

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. 109113 January 25, 1995

CONCERNED OFFICIALS OF THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM (MWSS), petitioners,

vs.

HON. OMBUDSMAN CONRADO M. VASQUEZ AND MEMBERS OF THE PHILIPPINE LARGE DIAMETER PRESSURE PIPE MANUFACTURERS ASSOCIATION (PLDPPMA), respondents.

VITUG, J.:

The Ombudsman, in its 19th October 1992 Order,¹ directed the Board of Trustees of Metropolitan Waterworks and Sewerage System ("MWSS") (a) to set aside the recommendation of its Pre-qualification, Bids and Awards Committee for Construction Services and Technical Equipment ("PBAC-CSTE") that Contract No. APM-01 be given to a contractor offering fiberglass pipes and (b) to instead award the contract to a complying and responsive bidder pursuant to the provisions of Presidential Decree No. 1594.² The subsequent motion for reconsideration was denied by the Ombudsman in its Order 01 March 1993.

These two Orders are now sought to be annulled in this petition for *certiorari*, with prayer for preliminary injunction or a restraining order, lodged by the "Concerned Officials of the Metropolitan Waterworks and Sewerage System"³ led by its former Administrator Teofilo I. Asuncion. Let us first touch on the factual backdrop.

In order to provide about 1.3 million liters of water daily to about 3.8 million people in the metropolitan area,⁴ MWSS launched the Angat Water Supply optimization ("AWSOP") consisting of several phases. The entire project would be, in most part, financed by funds loaned by the Overseas Economic Cooperation Fund ("OECF") of Japan to the national government and allocated to MWSS in the form of equity.⁵ With the completion of the construction of the main aqueduct from Angat Dam all the way down to La Mesa Dam in Novaliches, Quezon City, from where water mains for the distribution system of the entire Metro Manila begin, MWSS focused its attention to the Distribution System Phase of the AWSOP. The projects were denominated Projects APM-01 and APM-02 which consist of the construction of the Distribution System Phase of the AWSOP, that would particularly call for the supply of labor, materials and equipment, and of the installation of new watermains (43,305

linear meters for APM-01 and 31,491 linear meters for APM-02),⁶ comprising of fittings, valves and pipes of different sizes.⁷ Under Clause IB-34 of the contract documents for APM-01 and APM-02 the permitted alternative pipe materials for the projects were to include the following items:

	(millimeters)
Asbestos cement Pipe (ACP)	— 100 mm to 600 mm
Cast Iron Pipe (CIP)	— 50 and larger
Polyethylene Pipe (PE)	— 50 mm to 250 mm
Polyvinyl Chloride Pipe (DIP)	— 50 mm and larger
Steel Pipe (SP)	— 400 mm and larger
Fiberglass Pressure Pipe (FPP)	— 300 mm and larger

On 30 August 1991, MWSS caused the publication in two (2) leading newspapers of an "Invitation for Pre-qualification and Bids" for Projects were opened for international competitive bidding, copies of the "Invitation for pre-qualification and Bids" were sent to the respective embassies and trade missions of member countries of the OECF. The advertisement and invitation to prospective bidders announced that "(g)oods and services to be supplied under (the) contract must have their origin from countries defined in the Guidelines for Procurement of Goods under OECF loans" and that "(j)oint ventures between foreign and domestic firms as encouraged." While there were twenty-five (25) prospective applicants who secured pre-qualification documents, only fourteen (14) contractors submitted corresponding applications to the PBAC-CSTE.

On 20 November 1991, the PBAC-CSTE, after evaluating the applications for pre-qualification, issued a report⁹ concluding that only eleven (11)¹⁰ out of the fourteen (14) contractors were pre-qualified to bid for the 31st March 1992 scheduled bidding covering both the APM-01 and APM-02 proposed contracts. The major factors considered in the evaluation were the applicants' financial condition, technical qualifications and experience to undertake the project under bid.

Meanwhile, private respondent Philippine Large Diameter pressure Pipes Manufacturers' Association ("PLDPPMA"),¹¹ sent seven (7) letters, between 13 January and 23 March 1992, to the MWSS requesting clarification, as well as offering some suggestions, on the technical specifications for APM-01 and APM-02.

The first letter, dated 13 January 1992,¹² sought clarification on the design criteria of thickness used for fiberglass and ductile iron pipes which varied from the standard thickness given by manufacturers.

The second letter, dated 29 January 1992,¹³ suggested that all alternative pipes for Projects APM-01 and APM-02 should have the same design criteria on stiffness class, pressure class,

rating, elevated temperature and wall thickness and should be manufactured in accordance with American water Works Association ("AWWA") standards.

PLDPPMA, in its third letter of 13 February 1992,¹⁴ sought to be elaborated on the imposition of the testing procedure of stiffness factor on steel pipes used in Fiberglass Reinforced Pipes ("FRP") and suggested that the 5-year minimum experience by manufacturers be required for alternative pipes.

In its fourth letter, dated 25 February 1992,¹⁵ PLDPPMA reiterated their request that the deflection allowance of 3% under the AWWA standards on steel pipes be also applied to all alternative pipes and suggested that a comparative study should be undertaken by the MWSS on the feasibility of using filament wound fiberglass pipes ("FRP") and centrifugally cast fiberglass pipes ("GRP").

