ESTELITA P. PACARDO, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

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SANTOS, J.:[1]

This involves two (2) Petitions for Review[2] under Rule 43 of the Rules of Court, individually filed by the above-named petitioners, seeking the reversal of the Order[3] dated 20 January 2005 of the Office of the Ombudsman-Mindanao in OMB-MIN-ADM-00-200 finding both petitioners liable for Conduct Prejudicial to the Best Interest of the Service, and meting them each with the penalty of suspension from the service for a period of one (1) year.

The Antecedents

Acting on an anonymous letter addressed to the Secretary of the Department of Agriculture (DA) regarding some alleged anomalous transactions in the DA, the latter requested respondent Commission on Audit (COA) to conduct an audit and fact-finding investigation on the DA, Region IX, Zamboanga City, and accordingly, one was conducted by State Auditor III Bernardo R. Sumicad. [4] The result of the latter's investigation were contained in a Report on the Audit and Fact-Finding Investigation[5] dated 07 July 1999, which enumerated the following findings, viz.:

> Finding No. 1:
>
> Biddings were simulated in at least four (4) instances and five (5) "Request[s] for Quotations" of one participant were falsified thus, giving undue advantage to favored suppliers and facilitated the jacking up of prices of procurements.
>
> Finding No. 2:
>
> Purchase from Hundred Years Trading and General Merchandise (HYTGM) were found to be higher compared with independent canvass by other Government Agencies from the same store.
>
> Finding No. 3:
>
> Fictitious purchases were discovered at the Department of Agriculture, Western Mindanao Agricultural Research Center (DA-WESMIARC), Ipil, Zamboanga del Sur[,] totalling P1,242,400.00 wherein the supplies were undelivered and the bids of the losing bidders were falsified thus, causing undue injury to the government in the same amount.
>
> Finding No. 4:
>
> Purchases by DA-WESMIARC from Ricomar General Merchandise [t]otal[l]ing P600,000.00 remained unaccounted for. [6] (Emphasis omitted)

Several employees of the DA, namely: Abundio E. Bernardo, Jr., Fernando F. Godinez, Vicente M. Gazmen, and herein petitioners Estelita P. Pacardo (Pacardo) and Salvador P. Peñaflor (Peñaflor), all members of the DA Bids and Awards Committee, filed a Joint Counter-Affidavit[7] dated 27 September 2001 relative to the charges based

on the first two (2) findings in the above-cited Report, docketed as OMB-MIN-ADM-00-200.

On 11 June 2002, the Office of the Ombudsman-Mindanao rendered a Decision dated 15 April 2002, the dispositive portion of which reads:

> WHEREFORE, PREMISES CONSIDERED, this Office finds substantial evidence to prove that acts of DISHONESTY were committed by all the respondents who were involved in the purchases of the various supplies and materials, whose names are listed below, and said respondents are hereby meted the penalty of DISMISSAL FROM SERVICE with all the accessory penalties appurtenant thereto.
> 1) LEODEGARIO A. GARCIA;
> 2) MIRALAM C. TILLAH, JR.;
> 3) SHEIK FAROUK M. BAGIS, AL HAJ;
> 4) ABUNDIO E. BERNARDO, JR.;
> 5) FERNANDO F. GODINEZ;
> 6) ESTELITA P. PACARDO;
> 7) SALVADOR P. PEÑAFLOR;
> 8) EDGARDO B. TABAL;
> 9) DANILO V. NAZARIO;
> 10) JOVITA F. JACARIA;
> 11) ANGELINA D. DOMINGO;
> 12) CARMEN M. ARCEO;
> 13) RABIA J. ALBANI;
> 14) HIROHITO M. MANZANARIS;
> 15) ABDULGAFOR N. ABDUA;
> 16) SAMUEL M. SIMBAJON;
> 17) VICENTE M. GAZMEN;
> 18) ROMAN H. MERCADO;
> 19) VICENTE A. GARNICA, JR.;
> 20) FELICIANO P. DAGUPLO;
> 21) PETER M. ANDALAHAO;
> 22) EDGAR R. APAO;
> 23) ANDREW M. BALILI;
> 24) ALBERTO A. RAFON;
> 25) ELEAZAR K. DELOS REYES; and,
> 26) ROSEMARIE B. YURONG.

On the other hand, considering that respondent ANTONIO LIM is no longer connected with the government, then the penalty of DISMISSAL is not made applicable as against him only. However, the accessory penalties of perpetual disqualification for reemployment in the government service, cancellation of eligibility, and forfeiture of retirement benefits are imposed upon him.

