



Republic of the Philippines
OFFICE OF THE OMBUDSMAN
Ombudsman Building, Agham Road, Diliman, Quezon City

National Bureau of Investigation
Represented by Palmer U. Mallari
Complainant,

- versus -

OMB-C-A-20-0176
For: Grave Misconduct, Gross
Neglect of Duty and Conduct
Prejudicial to the Best Interest
of the Service.

STEVE Y. DICDICAN
General Manager
Mactan Cebu International Airport
Authority
Respondent.

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ORDER

This pertains to the Complaint¹ filed on 14 December 2020 by the National Bureau of Investigation (NBI), represented by Palmer U. Mallari (complainant), Chief, Anti-Fraud Division of the NBI, against Steve Y. Dicdican(Dicdican), General Manager and Chief Executive Officer of Mactan Cebu International Airport Authority (MCIAA) for Grave Misconduct, Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service with Prayer for the Issuance of Preventive Suspension of respondent.

The present case is anchored on the Complaint² filed by Larry T. Iguidez (Iguidez) against the respondent. At the core of the controversy is Dicdican's act of consenting, allowing and collaborating with foreign

¹ Records, pp. 591-617.

² Records, pp.38-590, including Annexes

³ Charter of the Mactan-Cebu International Airport Authority

nationals, to manage and operate the Mactan Cebu International Airport (MCIA), a public utility, which administration and control thereof is reserved to Filipino Citizens.

The Antecedents

The MCIA, located in Lapu-Lapu City, Province of Cebu, is one of the busiest international airports in the Philippines. It hosts seventeen (17) international airlines, eight (8) local carriers, has thirty-six (36) domestic destination and thirty-seven (37) international routes. By virtue of R.A. 6958,³ MCIA's management and operation was vested in MCIAA.

Complainant alleges that in April 2014, Department of Transportation and Communications (DOTC) and MCIAA awarded MCIA's management and operation to GMCAC⁴ under a 25-Year concession after winning the bid for PhP 14.4 Billion Pesos. The concession was for the expansion and operation of the MCIA, consisting of, *to wit*: "construction of a new passenger terminal with all associated infrastructure facilities; construction of apron for the new passenger terminal; rehabilitation and expansion of the existing terminal along with all associated infrastructure and facilities; installation of all the required equipment and other associated facilities; installation of the required information technology and other equipment commensurate with the operations; and operation and maintenance of both passenger terminals during the concession period."

³ Charter of the Mactan-Cebu International Airport Authority

⁴ GMCAC is a corporation organized under Philippine Laws with principal office address at 20 N. Domingo Street, Barangay Valencia, Quezon City. GMCAC is a consortium between Megawide Construction Corporation (Megawide) and GMR Group.

Insisting that GMCAC's actions went beyond the above-mentioned terms and coverage of its 25-Year concession and that MCIA is operated, administered and managed by foreign nationals, complainant submitted as evidence Annex 1 to 53⁵ of the Complaint filed Iguidez.

Basically, Iguidez's Complaint-Affidavit shows that Acquaaah-Harrison is the top executive officer and is in command of GMCAC . He makes announcement in press releases for GMCAC; speaking in forums on behalf of GMCAC; receiving tokens for GMCAC; making announcements regarding MCIAA's projects and its expansion outside Cebu; giving details regarding the consortium's plans of MCIA's operation; giving the visiting government officials a tour of MCIA; welcomes social media personalities and representing GMCAC in official events and inaugural ceremonies.

Acquaaah-Harrison, with Dicedican's knowledge and consent, perform managerial and executive functions at MCIA, such as, managing busi
affairs, initiates and develops corporate policies, implements operational policies of GMCAC and represents GMCAC at functions and proceedings. Complainant likewise alleges that Dicedican similarly allowed Lelane, Chief Operations Officer of GMCAC and Saravu, GMCAC's Chief Commercial Advisor to exercise managerial functions at MCIA.