In their fifth letter, dated 05 March 1992,¹⁶ PLDPPMA appealed to the MWSS to have steel pipes placed in equal footing with other alternative pipes, specifically filament wound and centrifugally cast fiberglass pipes, in order to avoid an unfair requirement on stiffness value.

In their penultimate letter of 16 March 1992,¹⁷ PLDPPMA informed MWSS of their computation for wall thickness and stiffness values for cement lined/cement coated and epoxy lined/coal tar enamel coated steel pipes based on AWWA standards.

Finally, in their seventh letter of 23 March 1992,¹⁸ PLDPPMA reiterated their request for correcting the specifications for steel and fiberglass pipes, particularly on wall thickness and deflections, because of MWSS Addendum #5 where the wall thickness for steel pipes were noted to be more than the wall thickness computed in the previously agreed agenda.

Former Administrator Luis Sison issued, between 10 February and 24 March 1992, six (6) *addenda* to the bidding documents that embodied the meritorious suggestions of PLDPPMA on various technical specifications. In his 24th March 1992 letter to the PLDPPMA, in response to the latter's 23rd March 1992 (seventh) letter, Sison explained that the additional thickness for steel pipes was so required in order to serve as a pipe corrosion allowance to counter imperfection in the preparation and application of lining and coating, the limit service life of epoxy resin lining and the corrosive element of the local soil.

The bidding was conducted by PBAC on the previously scheduled date of 31 March 1992. The prequalified bidders using steel and fiberglass pipes submitted their respective bid proposals. The approved agency cost estimate for Project APM-01 was Three Hundred Sixty Six Million Six Hundred Fifty Thousand Pesos (P366,650,000,00).¹⁹ The Three (3) lowest bidders for the said project (APM-01) were the following:

	BIDDER	BID PRICE
1	DYWIDAG/TITAN/WILPER PLDPPMA/GREEN JADE (Joint Venture)	P267,345,574.00
2	F.F. CRUZ & CO., INC.	P268,815,729.00
3	J.V. ANGELES CONST. CORP./JA DEVT. CORP.	P278,205,457.00 20

while the three lowest bidders for Project APM-02 included:

	BIDDER	BID PRICE
1	ENG'G. EQUIPMENT, INC. (EEI)	P219,574,538.00
2	FF CRUZ & CO., INC.	P233,533,537.00
3	J.V ANGELES CONST. CORP./JA DEVT. CORP.	P277,304,604.00 21

In APM-01, Joint Venture and F.F. Cruz and Co., Inc. proposed to use fiberglass pipes. In APM-02, Eng'g. Equipment Inc. and F.F. Cruz likewise preferred to use fiberglass pipes.

After the three lowest bidders for both projects were known, a meeting was held on 27 May 1992 by the PBAC-CSTE, composed of MWSS Deputy Administrator for Engineering Eduardo M. del Fierro, as Acting Chairman, and deputy Administrator for Operations Ruben A. Hernandez, Acting Chief of Legal office Precioso E. Remolacio, and Project Manager Cesar S. Guevarra, as members, to decide on what should be done about Contract APM-01. Three of the members, namely, Hernandez, Guevarra and Asuncion, recommended for the contract on the following grounds:

- a. Ambiguity of Addendum No. 6 — The Addendum is subject to different interpretations because there was no illustrations provided. Further, it could also be said that some contractors did not use the FRP because said Addendum was not clearly explained.
- b. There was no provision for maintenance/repair materials for bidders who opted to use FRP which is relatively new pipe to be used in the country. It was suggested that a 5% to 10% allowance be provided for maintenance purposes.
- c. Further review of pipe design should be made by the Consultant (NJS) in order to accommodate the load to be carried in the Umiray-Angat Loop.²²

Precioso E. Remolacio abstained; he felt that "technical evaluation (was) more essential in deciding the issues in (the) Contract." For his part, Acting Chairman Eduardo M. del Fierro recommended that no rebidding should be undertaken and that an award should be made to either the lowest or the second lowest bidder.

On 29 May 1992, PBAC-CSTE met again to discuss and evaluate the bids in APM-02. Here again, three members, namely, Guevarra, Hernandez and Asuncion, opined that a rebidding should be conducted, while Acting Chairman del Fierro and Remolacio believed that the contract should be awarded to the lowest bidder.

Finally, on 02 June 1992, the PBAC-CSTE formally submitted its report ²³ on its bid evaluation on APM-01. The PBAC-CSTE held that while Joint Venture's bid might have been the lowest it was, however, invalid due to its failure to acknowledge Addendum No. 6, a major consideration, that could not be waived. It accordingly recommended that the contract be instead awarded to the second lowest but complying bidder, F.F. Cruz & Co., Inc., subject to the latter's manifestation that it would only hire key personnel with experience in the installation of fiberglass pressure pipes (due to PBAC-CSTE's observation in the report that the company and its key personnel did not have previous experience in the installation of fiberglass reinforced pipes). Acting Chairman del Fierro, together with members Guevarra and Asuncion, approved the PBAC-CSTE's findings and recommendation. Hernandez and Remolacio both disagreed with the findings of the PBAC-CSTE; the former opted for a rebidding while the latter batted for awarding the contract to Joint Venture.