Finally, this Office would like to thank the Commission on Audit-Regional Office No. IX for their support in the proper disposition of the instant case through the conduct of an exhaustive audit.

SO DECIDED.[8]

On 09 July 2002, several of the above-enumerated respondents in OMB-MIN-ADM-00-200, including the two (2) petitioners herein, filed a Motion for Reconsideration[9] from the Decision cited above.

In an Order[10] dated 20 January 2005, the Motion for Reconsideration was partially granted by modifying the Decision in this wise, viz.:

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WHEREFORE PREMISES CONSIDERED, the Decision dated 15 April 2002 is hereby Modified.

Relative to Finding No. 1 and II, this Office finds the following respondents liable for less grave offense of CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE and are hereby meted the penalty of ONE (1) YEAR SUSPENSION FROM THE OFFICE:

- Regional Director Miralam C. Tillah, Jr.,

- Asst. Regional Director for Administration and Regulatory Shiek Farouk M. Bagis, Al Haj,

- Administrative Officer/BAC Member Abundio E. Bernardo, Jr.

- Finance and Mgmt. Officer/BAC Member Fernando F. Godinez,

- Chief Agriculturist/BAC Member Estelita P. Pacardo,

- Sr. Agriculturist/BAC Member Salvador P. Penaflor,

- Administrative Officer (DA-WESMIARC) Vicente M. Gazmen,

- Assistant Regional Director for Fisheries Abdulgafor N. Abdua[.]

Liable for SIMPLE MISCONDUCT is Supply Officer Antonio Lim and is hereby meted the penalty of SUSPENSION OF THREE (3) MONTHS.

As earlier found in the assailed Decision, respondent Supply Officer Antonio Lim is no longer in service. Likewise, in his Motion for Reconsideration, respondent Regional Director Miralam C. Tillah informed that he left government service on August 6, 2001. With respect to these two respondents, the penalty of suspension could no longer be served; instead they shall be required to pay the fine equivalent to their salaries for the period of the suspension they are supposed to serve.

Charges against Supervising Agriculturist Edgardo B. Tabal, Supervising Agriculturist/Regional Integrated Pest Management Program Coordinator Samuel M Simbajon; Supply Officer Danilo V. Nazario, Storekeeper Jovita F. Jacaria, Utility Worker Angelina Domingo, Agriculturist II Carmen M. Arceo, Sr. Bookkeeper Rabia J. Albani, and Program Officer Hirohito M. Manzanaris are hereby dismissed.

For Finding III and IV, this Office finds respondent Leodegario A. Garcia guilty of DISHONESTY and SERIOUS MISCONDUCT and is hereby meted the penalty of DISMISSAL FROM SERVICE. The following respondents are found guilty of the administrative offense of CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE GOVERNMENT and is hereby meted the penalty of SIX (6) MONTHS SUSPENSION FROM OFFICE:

- BAC Members Feliciano P. Daguplo,

- Peter M. Andalahao,

- Edgar R. Apao,

- Andew M. Balili,

- DA property Inspector Vicente A. Garnica, Jr.

- Disbursing Officer Eleazar K. delos Reyes,

- Accountant Rosemarie B. Yurong

- Alberto A. Rafon as canvasser.

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The charges against Assistant Manager Roman H. Mercado are hereby dismissed.

SO ORDERED.[11] (citations and emphasis omitted)

On 08 October 2008, save for Accountant Rosemarie B. Yurong, seven (7) of the respondents in OMB-MIN-ADM-00-200 cited above who were meted the penalty of six (6) months suspension, and the two (2) petitioners herein, filed before this Court a Motion for Extension of Time to File Petition for Review on Certiorari, praying for an extension of thirty (30) days or until 07 November 2008 within which to file the petition.[12]

This Court, however, granted an extension of fifteen (15) days only, thus, the petitions separately filed by petitioners Pacardo and Peñaflor on 07 November 2008 were already late. Despite that, this Court admitted the same in its Resolution dated 23 January 2009, and directed that those respondents who requested for an extension but failed to file their petition be dropped as parties to the case, and the case be re-captioned accordingly.[13]

On 23 February 2009, petitioners Pacardo and Peñaflor filed their respective Amended Petitions reflecting the revised captions.[14]

