

**ARMANDO E. ENAJE, SR., PAULITO V. LINIS, CARLOS H. DELA CRUZ,
LUTGARDA S. BAUTISTA, MARICHU D. SIEJA, BENJAMIN M. CHUA,
KARL S. SANMILLAN, RHEA PAULA G. GAMIT AND BRENIA F. FRAY...**

Ponente: ABDULWAHID, J.

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ABDULWAHID, J.:

This is a Petition for Review[1] filed under Rule 43 of the 1997 Rules of Civil Procedure by Armando E. Enaje, Sr., et.al., seeking the review of the following decision and order issued by the Office of the Ombudsman in OMB-C-A-12-0133-C, to wit: (1) Decision[2] promulgated on July 29, 2013, finding petitioners guilty of grave misconduct and conduct prejudicial to the best interest of the service, and further finding petitioner Enaje, Sr., guilty of serious dishonesty, and dismissing them from the service with accessory penalties of forfeiture of retirement benefits, cancellation of CSC eligibility and perpetual disqualification to render government service; and (2) Order[3] promulgated on April 30, 2014, denying the motion for reconsideration thereof.

Petitioner Armando E. Enaje, Sr. is the incumbent Barangay Captain of Barangay 598, Zone 59, District VI, Manila, while petitioners Paulito V. Linis, Carlos H. Dela Cruz, Lutgarda S. Bautista, Marichu D. Sieja, Benjamin M. Chua are impleaded in their capacity as Barangay Kagawad, Karl S. Sanmillan as Chairman of Sangguniang Kabataan, and Rhea Paula G. Gamit and Brenia F. Frayres as Barangay Secretary and Barangay Treasurer, respectively.

On September 26 and 27, 2011 typhoon “Pedring” brought havoc in Luzon, particularly in Metro Manila. To immediately address the needs of the constituents, the City Council of Manila adopted a Resolution, declaring a state of calamity, and allowing all barangays in the City of Manila to release and disburse their 5% calamity funds. Thus, on October 12, 2011 the Office of the Sangguniang Barangay of Brgy. No. 598, Zone 59, District VI, Manila passed a Resolution, approving the release of 5% calamity fund to purchase assorted goods for distribution to their constituents. Thereafter, the Committee on Canvass immediately canvass for the lowest net government price of one hundred twenty (120) sacks of rice intended to be distributed to their constituents. Accordingly, three firms submitted their corresponding bids, to wit:

FIRM UNIT COST TOTAL COST

Danrenz Trading Php 2,694.12 Php 323, 294.40

Boylet Ent. Gen. Contractor Php 2,822.41 Php 338, 689.20

HRPH Trading & Gen Contractor, Co. Php 2,565.83 Php 307, 899.00

Considering, that HRPH gave the cheapest price, which is the most advantageous to the government, petitioners contracted with the said firm and made the corresponding particulars of payment.[4]

Respondent Ricky V. Oquendo, Sr., a Barangay Kagawad of Barangay 598 Zone 59, District VI, Manila, alleged that there was no public bidding nor invitation to bid conducted for the subject disbursement. There was no publication nor any proof that notice of bidding was posted in the barangay. Hence, there was clear violation of

Republic Act 9184, otherwise known as the “Government Procurement Reform Act of 2003”. Further, respondent alleged that only fifty (50) out of the one hundred twenty (120) sacks of rice were actually delivered. Also, in the subject list of recipients, there appeared at least eighteen (18) persons who came forward and claimed that their signatures were falsified and have not received the sacks of rice. More importantly, the list of recipients included at least three (3) names of persons who were already deceased even before typhoon “Pedring” hit the City of Manila. Thus, on March 13, 2012, respondent lodged a criminal and administrative complaint against petitioners.[5]

On July 29, 2013, the Office of the Ombudsman rendered the assailed Decision[6], finding petitioners guilty of grave misconduct and conduct prejudicial to the best interest of the service. Also, petitioner Enaje, Sr. was found guilty of serious dishonesty. They were meted the penalty of dismissal from the service with accessory penalties of forfeiture of retirement benefits, cancellation of CSC eligibility and perpetual disqualification to render government service. The Office of the Ombudsman declared that the acts of petitioners in conspiring with one another, to process, recommend, approve, and award the procurement of rice, as well as the disbursement of public funds without the required competitive bidding under R.A. No. 9184, constitute grave misconduct and conduct prejudicial to the best interest of the service. Contrary to petitioners' claim, negotiated procurement as alternative method of procurement was not valid or justified, since, there was no emergency to speak of in order to prevent damage or loss to life or property.