On the following day, or on 03 June 1992, the MWSS Board Committee on Construction Management and the Board Committee on Engineering, acting jointly on the recommendation of Administrator Sison, recommended that Contract No. APM-01 be awarded to F.F. Cruz & Co., Inc., being the lowest complying bidder. ²⁴

Prior thereto, or on 07 April 1992 (seven days after the submission of the bid proposals on 31 March 1992), private respondent PLDPPMA, through its President Ramon Pastor, filed with the Office of the Ombudsman a letter-complaint ²⁵ (docketed Case No. OMB-0-92-0750) protesting the public bidding conducted by the MWSS for Projects APM-01 and APM-02, detailing charges of an "apparent plan" on the part of the MWSS to favor suppliers of fiberglass pipes, and urging the Ombudsman to conduct an investigation thereon and to hold in abeyance the award of the contracts. PLDPPMA's letter-complaint, in part, read:

Even before the bidding had started, there appears to be an apparent plan on the part of the MWSS to favor a particular supplier of pipes for the project considering the following events:

Firstly, the bid documents particularly the specifications for alternative pipes when first released in December 1991 whimsically and arbitrarily set such rigid standards for steel pipes so that MWSS had to issue six addenda to the bidding documents and had to postpone the bidding several times in a vain attempt to correct the apparent prejudice against the use of steel pipes for the APM 01 and 02 projects;

Secondly, despite our prior agreement with MWSS Engineering Department that the alternative pipes to be used for the project should comply with

internationally accepted AWWA specifications was written arbitrarily and in complete disregard of AWWA specifications increased by 1 mm. the thickness required for steel pipes thereby effectively increasing the cost of steel pipes for the APM 01 project bid by about P30 Million, or more than twice the difference between the lowest bid and the bid that utilized steel pipes;

Thirdly, despite the fact that it was/is of common knowledge that FRP and GRP (Fiberglass) pipes have had a long history of failures in the United States such that even MWSS Pre-qualification, Bidding and Awards Committee resolved in a meeting held in March 1992 not to use FRP and GRP pipes for large projects, bids utilizing such pipes were still accepted for the FRP and GRP pipes for large projects, bids utilizing such pipes were still accepted for the APM 01 and 02 projects; and

Lastly, the undue preference for the use of GRP pipes became more apparent when the supposed lowest bidder for the APM 01 project (who did not participate in the bidding for APM 02 project), and the supposed lowest bidder for the APM 02 project (who also did not participate in the bidding for APM 01 project), both submitted bids utilizing GRP pipes.

On 10 June 1992, the Ombudsman referred PLDPPMA's 07th April 1992 letter-complaint to the MWSS Board of Trustees for comment along with a directive to it to hold in abeyance the awarding of the subject contract.²⁶ MWSS asked for an extension of time within which to submit its comment but called, at the same time, the attention of the Ombudsman to Presidential Decree No. 1818²⁷ prohibiting the issuance of restraining orders/injunctions in cases involving government infrastructure projects.

After the submission by the parties of their respective pleadings, the case was referred to the Fact-Finding and Intelligence Bureau of the Office of the Ombudsman for investigation and report²⁸ was submitted to, and approved by, the Ombudsman which became the basis for the issuance of the now challenged order, dated 19 October 1992,²⁹ reading as follows:

In view of the findings of this Office on the above-entitled case as contained in the Fact-Finding Report, dated September 14, 1992, of the Fact Finding Investigation Bureau (copy attached), and pursuant to the Powers, Functions and Duties of the Office of the Ombudsman as mandated under Section 15 of Republic Act 6770 (Ombudsman Act), the MWSS Board of Trustees in hereby directed to:

- 1) Set aside the recommendation of the MWSS Pre-qualification, Bids and Awards Committee for Construction Services and Technical Equipment (PBAC-CSTE) to award Contract APM-01 to a contractor offering fiberglass pipes;

2) Award the subject contract to a complying and responsive bidder pursuant to the provisions of PD 1594, Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts.

The Board of Trustees is further directed to inform this Office of the action taken thereon.

SO ORDERED.

A motion by herein petitioners for the reconsideration of the order was denied on 01 March 1993.³⁰

Petitioners cite to us the following reasons for its petition for *certiorari*.

I

RESPONDENT OMBUDSMAN ACTED BEYOND THE COMPETENCE OF HIS OFFICE WHEN HE ASSUMED JURISDICTION OVER THE COMPLAINT AT BAR NOTWITHSTANDING THAT THE SAME IS CLEARLY AMONG THE CASES EXCEPTED BY SECTION 20 OF THE OMBUDSMAN ACT OF 1989 (RA NO. 6770) WHICH ENUMERATED THE ADMINISTRATIVE ACT OR OMISSION THAT MAY NOT BE THE SUBJECT OF INVESTIGATION BY HIS OFFICE.

II

RESPONDENT OMBUDSMAN, AFTER HAVING TAKEN COGNIZANCE OF THE COMPLAINT, ARBITRARILY ISSUED A DIRECTIVE IN THE NATURE OF A RESTRAINING ORDER OR WRIT OF PRELIMINARY INJUNCTION TO PETITIONERS "TO HOLD IN ABEYANCE THE AWARDED OF THE CONTRACT . . . UNTIL FURTHER ORDER FROM THIS OFFICE," A POWER OR AUTHORITY NOT VESTED IN HIS OFFICE.

III

RESPONDENT OMBUDSMAN ACTED WITHOUT JURISDICTION IN ISSUING THE ORDER OF OCTOBER 1993, CONSIDERING THAT UNDER THE LAW THE OMBUDSMAN'S JURISDICTION CANNOT AND SHOULD NOT BE EXPANDED TO INCLUDE THE DECISION MAKING POWER OVER A CIVIL ADJUDICATORY MATTER SUCH AS THE MWSS BIDDING PROCESS.