Respondent COA, having failed to submit its Comment on the Amended Petitions, was deemed to have waived the filing thereof.[15] It, however, availed of the opportunity to file its Memorandum, which the Office of the Solicitor General (OSG) filed on its behalf, on 15 January 2010 relative to petitioner Pacardo's petition in CA-G.R. SP No. 02556.[16] Petitioner Pacardo filed a Reply to said Memorandum on 11 June 2010.[17]

On 23 March 2011, both petitioners submitted a copy of the Decision dated 03 March 2011 of the Sandiganbayan acquitting petitioner Peñaflor, along with several others, in Criminal Case Nos. 27495-27496 for Violation of Section 3 (e), Republic Act (R.A.) No. 3019.[18]

On 18 April 2013, this Court issued a Resolution stating thus:

> WHEREFORE, in view of the foregoing premises, the Judicial and Records Division (JRD) is hereby DIRECTED to assign the case captioned as "Salvador P. Peñaflor, Petitioner, v. Commission on Audit, Respondent" a new docket number. The petition of Estelita P. Pacardo however, shall remain docketed as "CA-G.R. SP 02556-MIN." Thereafter, both cases having arisen from the same administrative charge, they are hereby ORDERED CONSOLIDATED motu proprio pursuant to Rule III, Sec. 3 of the Internal Rules of the Court of Appeals (IRCA).
>
> For the purpose of facilitation, petitioner Salvador P. Peñaflor is hereby DIRECTED to furnish the OSG, respondent COA's counsel, a copy of his Amended Petition within five (5) days from notice. The OSG is hereby DIRECTED to file its Memorandum relative to the Amended Petition of Salvador P. Peñaflor within fifteen (15) days from receipt of said petition.
>
> Meanwhile, the Resolution of 15 July 2010 declaring the case submitted for decision is hereby SET ASIDE.
>
> SO ORDERED.[19]

Acting on the OSG's Motion for Extension of Time to File Memorandum,[20] this Court granted the same, and, additionally, directed the payment of docket fees for Peñaflor's petition which was docketed as CA-G.R. SP No. 05468.[21]

On 27 August 2013, the OSG filed a Memorandum on behalf of respondent COA for CA-G.R. SP No. 05468.[22]

In this Court's Resolution dated 23 October 2013, the instant petitions were declared submitted for decision.[23]

The Issues

Petitioners Pacardo and Peñaflor similarly raise the following issues in their respective petitions, viz.:

> 1. WHETHER OR NOT PETITIONER WAS IN BAD FAITH OR ACTED WITH MALICE IN PERFORMING HIS [or HER] ADDED DUTIES AS ONE OF THE MEMBERS OF THE BIDS AND AWARDS COMMITTEE.
>
> 2. TAKING INTO CONSIDERATION THE EVIDENCE PRESENTED BY THE COMPLAINANT IN THE PRESENT CASE, AND THE EXAMINATION OF ITS WITNESSES IN RELATED CASES BEFORE THE SANDIGANBAYAN, WHETHER OR NOT THERE IS SUBSTANTIAL EVIDENCE TO HOLD HEREIN PETITIONER ADMINISTRATIVELY LIABLE FOR CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE? OTHERWISE PUT, DO THE PERCEIVED AND DECLARED EVILS (FALSIFICATION OF PUBLIC DOCUMENTS OR UTILIZATION OF SIMULATED BIDS, AND OVER-PRICING) WERE (sic) ACTUALLY PROVED? [24] (emphasis omitted)

This Court's Ruling

The two (2) issues raised by petitioners Pacardo and Peñaflor can be restated, thus: Whether petitioners' culpability for allegedly conducting themselves in a manner prejudicial to the best interest of the service was established by substantial evidence thereby warranting the penalty of suspension of one (1) year from the service meted upon them.

In particular, the Office of the Ombudsman-Mindanao (OMB) held both petitioners liable for Conduct Prejudicial to the Best Interest of the Service on the basis of Findings 1 and 2 of respondent COA's Audit and Fact-Finding Investigation Report[25] dated 07 July 1999, pertinent portions of which read as follows:

