

MALACAÑANG

Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 158

DISMISSING DAVID T. ROJAS, SEBASTIAN I. JULIAN, AND ZENAIDA C. SEBASTIAN, ALL ASSISTANT ADMINISTRATORS OF THE NATIONAL IRRIGATION ADMINISTRATION, FROM THE SERVICE.

This refers to the administrative complaint against three (3) officials of the National Irrigation Administration (NIA), namely: Atty. DAVID T. ROJAS, NIA Assistant Administrator for Administrative Services; Engr. SEBASTIAN I. JULIAN, NIA Assistant Administrator for Systems Operation and Equipment Management; and Ms. ZENAIDA C. SEBASTIAN, NIA Assistant Administrator for Finance and Management, for dishonesty, misconduct, conduct prejudicial to the best interest of the service, inefficiency in the performance of official duties, and neglect of duty.

pl
Through a referral of several cases of alleged anomalies at the NIA from the Gising Bayan Foundation, Inc., the National Bureau of Investigation (NBI) initiated an inquiry into the activities of several NIA officials and employees, in relation with the procurement of drill bits, parts and accessories for the Communal Irrigation Project or CIP in Laur, Nueva Ecija. Thereafter, the NBI transmitted its report/ findings to the Ombudsman with recommendations for the criminal and administrative prosecution of several NIA officials and employees, including the herein respondents.

After evaluation of the NBI findings and recommendations, the Office of the Ombudsman prepared a First Supplemental Evaluation Report, dated June 7, 1989, and transmitted the same, together with the NBI report, to my Office and the Department of Public Works and Highways for the administrative investigation of the involved NIA personnel.

The NBI report recommending administrative proceedings against respondents for violation of:

- a. Executive Order (EO) No. 301, dated July 26, 1987, as to the 29 separate purchases without public bidding;
- b. COA Circular No. 76-41, dated July 30, 1976 prohibiting the splitting of vouchers, payment, etc. as to the 29 separate RIVs, POs, etc.; and

- c. COA Circular No. 85-55-A, dated September 8, 1985, prohibiting unnecessary, irregular, excessive and extravagant expenditures of public funds - as to the purchase of ₱17,758,873.72 worth of items when only about ₱304,340.00 worth of drill bits, parts and accessories were actually used in LAUR CIP,

as evaluated by the Office of the Ombudsman, became the basis of the Memorandum issued by my Office, dated July 24, 1989, formally charging respondents with dishonesty, misconduct, conduct prejudicial to the best interest of the service, inefficiency in the performance of official duties, and neglect of duty; and directing them to file their answer to the charges and to state therein whether they are electing a formal investigation of the charges or whether they are waiving their right to such investigation.

In addition, my Office directed the Secretary of Justice to constitute an ad hoc Committee to investigate respondents, who are all presidential appointees. Accordingly, the Secretary of Justice issued Department Order No. 132, dated July 27, 1989, constituting the three-man ad hoc investigating committee.

pd
Formal hearing, which started on August 30, 1989, and ended on November 9, 1989, was set against the antecedents as recited in the Resolution of the Ad Hoc Investigating Committee, dated December 19, 1989, thus:

"It appears that under RA 6642 (Appropriations Act of 1989), the National Irrigation Administration was granted a fund allocation of ₱420,000,000.00 for 'construction and rehabilitation of Communal Irrigation Systems (subsidy support)'. Drawing from this fund, the NIA sought to implement several projects denominated COMMUNAL IRRIGATION PROJECTS or CIPS. There were 16 CIPs, nine (9) of which were allegedly attended by anomalies.

"One of the questioned projects is the Laur CIP, Nueva Ecija, for which ₱17,758,873.72 was allegedly spent for the purchase of 901 assorted drilling bits, accessories and spare parts bearing the following brands: 'Diamond Bort', 'Longyear' and 'Tone'.

"Said items were allegedly procured in 29 negotiated purchases effected through falsification of official supporting documents to do away with the required public bidding.

"Only three (3) suppliers are involved in the twenty-nine (29) transactions subject of the inquiry, namely: BLIMS General Merchandise Gravel and Sand (BLIMS), with address

at 110 Kaingin Road, Masambong, Quezon City; Central Luzon Mahogany Corporation (CLMC), 209-215 E. de los Santos Ave., Greenhills Ave., San Juan, M.M.; and TECHNOQUIP MACHINERY, INC. (TMI), 5th Floor Champaca Condominium, Legaspi Village, Makati, M.M. Purchased were a total of ' x x x 901 units of 45 (should be 54) different types of Longyear, Diamant Boart, and Tone parts/accessories x x x'.