IV

RESPONDENT OMBUDSMAN COMMITTED A GRAVE ERROR OF LAW, AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION, BY ARBITRARILY AND CAPRICIOUSLY INTERPRETING WITH THE EXERCISE OF SOUND DISCRETION BY THE MWSS WHICH IS A SPECIALIZED AGENCY OF GOVERNMENT WITH WHICH EVEN COURTS OF JUSTICE GENERALLY DO NOT INTERFERE TO ISSUE THE ORDERS.

V

RESPONDENT OMBUDSMAN COMMITTED A GRAVE ERROR OF LAW, AND ACTED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION, IN ISSUING THE SUBJECT ORDERS IN GROSS DISREGARD OF THE CARDINAL PRINCIPLES OF DUE PROCEEDINGS, ASSUMING ARGUENDO THAT HE HAS JURISDICTION TO ISSUE SAID ORDERS.

VI

RESPONDENT OMBUDSMAN COMMITTED GRAVE ERROR OF LAW, AND ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION, IN GROSSLY MISAPPREHENDING THE RECORD BY FAILING TO TAKE INTO ACCOUNT THE FINDINGS OF EXPERTS THAT THE MWSS SPECIFICATIONS ARE FAIR, AND BY CONCLUDING BASELESSLY THAT MWSS FORMULATED ITS SPECIFICATIONS TO FAVOR FIBERGLASS PIPES OVER STEEL PIPES, ASSUMING ARGUENDO THAT HE HAS JURISDICTION TO ISSUE THE SUBJECT ORDERS.

VII

RESPONDENT OMBUDSMAN COMMITTED GRAVE ERROR OF LAW, AND ACTED ARBITRARILY AND CAPRICIOUSLY, IN IMPLYING BASELESSLY THAT MWSS ACTED UNFAIRLY, OPPRESSIVELY AND WITH GRAVE ABUSE OF DISCRETION, ASSUMING ARGUENDO THAT HE HAS JURISDICTION TO ISSUE THE SUBJECT ORDERS.

VIII

IN CONSEQUENCE, THE ORDERS OF OCTOBER 19, 1992 AND MARCH 1, 1993 MUST BE REVERSED, ANNULLED AND SET ASIDE.³¹

After the required pleadings were filed by the parties, this Court, in its resolution of 19 May 1994 gave due course to the petition and required the parties to submit memoranda. In compliance therewith, the parties filed their respective memoranda, petitioners (MWSS) on 07 July 1994, the Solicitor-General on 28 June 1994, and PLDPPMA on 19 July 1994. Petitioners opposed Titan's intervention. This Court, ultimately, denied the motion for leave to intervene.

The various alleged errors raised by petitioners can be grouped into two basic issues, i.e., (a) whether or not the rudiments of due process have been properly observed in the issuance of the assailed 19th October 1992 and 01st march 1993 orders of the Ombudsman; and, more pivotal that the first, (b) whether or not the Ombudsman has jurisdiction to take cognizance of PLDPPMA's complaint and to correspondingly issue its challenged orders directing the Board of Trustees of the MWSS to set aside the recommendation of the PBAC-CSTE.

Relative to the first issue, we are more than convinced, after a scrutiny of the records of this case, that petitioners have been amply accorded the opportunity to be heard.

Petitioners were asked to comment on the letter-complaint of PLDPPMA. On 25 June 1992, petitioners moved for an extension of time within which to comment. On July 16, 1992, petitioners filed their letter-comment. Responding to the reply of PLDPPMA, petitioners later filed a rejoinder. When an adverse order was rendered against them, petitioners moved for its reconsideration, *albeit* to no avail.

The absence of due process is an opportunity to be heard.³² One may be heard, not solely by verbal presentation but also, and perhaps even many times more creditably and practicable than oral argument, through pleadings.³³ In administrative proceedings, moreover, technical rules of procedure and evidence are not strictly applied; administrative due process cannot be fully equated to due process in its strict judicial sense.

On the threshold matter that puts to issue the Ombudsman's directive to the Board of Trustees of MWSS to set aside the recommendation of the PBAC — CSTE to award Contract No. APM-01 to the lowest complying bid, we find, this time, the petition to be impressed with merit.

Petitioners maintain that while Republic Act ("R.A.") No. 6770, otherwise known as the Ombudsman Act of 1989, extends certain well-defined powers and authority to the Office of the Ombudsman to, among other functions, investigate and prosecute complaints filed therewith, the same law, however, expresses limits to the exercise of such jurisdictional power and authority. Section 20 of the Act is cited; viz:

Sec. 20. Exceptions. — The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

- (1) The Complainant has an adequate remedy in another judicial or quasi-judicial body;
- (2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;
- (3) The complaint is trivial, frivolous interest in the subject matter of the grievance; or

(4) The complaint is trivial, frivolous, vexations or made in bad in bad faith;

(5) The complaint was filed after one year from the occurrence of the act or omission complained of.

Petitioners contend that PLDPPMA's complaint falls under exceptions (1) to (4) of Sec. 20 of R.A. No. 6770, and that, therefore, the Ombudsman should not have taken cognizance of the complaint.