Petitioners filed a motion for reconsideration, but the Office of the Ombudsman denied the same in the assailed Order[7] promulgated on April 30, 2014.

Undaunted, petitioners filed this petition for review, raising the following assignment of errors[8], to wit:

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THE OFFICE OF THE OMBUDSMAN SERIOUSLY ERRED IN HOLDING PETITIONERS LIABLE FOR MISCONDUCT, CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE AND SERIOUS DISHONESTY IN THAT:

1. THERE WAS FAITHFUL AND SUBSTANTIAL COMPLIANCE WITH THE PROVISIONS OF R.A. 9184.
2. THERE WAS NO EVIDENCE TO PROVE THE EXISTENCE OF CONSPIRACY.
3. THE THEORY OF FORGERY AND FALSIFICATION OF DOCUMENTS HAS NO BASIS IN FACT AND IN LAW. (Emphasis ours)

Petitioners claim that aside from public bidding, there are other alternative modes of procurement, i.e., negotiated procurement, allowed by law. In the procurement undertaken by the barangay, paramount consideration was given to the fact that time was of the essence, which arose out of a natural calamity where immediate action was necessary to prevent the damage to or loss of life. Thus, the award of purchase contract to HRPB underwent a process that falls under negotiated procurement.

The petition is not meritorious.

Republic Act No. 9184, otherwise known as “The Government Procurement Reform Act”, requires public bidding in all procurement of infrastructure, goods and services. Specifically, Section 10, Article IV of the said Act provides, as follows:

Section 10. Competitive Bidding – All procurement shall be done through Competitive Bidding, except as provided for in Article XVI[9] of this Act.

Competitive Bidding refers to a method of procurement which is open to participation by any interested party and which consists of the following processes: advertisement, pre-bid conference, eligibility screening of prospective bidders, receipt and opening of bids, evaluation of bids, post-qualification, and award of contract.[10] The rationale behind the requirement of a public bidding is to ensure that the people get maximum benefits and quality services from the contracts. More significantly, the strict compliance with the requirements of a public bidding echoes the call for transparency in government transactions and accountability of public officers.[11]

Clearly, petitioners failed to comply with the aforementioned requirements. The winning bid submitted by private contractor HRPB Trading has a unit cost amounted to Php 2,565.83 or equivalent to Php 51.32 per kilo of rice, which is considerably higher than the prevailing rate in the market, especially at the time when it was contracted in 2011. Further, there was no detailed description or brand of rice to be quoted or to be bided out, and neither the purchase request or acceptance & inspection report provided such description. Clearly, this transaction is not favorable to the government nor does it protect the public interest.

Petitioners claim that the barangay undertook the procurement of the sacks of rice through an alternative method of procurement legally known as negotiated procurement, falling under emergency cases. In justifying the negotiated purchase without competitive bidding, petitioners claim that paramount consideration was given to the fact that time was of the essence, which arose out of a natural calamity where immediate action is necessary to prevent damage to or loss of life. Although this reasoning is quite laudable, there was no convincing evidence presented to substantiate it.

As pointed out by the Office of the Ombudsman, there is no emergency to speak of in order prevent damage or loss to life or property. The procurement was made on October 13, 2011 or more than two (2) weeks after typhoon “Pedring” hit the City of Manila. Also, the delivery and distribution of the sacks of rice were not done immediately. Petitioner Enaje, Sr. informed the barangay accounting department that they decided to distribute the sacks of rice simultaneously with the distribution of gifts in December 2011. This evidently contradicts petitioners contention that time was of the essence in the procurement.

In sum, competitive public bidding may not be dispensed with nor circumvented, and alternative modes of procurement for public service contracts and for supplies, materials, and equipment may only be resorted to in the instances provided for by law. The declaration of state of calamity only authorizes the barangay to use its calamity fund but no express provision of law has granted the barangay the right to forego competitive bidding in negotiating the procurement of goods. Thus, the acts of petitioners to process, recommend, approve, and award the procurement of rice, as well as the disbursement of funds, without the required competitive bidding, constitute grave misconduct and conduct prejudicial to the best interest of the service.