"The supporting documents of purchases such as the requisition and issue vouchers (RIVs), disbursement vouchers, and a certification, all indicated that the items were described as 'exclusive' and 'unique' to make it appear that the items were under the sole and exclusive distributorship of one company for the purpose of doing away with public bidding.

"The technical description of the items as 'unique' made it difficult to ascertain the identification thereof for purposes of canvassing and in determining the real price from other distributors."

fl
In said Resolution, the Ad Hoc Investigating Committee found, vis-a-vis the twenty-nine (29) transactions involving the LAUR CIP, that EO 301, series of 1987, has been deliberately violated. EO 301 prescribes the procurement of supplies and equipment thru public bidding, except, inter alia, whenever the materials are sold by an exclusive distributor/manufacturer who does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained elsewhere at more advantageous terms to the government (Sec. 1[c]). On the basis of the evidence presented, the Committee made the following observations: (a) NIA officials/employees concerned circumvented the bidding requirement of EO 301 by falsely representing in various purchase orders (POs) that the suppliers/dealers of the items sold to NIA are the exclusive dealers/distributors thereof or that the articles are being purchased from exclusive suppliers; and (b) Firms, i.e., BLIMS and CLMC, which acted as mere middlemen, were made to appear as exclusive distributors when in fact there is "Longyear Philippine Drilling Products, Inc." at Malugay Street, Makati, Metro Manila, from which came the "Longyear" products sold to NIA by BLIMS. Likewise, CLMC does not appear to be the exclusive distributor in the Philippines of "Diamant Boart Societe Anonyme" of Belgium because there is a "Diamant Boart Philippines Inc." from which CLMC procured the drill bits, parts and accessories of "Diamant Boart" brand which it sold to the NIA. As regards TMI, which claimed to be the exclusive distributor of "TONE" drilling machine and spare parts, there is no showing that

its exclusive distributorship was still existing at the time the questioned purchases of "TONE" spare parts and accessories were effected. Undoubtedly, therefore, BLIMS and CLMC merely acted as middlemen to increase the prices paid by NIA.

The Committee likewise found that COA Circular No. 76-41, dated July 30, 1976, in relation to COA Circular No. 86-257, dated March 3, 1986, prohibiting splitting of vouchers, orders/payments has also been violated in connection with the aforesaid transactions. The Committee predicated its finding on the investigation of the NBI and the testimony of Ms. Nelia Villeza of COA. As related by Ms. Villeza, the splitting of POs was evidenced by not too wide intervals in dates and numbers of POs approved by the same officers and served to the same suppliers as shown by: 29 POs approved either by respondent Rojas or then NIA Administrator Alday, processed for Laur CIP from January to May, 1988, with the POs being served to only three (3) suppliers: CLMC, BLIMS, and TMI (Exh. "MM-17A-COA"). Splitting of payments, on the other hand, was evidenced by the issuance of three checks in payment of one disbursement voucher/PO, evidently to make the checks fall within the ceiling of the signing authority of respondent Zenaida Sebastian.

pd
COA Circular No. 85-55-A, dated September 8, 1985, prohibiting unnecessary, irregular, excessive, and extravagant expenditure of public funds was likewise violated in the questioned transactions, it appearing that of a total of 901 units of materials acquired (at a total cost of P17,758,873) only 17 units (at a total cost of P304,540.00) were actually utilized. In fact, and as testified to by NBI agent Rizalde Laudencia, about P9,652,693.47 worth of "Longyear" drill parts and accessories had never been used because, as per the affidavit of Cesar L. Orpilla, NIA Senior Geologist, the "Longyear" rig, though mobilized, was not actually put in operation. To compound matters, Ms. Nelia Villeza testified that bits/parts/accessories intended for LAUR CIP were acquired after completion of the project and the supporting RIVs therefor were prepared towards such completion.

The Committee's findings that (a) the twenty-nine (29) purchases were done in violation of EO 301, entered as they were thru negotiation when circumstances surrounding each transaction called for public bidding; (b) the same purchases were attended with splitting of orders, vouchers and/or payments in violation of COA Circular No. 76-41; and (c) that said purchases were done in contravention of the injunction embodied in COA No. 85-55-A, series of 1985, merit approval. Indeed, judging from the supporting documents of the twenty-nine (29) negotiated purchases, the requirement of public bidding was deliberately dispensed with through the convenience of making it appear in said

For her part, respondent Sebastian contended that she could not be held liable because she merely countersigned the corresponding checks for each purchase. Like Julian, she contended that she had no involvement whatsoever in the procurement process, such as the preparation/approval of RIVs and POs, and therefore she should not be held responsible for any misdescription of the purchased items because the supporting papers came to her duly approved by the other authorities concerned.