Asserting, upon the other hand, that the Ombudsman has jurisdiction over PLDPPMA's complaint, the Solicitor-General enumerations various constitutional and statutory provisions; to wit:

(a) Section 13, Article XI of the 1987 Constitution providing thusly:

Sec. 13. The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

(3) Direct, the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission of Audit for appropriate action.

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.

(7) determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

(8) Promulgate its rule of procure and exercise such other powers or perform such functions or duties as may be provided by law.

(b) Section 13 of republic Act No. 6770 which reads:

Sec. 13. Mandate. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the to the people.

(c) Section 15, paragraphs (1) to (7), of republic Act No. 6770 which reproduced verbatim the aforementioned provisions of Section 13 of the 1987 Constitution with some additional salient statutory provisions; hence:

Sec. 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

xxx xxx xxx

(8) Administer oaths, issue *subpoena* and *subpoena duces tecum*, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;

(9) Punish for contempt in accordance with the Rules of Court and under the same penalties provided therein;

(10) delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions and duties herein or hereinafter provided;

(11) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein;

The Ombudsman shall give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offenses as well as complaints involving large sums of money and/or properties.

(d) And, finally, Section 26 of the Ombudsman Act which expresses, as follows:

Sec. 26. Inquiries. — The Office of the Ombudsman shall inquire into acts or omissions of the public officer, employee, office or agency which, from the reports or complaints it has received the Ombudsman or his Deputies consider to be:

(a) contrary to law or regulation;

(b) unreasonable, unfair, oppressive, irregular or inconsistent with the general course of the operations and functions of a public officer, employee, office or agency;

(c) an error in the application or interpretation of law, rules or regulations, or a gross or palpable error in the appreciation of facts;

(d) based on improper motives or corrupt considerations;

(e) unclear or inadequately explained when reasons should have been revealed; or

(f) inefficiently performed or otherwise objectionable.

2. The Office of the Ombudsman shall receive complaints from any source in whatever form concerning an official act or omission. It shall act on the complaint immediately and if it finds the same entirely baseless, it shall dismiss the same and inform the complainant of such dismissal citing the reasons therefor. If it finds a reasonable ground to investigate further, it shall first furnish the respondent public officer or employee with a summary of the complaint and require him to submit a written answer within seventy-two hours from receipt thereof. If the answer is found satisfactory, it shall dismiss the case.

3. When the complaint consists in delay or refusal to perform a duty required by law, or when urgent action is necessary to protect or preserve the rights of the

Ombudsman shall take steps or measures and issue such orders directing the officer, employee, office or agency concerned to:

- (a) expedite the performance of duty;
- (b) cease or desist from the performance of a prejudicial act;
- (c) correct the omission;
- (d) explain fully the administrative act in question; or
- (e) take any steps as may be necessary under the circumstances to protect and preserve the rights of the complainant.

4. Any delay or refusal to comply with the referral or directive of the Ombudsman or any of his Deputies shall constitute a ground for administrative disciplinary action against the officer or employee to whom it was rendered.

On the basis of all the foregoing provisions of law, the Solicitor-General insists that the authority of the Ombudsman is sufficiently broad enough to cloth it with sufficient power to look into the alleged irregularities in the bidding conducted on 31 March 1992 leading to the recommendation made by the PBAC-CSTE on contract APM-01. He argues that even if no criminal act could be attributed to the former MWSS Administrator and members of the PBAC-CSTE, the questioned report could still be embraced in the all-encompassing phrase "all kinds of malfeasance, misfeasance, and non-feasance," and falls within the scope of the constitutional provision calling for an investigation of "any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient."

Indeed, in *Deloso v. Domingo*,³⁵ this Court had occasion to explain not only the rationale for the creation of an office of the Ombudsman but also the grant to it of broad investigative authority, thus:

The reason for the creation of the Ombudsman in the 1987 Constitution and for the grant to it of broad investigative authority, is to insulate said office from the long tentacles of officialdom that are able to penetrate judges' and fiscals' offices, and others involved in the prosecution of erring public officials, and through the exertion of official pressure and influence, quash, delay, or dismiss investigations into malfeasances and misfeasances committed by public officers. It was deemed necessary, therefore, to create a special office to investigate all criminal complaints against public officers regardless of whether or not the acts or omissions complained of are related to or arise from the performance of the duties of their office. The Ombudsman Act makes perfectly clear that the jurisdiction of the Ombudsman encompasses "all kinds of malfeasance,

misfeasance, and non-feasance that have been committed by any officer or employee as mentioned in Section 13 hereof, during his tenure of office."

To begin with, the owners, functions and duties of the Ombudsman have generally been categorized into the following headings: Investigatory Power; Prosecutory Power; Public Assistance Functions; Authority to Inquire and Obtain Information; and Function to Adopt, Institute and Implement Preventive Measures.