Civil Service Commission Resolution No. 06-0538 or the Rules on the Administrative Offense of Dishonesty classifies dishonesty into three gradations: (1) serious; (2) less serious; and (3) simple. Serious dishonesty is punishable by dismissal. Less serious dishonesty is punishable by suspension for six months and one day to one year for the first offense and dismissal for the second offense. Simple dishonesty is punishable by suspension of one month and one day to six months for the first offense, six months and one day to one year for the second offense, and dismissal for the third offense.[12]

Under Section 3 of Resolution No. 06-0538,[13] serious dishonesty comprises the following acts:

Section 3. Serious Dishonesty. – The presence of any one of the following attendant circumstances in the commission of the dishonest act would constitute the offense of Serious Dishonesty:

- The dishonest act causes serious damage and grave prejudice to the government.

- The respondent gravely abused his authority in order to commit the dishonest act.
- Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption.
- The dishonest act exhibits moral depravity on the part of the respondent.
- The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment.
- The dishonest act was committed several times or in various occasions.
- The dishonest act involves a Civil Service examination, irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets.
- Other analogous circumstances. (Emphasis supplied)

A careful reading of the records of this case reveals that petitioner Enaje, Sr. is also liable for serious dishonesty. Petitioner Enaje, Sr. attested in every page of the lists of recipients that all the persons named therein received rice from the barangay, when in truth and in fact, some did not. Evidence show that several of those listed beneficiaries neither signed the said document nor received anything from the barangay because their signatures opposite their names were forged, while the other names in the list were of those who were already deceased even before typhoon “Pedring” hit the City of Manila. Since, petitioner Enaje, Sr. is in possession of the lists of recipients, containing falsified/forged signatures and made use of the same for liquidation purposes of the barangay transaction, it can reasonably be concluded that he is the author of the falsification or forgery. As such, he is responsible for these dishonest acts.

Well-established is the principle that findings of fact of quasi-judicial bodies, like the Office of the Ombudsman, are accorded with respect, even finality, if supported by substantial evidence.

In *Marcelo vs. Bungubung*,^[14] the High Court defined substantial evidence and laid down guidelines relative to the conduct of judicial review of decisions rendered by administrative agencies in the exercise of their quasi-judicial power, viz.:

First, substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. Second, in reviewing administrative decisions of the executive branch of the government, the findings of facts made therein are to be respected so long as they are supported by substantial evidence. Hence, it is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. Third, administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law. These principles negate the power of the reviewing court to re-examine the sufficiency of the evidence in an administrative case as if originally instituted therein, and do not authorize the court to receive additional evidence that was not submitted to the administrative agency concerned. (Emphasis ours)

In brief, in the light of the foregoing rules, we find the factual findings of the Office of the Ombudsman with respect to the liability of petitioners for dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service are supported by substantial evidence.

WHEREFORE, the petition for review is DISMISSED for lack of merit.

SO ORDERED.

Baltazar-Padilla, P. J., and Inting, S. B., JJ., concur.

[1] Rollo, pp. 3-19.

[2] Id. at 20-33.

[3] Id. at 34-38.

[4] Id. at 4-5.

[5] Id. at 175-178.

[6] See Note 2.

[7] See Note 3.

[8] Rollo, p. 7.

[9] ARTICLE XVI ALTERNATIVE METHODS OF PROCUREMENT

Section 48. Alternative Methods. - Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

a. Limited Source Bidding, otherwise known as Selective Bidding - a method of Procurement that involves direct invitation to bid by the Procuring Entity from a set of pre-selected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract;

b. Direct Contracting, otherwise known as Single Source Procurement - a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma voice together with the conditions of sale, which offer may be accepted immediately or after some negotiations;

c. Repeat Order. - a method of Procurement that involves a direct Procurement of Goods from the previous winning bidder, whenever there is a need to replenish Goods procured under a contract previously awarded through Competitive Bidding;

d. Shopping - a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualification; or

e. Negotiated Procurement - a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the

Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant. In all instances, the Procuring Entity shall ensure that the most advantageous price for the government is obtained.

[10] Section 5 (h), Revised Implementing Rules and Regulations of R.A. 9184.

[11] Manila International Airport Authority vs. Olongapo Maintenance Services, Inc., 543 SCRA 269, 275. (2008)

[12] Light Rail Transit Authority vs. Salvaña, G.R. 192074, June 10, 2014.

[13] Ibid.

[14] 552 SCRA 589, 607. (2008)

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