Respondents' posture in defense impresses me as unconvincing. For, as correctly observed by the Committee to which I fully agree:

"We do not believe that respondents were not aware that certain irregularities had been committed relative to the twenty-nine (29) transactions involved in the Laur CIP, and, therefore, they should be excluded from any culpability arising therefrom, just because the documents in question were initiated, prepared and processed at the lower level of the NIA administrative hierarchy.

pd

"On the contrary, in view of the big amounts involved (numbering to hundreds of thousands of pesos per RIV or PO or DV) and the great number of materials being purchased for a particular project, respondents should not have just relied on the papers and documents submitted to them by their subordinates for their favorable indorsement, approval and/or signature. As officials occupying high and sensitive positions in the NIA administrative hierarchy, next only to the Administrator in importance and influence, they should have been more vigilant in checking and verifying each and every requisition and issue voucher (RIV), purchase order (PO), disbursement voucher (DV), and check which passed through them for approval and/or signature, as well as their supporting papers, to find out if such documents and transactions covered therein were lawful and in order. The fact that there were several RIVs, POs, DVs, and checks bearing similar and/or proximate dates, and the payments were made to only three (3) favored companies, should have been enough reason for them to undertake a closer review of the same. Precisely, they were placed in said positions to be zealous in protecting the public funds which have been put at their disposal so they will be properly administered and utilized in the purchase of equipment,

00000000000000000000

materials and spare parts needed by their office and their projects. They are there to protect the interest and welfare of the people and of the nation by closely monitoring the procurement and purchasing activities of their office.

"That they failed to do so, and allowed the irregularities to be committed, by approving and affixing their signatures on the documents in question, showed that they were remiss in their duties and responsibilities both under the law and the Constitution. x x x "

For sure, had any of the respondents been as vigilant as their positions so require, they could have discovered that the so-called exclusive distributors were not what they were depicted to be. Such discovery would have led to the procurement of drill bits/parts/accessories thru public bidding and thereby enable NIA to obtain the best price in the market. The bare fact that the same favored suppliers appear on all these supporting purchase documents should have alerted respondents on the possibility of irregularities.

As it were, there is no concrete evidence proving or tending to prove that the doctored documents submitted in support of the twenty-nine (29) anomalous purchases came to be at the instance or initiative of respondents or that they conspired with their subordinates in the preparation thereof. Nonetheless, respondents stand culpable for not exercising that degree of vigilance, that level of caution expected from ranking executive officers of which they are. By ordinary standards, the omission constitutes gross negligence and/or inefficiency in the performance of official duties. Such omission translates into a tremendous financial waste of government funds and property.

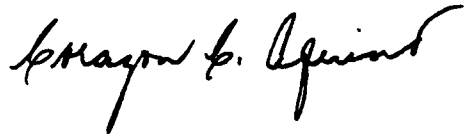
pd

I am not insensitive to the Committee's observations that all the respondents herein "rose from the ranks, having served the (National Irrigation) Administration for more than twenty-two years", and that the instant case "is their first administrative offense." Let it be made clear, however, that service in the government, no matter how long, has not been and can never be a passport for official malfeasance or misfeasance. On the contrary, greater care and vigilance in the performance of official duties and responsibilities ought to be expected of those with long years in the public service if they are to preserve the honor and dignity due them by their unblemished record should they eventually leave the portals of the government. Neither can I view respondents' case with leniency on the score that this is their first administrative offense. Perhaps, alongside with their length of

service, there is an occasion for such a compassion if the matter at hand concerns a single isolated transaction of few hundred pesos. But such is not the case. Here, no less than twenty-nine (29) transactions amounting in the aggregate to several millions of pesos - P17,758,873.72 to be precise - were involved, each of which was attended by massive irregularities. In a very real sense, therefore, the government was cheated twenty-nine (29) times, all because the herein respondents failed to live up to that exacting requirement of care and caution inherent in their respective positions which are no less next only in importance, prestige, powers, duties and responsibilities to the head of the agency itself.

WHEREFORE, and as recommended by the Department of Justice, through the Ad Hoc Investigating Committee, respondents DAVID T. ROJAS, SEBASTIAN I. JULIAN, and ZENaida C. SEBASTIAN, all Assistant Administrators of the National Irrigation Administration (NIA), are hereby DISMISSED from the service with all its accessory penalties.

Done in the City of Manila, this 27th day of February, in the year of Our Lord, nineteen hundred and ninety.



By the President:



CATALINO MACARAIG, JR.
Executive Secretary