Although the Solicitor-General has practically enumerated all the constitutional and statutory provisions describing the ample authority and responsibilities of the Ombudsman, the particular aspect of his functions that, however, really finds relevance to the present case relates to his investigatory power and public assistance duties which can be found in the first and second paragraphs, respectively, of Section 13, Article XI, of the Constitution, along with the corresponding provisions of the Ombudsman Act. This much can be gleaned from the findings of the Office of the Ombudsman leading to its questioned orders. We quote:

a. There is an evident on the part of the MWSS under then Administrator Sison to favor suppliers of fiberglass when it prescribed rigid standards for steel pipes but set lenient requirements for pipes made of fiberglass, for the following reasons:

1. MWSS management rely on the AWWA standards for fiberglass pipe but neglect the same AWWA standards for steel pipes. The MWSS management under Administrator Sison disregarded the AWWA specifications by increasing 1mm thickness for steel pipes.
2. Complainant sent seven letters to the MWSS questioning and making suggestions of the rules of the bidding it set but only one was answered by Administrator Sison dated and received (by the complainant) after the bidding.
3. The MWSS' original specification for stiffness of fiberglass (36 psi) was [c]hanged to 54 psi (pounds per square inch) in its Addendum No. 1 as a result of the complaints of the PLDPPMA members. But in its Addendum No. 4, the MWSS reverted to the original stiffness class of 36 psi. In the letter-comment dated July 26, 1992 of the MWSS, thru Acting Administrator Teofilo I. Asuncion, the MWSS tried to mislead this office by stating that the stiffness class of fiberglass pipes was increased from 36 psi to 54 psi when in truth, as appearing in its Addendum No. 4, the MWSS reverted to the original stiffness class of 36 psi. there is nothing in the subsequent Addenda (Nos. 5 and 6) that will show that the MWSS finally settled for the stiffness class of 54 psi.

4. The MWSS failed to prescribe specific pipe laying procedure for fiberglass pipes. Contrary to the claim of the MWSS that pipes is not a complicated procedure as it is similar with other types of pipes, the installation of fiberglass pipes seems to be a critical factor in the successful implementation of a project as shown in the findings of experts, attached by the MWSS in its motion, and quoted as follows: . . .

5. The MWSS failed to include in the Specifications a provision for the maintenance/repair materials for bidders who opted to use fiberglass pipes. The importance of a provision for repair of fiberglass pipes can be inferred in the findings of experts cited by the MWSS and quoted as follows: . . .

6. The MWSS tried to limit the acceptable joints for fiberglass pipes favorable to a fiberglass manufacturer by issuing Addendum No. 6 which was undated. The provision of Addendum No. 6 "The only acceptable joints are gasketed bell and Spigot and Mechanical Type" appears to be vague and ambiguous as it cannot be determined clearly whether the bidders will be using the Mechanical Type of Joint. As stated in the Report, the cost of the Bell and Spigot Joint is cheaper than the cost of mechanical Type Joint. Moreover, it was only June 1, 1992 or two (2) months after the bidding that the MWSS issued clarification to the effect that fiberglass pipes bidders can use either the Bell and Spigot type or Mechanical type.

7. In connection with Addendum No. 6, this office recently got hold of a copy of a letter dated January 31, 1992 (found on Folder I, records) of Joseph Albanese, Gruppo Sarplast, Milan, Italy (Manufacturer/Supplier of fiberglass pipes for F.F. Cruz & Co. Inc.), addressed to Felipe Cruz. The letter was officially stamped/received by the Office of the MWSS Administrator on February 12, 1992. It also has a veriño From: Mr. F.F. Cruz." The pertinent portion of the letter in the light of Addendum No. 6 is quoted as follows:

8. Conclusion "During the pre-bid meeting our friends should stay: our Spec TS-23 is a general one, but for this case only the pipes produced with discontinuing filament winding will be accepted and only bell and spigot joint."

The existence of such a letter in such a situation can only mean that F.F. Cruz and Sarplast, Italy had previous communications

with the top officials of the MWSS even before the opening of the bids on March 31, 1992. Clearly, the issuance of Addendum No. 6 would only fit well for F.F. Cruz Co., Inc. and Sarplast who is proposing the use of discontinuous filament winding fiberglass pipe with bell and Spigot joint.

b. MWSS has no experience and sufficient knowledge on the use of fiberglass pipes.

c. The Contractors who proposed to use fiberglass pipes have no track record or experience in the installation of the same. Thus, they are not qualified to undertake projects pursuant to the provisions of PD 1594 and under the guidelines of the Overseas Economic Cooperation Fund.

d. The would-be manufacturers of fiberglass pipes has no manufacturing plant at this stage and there is no guarantee whether such manufacturing plants will be operational.

e. There is no assurance that the manufacturers of fiberglass would be able to produce the kind of pipe desired.³⁶

In sum, the Office of the Ombudsman has considered three issues: (1) whether or not the technical specifications prescribed by the MWSS in projects APM 01 and 02 have been so designed as to really favor Fiberglass Pipes-Contractors/Bidders; (2) whether or not the MWSS has the technical knowledge and expertise with fiberglass pipes; and (3) whether or not the contractors and local manufacturers of fiberglass pipes; and (3) whether or not the contractors and local manufacturers of fiberglass pipes have the experience and qualification to undertake the APM-01 and APM-02 projects.

While the broad authority of the Ombudsman to investigate any act or omission which ". . . appears illegal, unjust, improper, or inefficient" may be yielded, it is difficult to equally concede, however, that the Constitution and the Ombudsman Act have intended to likewise confer upon it veto or revisory power over an exercise of judgment or discretion by an agency or officer upon whom that judgment or discretion is lawfully vested. It would seem to us that the Office of the Ombudsman, in issuing the challenged orders, has not only directly assumed jurisdiction over, but likewise pre-empted the exercise of discretion by, the Board of Trustees of MWSS. Indeed, the recommendation of the PBAC-CSTE to award Contract APM-01 appears to be yet pending consideration and action by the MWSS Board of Trustees.

