province of Quirino.

Next, the Court shall discuss Gov. Co's misplaced invocation of the *Arias* doctrine in relation to her reliance on the legal opinion of her lawyer, Atty. Primitivo Marcos.

To reiterate, Gov. Co argued that she merely depended in good faith on the judgment of Atty. Marcos, who opined that the transaction with Nakajima Trading was exempt from Section 338 of the Local Government Code. Again citing *Arias*, she maintained that she cannot be faulted for her

<sup>61</sup> CONSTITUTION, Article XI, Sec. 1.

<sup>62</sup> Concurring and dissenting opinion of Justice Arturo D. Brion, in *Technical Education and Skills Development Authority v. Commission on Audit*, 729 Phil. 60, 87 (2014).

<sup>63</sup> *Yap v. Commission on Audit*, 633 Phil. 174, 188 (2010).

*Meyer*



reliance on his opinion because the question of whether the advance payment violated the Local Government Code was not within her competence since she is not a lawyer. Thus, she concluded that her good faith reliance on the legal opinion of Atty. Marcos should exonerate her from the charge.<sup>64</sup>

The argument deserves scant consideration.

The subordinates contemplated by the *Arias* doctrine are those public officers and employees who are actually under the control or supervision of the head of office concerned, or those who answer directly or indirectly to their superiors, who are in the employ of the same government agency. In other words, for the *Arias* doctrine to find application, both the superior and the subordinate must be public officers working for the same government office or agency.

In his cross-examination,<sup>65</sup> Atty. Marcos admitted that he was merely consulted by Gov. Co in his capacity as a private lawyer, to wit:

Q: Mr. witness, you said that you were the legal consultant of the accused in 1996, does it mean that you were a private counsel for the accused in 1996?

A: Yes, ma'am.

Q: So, you were not the official legal counsel of the Provincial Governor in 1996?

A: Yes, **I was acting then as private legal consultant**, ma'am.

Q: And you were not connected in any way with the province?

A: At that time, ma'am. (Emphasis and underlining supplied)

Given the foregoing admission, the Court cannot extend the protection afforded by the *Arias* doctrine to Gov. Co.

Moreover, Gov. Co cannot hide behind the cloak of ignorance or lack of familiarity with the provisions of the law.<sup>66</sup> It is settled in our jurisdiction

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<sup>64</sup> *Rollo*, p. 48.

<sup>65</sup> TSN, March 20, 2007, id. at 105.

<sup>66</sup> *Office of the Deputy Ombudsman for Luzon v. Eufrocina Carlos Dionisio and Winifredo Salcedo Molina*, G.R. No. 220700, July 10, 2017.

*Reyes*

that ignorance of the law excuses no one from compliance therewith.<sup>67</sup> Corollarily, a mistake of law cannot be used to justify an illegal act because everyone is presumed to know the law and the consequences of its violation.<sup>68</sup>

Hence, Gov. Co's reliance on the legal opinion rendered by Atty. Marcos will not serve to exculpate her.

*Anent the third act*, the findings of the Sandiganbayan show that Nakajima Trading failed to comply with a stipulation in the agreement, which provided that the complete delivery of the heavy equipment had to be within ninety (90) days from the date payment was received. The record reveals that, through a letter of credit, full payment had been effected on February 14, 1996. Thus, the Japanese supplier had until May 14, 1996 to perform its obligation under the contract. However, it failed to do so. Nakajima Trading delivered the equipment in three (3) separate shipments. According to the Sandiganbayan, these shipments were made on April 10, 1996, June 10, 1996, and June 24, 1996.<sup>69</sup> Clearly, therefore, complete delivery was not made in accordance with the terms of the contract.

More, the prosecution established that, despite full payment of the contract price, the provincial government did not receive every unit of equipment due under the contract. Specifically, the evidence revealed that Nakajima Trading never delivered the set of tools and spare parts and that it failed to deliver the Ingersol-Rand SP 100 Vibratory Road Roller in accordance with the terms of the agreement. The record shows that Provincial Engineer Ringor inspected the machine upon delivery and that his inspection revealed that it was not in the condition agreed upon, the same being laden with dents and scratches.<sup>70</sup>

To the Court, this act only highlights Gov. Co's wanton negligence in the handling of public funds. Despite the lapse of the final day for delivery, Gov. Co chose to sit idly and wait for over a month for Nakajima Trading to ship the equipment that the province ordered. This shows that the governor was undoubtedly remiss in her duty to exercise heightened responsibility in dealing with public funds. This is precisely the lax attitude R.A. No. 3019 seeks to repress; this is, in every way, the cavalier disposition that a public officer cannot display and that the Court cannot countenance.

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<sup>67</sup> CIVIL CODE, Article 3.

<sup>68</sup> *In re: Petition to sign in the Roll of Attorneys, Medado*, B.M. No. 2540, 718 Phil. 286, 291 (2013).

<sup>69</sup> *Rollo*, p. 102-103.

<sup>70</sup> *Id.* at 103.


*Meyer*

Considering all the foregoing, Gov. Co must be held accountable for entering into a transaction grossly and manifestly disadvantageous to the government.


**WHEREFORE**, the petition is **DENIED**. The April 28, 2008 Decision and the September 24, 2008 Resolution of the Sandiganbayan in Criminal Case No. 24901, are **AFFIRMED** *in toto*.


The petitioner, Josie Castillo-Co, is hereby sentenced to an indeterminate penalty of Six (6) years and One (1) month, as minimum, to Six (6) years and Nine (9) months, as maximum, with perpetual disqualification from public office.

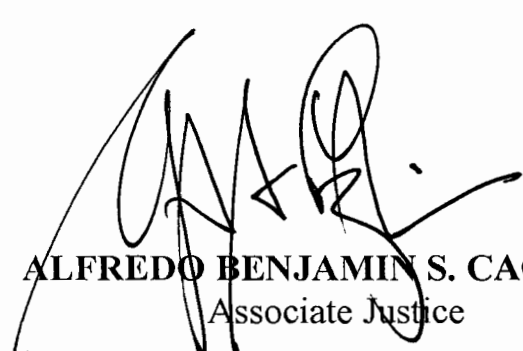
**SO ORDERED.**

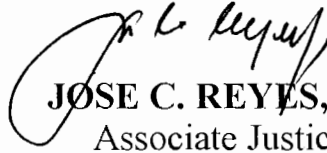
  
**ANDRES B. REYES, JR.**  
Associate Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson

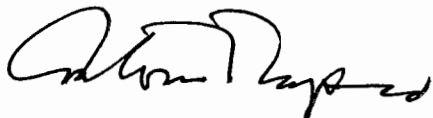
  
**ESTELA M. PERLAS BERNABE**  
Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

  
**JOSE C. REYES, JR.**  
Associate Justice

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, R.A. No. 296 The  
Judiciary Act of 1948, as amended)

*Reyes*