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Instead of reporting these irregularities to the MCIA Board, Dicedican turned a blind eye and knowingly aided, assisted and/or abetted these foreign officers/employees of GMCAC in the perpetration of the acts penalized by the Anti-Dummy Law.⁶ His acts likewise constitute a violation of the Anti-

⁵ Records, pp. 60-206

⁶ Commonwealth Act No. 108

Graft Law⁷ since he gave unwarranted benefits to these foreign nationals and effectively caused undue injury to the government. Thus, the filing of the present case against respondent Dicdican, as well as the prayer to place him under preventive suspension pending investigation.

Corollary to the power of the Office of the Ombudsman to investigate administrative complaints against erring public officials and employees, is its power to place under preventive suspension such official or employee subject of its administrative investigation, as specifically provided under Section 24 of R.A. 6770 –

“Section 24. Preventive Suspension. – The Ombudsman or his deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent’s continued stay in office may prejudice the case filed against him x x x (underscoring supplied).”

A similar provision is found in Rule III of OMB Administrative Order No. 7, Rules of Procedure of the Office of the Ombudsman, as amended, which provides:

“Section 9. Preventive Suspension. - Pending investigation, the respondent may be preventively suspended without pay if, in the judgment of the Ombudsman or his proper deputy, the evidence of guilt is strong and (a) the charge against such officer or employee involves dishonesty, oppression or gross misconduct, or gross neglect in the performance of duty; or (b) the charge would warrant removal from the service; or (c)

⁷ Republic Act No. 3019, as amended

the respondent's continued stay in office may prejudice the just, fair and independent disposition of the case filed against him."

R.A. No. 6958, Section 8⁸ instructs that its Dicedican's duty, as General Manager of MCIA, to direct and supervise the daily activities of the airport. He is obliged to undertake investigations related to the present operations of the airport and report the same to the MCIA Board. He failed to report the violations committed by the above-mentioned foreign national, which implies his consent to these violations. Evidence on records show that he knew that these foreign national exercised executive functions on behalf of GMCAC, yet he allowed it and consented to it.

Considering his position as General Manager of MCIAA, and in order to prevent any possible tampering of evidence, harassment of witnesses, interference or exercise of influence by Dicedican, and/or withholding or concealment of pertinent records or documents, this Office finds justification to place respondent under preventive suspension pending investigation of this Complaint. We reiterate the rule that the prosecution must be given the opportunity to gather and prepare the facts for trial under conditions which would ensure non-intervention and noninterference from respondent's camp.⁹ Part and parcel of this principle is a presumption that unless the public officer is suspended, he may frustrate his prosecution or commit further acts of malfeasance or both (*Rios v. The 2nd Division of the Sandiganbayan*, 345 Phil. 85, 92 [1997]).

⁸ Section 8. Functions, Powers and Duties of the General Manager. – The General Manager shall be directly responsible to the Board and shall have the following functions, powers and duties:

- a. To direct and supervise the day-to-day management, operation and administration of the airports;
- b. To implement and enforce decisions, orders, rules and regulations issued, prescribed or adopted by the Board; xxx

⁹ *Bunye v. Escarreal*, G.R. No. 110216, September 10, 1993, 226 SCRA 332

Also, evidence on record suggests that the evidence of guilt is strong and that the charge involves Grave Misconduct, as well as Gross Neglect of Duty, which would warrant his removal from the service; and considering that his continued stay in office may prejudice the case filed against him. He is hereby placed under preventive suspension for a period of six (6) months without pay, pursuant to Section 24 of R.A.6770.

In order to prevent any possible tampering of evidence, harassment of witnesses, interference or exercise of influence by Dicdican, and/or withholding or concealment of pertinent records or documents, during the duration of his preventive suspension, respondent is likewise prohibited from entering his Office.

The Honorable Arthur Tugade, Secretary of the Department of Transportation and Communication, is hereby furnished a copy of this Order for its immediate implementation, with the request to inform this Office within three (3) days from receipt hereof of the action taken.

SO ORDERED.

16 December 2020, Quezon City, Philippines.




SAMUEL R. MARTIRES
Ombudsman 16 DEC 2020