We can only view the assailed 19th October 1992 Order to be more of an undue interference in the adjudicative responsibility of the MWSS Board of Trustees rather than a mere directive requiring the proper observance of and compliance with law. The report submitted by the Fact-Finding and Intelligence Bureau of the Office of the Ombudsman reveals its predisposition against the use of fiberglass pipes, a technical, rather than a legal, matter. The fact-finding

report has dealt with such matters as (1) the wall thickness of pipes; (2) the joints; (3) the pipe laying procedure; (4) the technical expertise of the MWSS, on the one hand, and the fiberglass pronouncements, on the other; and (5) the supposed negative international feedback on the use of fiberglass pipes.

The question could be asked: Was the 31st March 1992 bidding really that faulty? During the bidding, the people present were the PBAC members, a COA representative, the bidders and the general public. The eleven (11) prequalified contractors, according to the prequalification evaluation³⁷ of the PBAC, possessed the required experience, technical qualification and financial condition to undertake the project. It should not be amiss to mention that the PBAC, under the implementing rules and regulations of P.D. No. 1594,³⁸ was tasked with the responsibility "for the conduct of prequalification, bidding, evaluation of bids and recommending award of contracts." In evaluating the bids, PBAC stated in its report that it had examined the three lowest bids. Part of PBAC's review was to verify whether the proposed pipe materials were in conformity with the permitted alternative materials specified in Clause IB-34 of the bid document.³⁹ In thereafter recommending that the award be made to F.F. Cruz, Inc., instead of Joint venture, PBAC explained:

As presented above, evaluation of the bid results touches on a number of parameters to determine whether the bids are "substantially responsive to the bidding documents and has offered the lowest evaluated bid, and that the bidder has the capacity and resources to effectively carry out the Contract Works." The evaluation was conducted as fairly and accurately as possible to come up with a recommendation that satisfies the interest of the MWSS which in the final analysis, shall bear the consequences if the contract is not fully performed. Conclusions of the important issues are hereunder presented.

A. Establishing the validity of the Bid of the Lowest Bidder

The deficiencies with respect to the bidding requirements enumerated in Section 4.2.1, page 4 were discussed to wit:

- a) Authority of the Signing Official
- b) Acknowledgment of Addenda received
- c) Currency Exchange Rate

After the discussion, the PBAC agreed that the deficiencies on the a) authority of the signing official and the c) currency exchange rate may be waived as they do not affect the validity of the bid. PBAC believes that the authority given to Fernando M. Sopot by the Consortium in the Joint Venture Agreement substantially complies with Clause IB-20-7 of the Contract Documents. On the

currency exchange rate, in the absence of BF-14, the MWSS may provide the exchange rate.

With regard to the acknowledgment of Addendum No. 6, which is a material provision of the documents, it is ascertained that the Joint Venture has not made allowance for the provision of said Addenda. The Joint Venture indicated in the bid, as originally submitted, the acknowledgment of Addenda #1 to #5 only. The alteration made during the bidding acknowledging Addendum #6 was done after the 12 noon deadline of submittal of bids and, hence, cannot be entertained. Moreover, the person who made the alteration is also not authorized to make such alteration and affix his signature to the bid.

It is therefore, the position of the PBAC that the deficiency in the acknowledgment of Addendum No. 6 is a major defect and cannot be waived as it affects the validity of the bid of the Consortium. The bid has to be rejected as non-complying.

The lowest complying becomes the bid submitted by the second lowest Bidder, F.F. CRUZ, & CO., INC. as discussed above.⁴⁰

PBAC was evidently guided by the rule that bids should be evaluated based on the required documents submitted before, and not after, the opening of bids,⁴¹ that should further dispel any indiscriminate or whimsical exercise of discretion on its part.

The MWSS, a government-owned and controlled corporation created by law through R.A. No. 6234,⁴² is charged with the construction, maintenance and operation of waterwork system to insure an uninterrupted and adequate supply and distribution of potable water.⁴³ It is the agency that should be in the best position to evaluate the feasibility of the projections of the bidders and to decide which bid is compatible with its development plans. The exercise of this discretion is a policy decision that necessitates among other things, prior inquiry, investigation, comparison, evaluation, and deliberation — matters that can best be discharged by it.⁴⁴ MWSS has passed resolution No. 32-93⁴⁵ to likewise show its approval of the technical specifications for fiberglass. All these should deserve weight.

In *Razon Inc. v. PPA*,⁴⁶ we have said that neither this Court nor Congress, and now perhaps the Ombudsman, could be expected to have the time and technical expertise to look into matters of this nature. While we cannot go so far as to say that MWSS would have the monopoly of technical know-how in the waterworks system, by the very nature of its functions, however, it obviously must enjoy an advantage over other agencies on the subject at hand. In *Felipe Ysmael, Jr. & Co. Inc. vs. deputy Executive Secretary*,⁴⁷ citing numerous cases,⁴⁸ this Court has held:

Thus, while the administration grapples with the complex and multifarious problems caused by unbridled exploitation of these resources, the judiciary will

stand clear. A long line of cases establish the basic rule that the courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.

It stands to reason for, in *Bureau Veritas v. Office of the President*,⁴⁹ we have further observed:

The discretion to accept or reject a bid and award contracts is vested in the Government agencies entrusted with that function. The discretion given to the authorities on this matter is of such wide latitude that the Courts will not interfere therewith, unless it is apparent that it is used as a shield to a fraudulent award.

All considered, it is our view that the issue here involved, dealing, such as they do, on basically technical matters, dealing, such as they do, on basically technical matters, deserve to be disentangled from undue interference from courts and so from the Ombudsman as well.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Kapunan and Mendoza, JJ., concur.

Francisco, J., took no part.

Footnotes

1 Case No. OMB-0-92-0750, entitled "Members of the Philippine Large Diameter Pressure Pipes Manufacturers Association (PLDPPMA) v. Concerned Officials of the Metropolitan Waterworks and Sewerage Systems (MWSS).

2 Entitled "Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts."

3 Petitioners have identified themselves as "Concerned Officials of the Metropolitan Waterworks and Sewerage System" because that is how they were so designated in the complaint before the Ombudsman. PLDPPMA maintains that the complaint is against the MWSS officials concerned with the bidding. It was primarily directed against then Administrator Teofilo Asuncion's predecessor, former MWSS Administrator Luis Sison.

4 *Rollo*, p. 10

5 *Rollo*, p. 86.

6 *Rollo*, p. 86.

7 *Rollo*, p. 70.

8 *Rollo*, p. 86.

9 Annex "A", Comment of Private Respondent, *Rollo*, pp. 297-302.

1. *PREQUALIFIED APPLICANTS*

CONTRACTOR	REMARKS
1. PHESCO, Inc.	Bid on both but award is limited to one contract
2. China estate Const. & Eng'g. Corp.	Eligible for award of two contracts
3. FF Cruz & Co., Inc.	Bid and award of two contracts
4. Kurimoto Ltd.	Eligible for award of two contracts
5. DM Consunji	Eligible for award of two contracts
6. Eng'g. Equipment Inc.	Bid on both but award is limited to one contract
7. SAMWHAN CORP.	Eligible for award of two contracts
8. DYWIDAG/TITAN Const./Wilfer Const./Alpha Tierra Mgmt. Corp./Consortium	Eligible for award of two contracts
9. Philippine Golden M (Nanjing Hua Tali Eng'g. Ltd./Shanghai Baogung Metallurgical Const. Corp. /Phil. Valve Mfg. Corp./MMRR Const./Golden City Eng'g. Corp. Joint Venture)	Eligible for award of two contracts
10. J.V. Angeles Const. Corp./JA Dev. Corp.	Bid on both but award is limited to one contract only
11. C.M. Pancho Const., Inc./MIESCOR/JE& Co. Consortium. (Rollo, p. 310)	Bid and award on both contracts

11 The members of the association include the International Pipe Industries Corporation, Italit Asbestos Cement Corporation, Mayer Steel Pipe Corporation, Goodyear Steel Pipe Corporation and City Industrial Corporation. (*Rollo*, p. 308)

12 *Rollo*, pp. 307-308.

13 *Rollo*, pp. 309-312.

14 *Rollo*, pp. 313-314.

15 *Rollo*, p. 88.

16 *Rollo*, pp. 318-319.

17 *Rollo*, pp. 320-321.

18 *Rollo*, p. 322.

19 *Rollo*, p. 425.

20 *Rollo*, p. 262.

21 *Rollo*, p. 262.

22 *Rollo*, p. 478.

23 *Rollo*, pp. 421-436.

24 *Rollo*, 417-420.

25 *Rollo*, pp. 406-407.

26 *Rollo*, p. 69.

27 Entitled "Prohibiting Courts from Issuing Restraining Orders or Preliminary Injunctions in Cases Involving Infrastructure and Natural Resource Development Projects of, and Public utilities Operated By, the Government."

28 *Rollo*, pp. 84-113.

29 *Rollo*, p. 83

30 *Rollo*, pp. 226-239.

31 *Rollo*, pp. 722-725.

32 *Crespo v. Provincial Board of Nueva Ecija*, 160 SCRA 66.

33 *Mutuc v. Court of Appeals*, 190 SCRA 43.

34 *Asiaworld Publishing House, Inc. v. Ople*, 152 SCRA 219; *Manuel v. Villena*, 37 SCRA 745.

35 191 SCRA 545, 550-551.

36 *Rollo*, pp. 752-756.

37 *Rollo*, pp. 299-301.

38 IB 2.1.

39 Asbestos Cement Pipe (ACP)

Cast Iron Pipe (CIP)

Polyethylene Pipe (PE)

Polyvinyl Chloride Pipe (PVC)

Ductile Iron Pipe (DIP)

Steel Pipe (SP)

Fiberglass pressure Pipe (FPP)

40 *Rollo*, pp. 432-433.

41 Republic v. Capulong, 199 SCRA 134.

42 67 O.G. no. 40, pp. 7866-7875.

43 Sections 1 and 3 (f), R.A. No. 6234.

44 See Bureau Veritas v. Office of the President, 205 SCRA 705.

45 *Rollo*, p. 240.

46 151 SCRA 233.

47 190 SCRA 673.

48 Lianga bay Logging Co., Inc. vs. Enage, 152 SCRA 80; Lacuesta vs. Herrera, 62 SCRA 116; Manuel vs. Villena, 37 SCRA 745; Villegas vs. Auditor General, 18 SCRA 877; Ganito vs. Secretary of Agriculture and Natural resources, 16 SCRA 543; Suarez vs. Reyes, 7 SCRA 461; Pajo vs. Ago, 108 Phil. 905; Coloso vs. Board of Accountancy, 92 Phil. 938; Espinosa vs. Makalintal, 79 Phil. 134.

49 *Supra.*, note 37.