> Finding No. 1:
>
> Biddings were simulated in at least four (4) instances and five (5) "Request[s] for Quotations" of one participant were falsified thus, giving undue advantage to favored suppliers and facilitated the jacking up of prices of procurements.
>
> In at least four (4) Disbursement Vouchers (DV) sampled (Annexes B, C, D & E) one supposed participant in the four biddings conducted, the Pacifica Agrivet Supplies, as represented by Ms. Phoebe Taupan, denied having quoted and signed in five (5) "Request for Quotations." Ms. Taupan executed two (2) affidavits to this effect, hereto attached as Annexes F & G. As shown in the 4 DVs, it appears that the opening of the bids per Annexes B, C, D & E were made on 4/13, 4/13, 7/7, & 10/27/1998 respectively and all at the same hour 10:00 A.M. Two (2) bided (sic) contracts were won by Hundred Years Trading and Gen. Merchandise whose registered owner is one Mr. Crisanto Madriaga, the other one by NT Agrivet Supplies owned by Nestor M. Lopez Vito, Jr., and the last by Evergreen Enterprises, owned by Arsenia Go.
>
> As a consequence of the falsified bid documents and simulated bidding, the Hundred Years Trading and General Merchandise, NT Agrivet Supplies and Evergreen Enterprises were able to obtain contracts with the DA-RO-IX in connivance with some DA-RO-IX personnel. Moreover, the prices in many items were higher than those compared with the prices in the official price list furnished by Pacifica Agrivet Supplies & independent canvass (Annex H-1 to Annex H-6). The differences totalling P675,623,59 in the four vouchers mentioned as per analysis xxx had caused undue injury to Government by the same amount through manifest partiality and evident bad faith.
>
> xxx
>
> From the foregoing facts, there is reason to believe that two laws had been violated. One is the Revised Penal Code (RPC) for falsification of official documents while the other is RA 3019 Sec. 3e. In the falsification of official documents, the act was committed by causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate. It is presumed however, in the absence of proof to the

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> contrary, that the persons who stand to benefit from the falsified document is the author of the same (Sec. 3j, Rule 131, Rules of Court). These acts could not, however, be made possible without the knowledge and acquiescence of some DA personnel which can be shown from the following circumstances, to wit:
> 1. The Pacific Agrivet Supplies was not represented in the opening of the bids, as they have not in fact quoted.
>
> xxx
>
> It should be emphasized that a falsified bid is not the original document of bids. Hence, any bidding conducted under it must be void from the beginning due to lack of representation. The falsification happened at least four times (without prejudice to the remaining vouchers not yet examined/audited) and this fact should have been known to the members of the Bids and Awards Committee, the canvassers and Agency Head either during the delivery of the requests for quotation (bids), opening of the bids or committee deliberations.
>
> 2. The canvassers assigned to deliver all Requests for Quotation, did not deliver those that were addressed to Pacifica Agrivet Supplies. Otherwise, Pacifica Agrivet [S]upplies could have been aware and it could have participated in the biddings. The deliberate failure to deliver was done many times.
>
> 3. No body (sic) opposed the awarding of the contracts nor questioned the proceedings (supposed biddings) as the records did not show any. xxx
>
> 4. The biddings should have been given widest publicity. xxx
>
> xxx

Considering that the amounts involved in the procurement amounted to more than one million each and the conditions then obtaining does not call for an emergency purchase under Sec. 439, Sec. 428a of GAAM Vol. 1 which requires a competitive public bidding shall apply. The four vouchers mentioned above however, show that the biddings were limited to only three (3) participants, employing personal delivery as the only means of publication. Hence, it is not in accordance with Sec. 433 cited above.

It is evident therefore, from the facts and circumstances given that the conduct of the biddings were simulated in all 4 transactions. The act of falsifying and the use of falsified public documents were parts of the conspiracies to give unwarranted benefit or advantage to favored suppliers and to defraud the government by jacking-up the prices of procurements.

Moreover, in the purchase of garden tools and fertilizers on May 6, 1998 (Annex B) amounting to P1,146,000.00, two hundred forty (240) sets were still undelivered as of May 24, 1999, or more than one year after payment on May 6, 1998. As stated in the reply letter of Mr. Hirohito Mananzares to the demand letter of the DA-RO-IX Regional Auditor xxx, the 240 sets of garden tools and fertilizers are still in the bodega of Evergreen Enterprises awaiting claimants.

xxx

From falsification of public documents to the jacking-up of prices and to advance payment of procurements or under-delivery, there is evidence of bad faith on the part of the public officers concerned. Unless rebutted, the following persons were determined to be liable for falsification of Public documents and violation of RA-3019 Sec. 3e, to wit:

> NAME POSITION EXTENT OF
> PARTICIPATION NO.OF
> COUNTS
>
> xxx

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5. Estelita P. Pacardo BAC Member a) Awarded the contracts to
lowest bidder in bad faith;
b) Allowed the falsified bid.

2

6. Salvador P.Penaflor
BAC Member a) Awarded the contracts to
lowest bidder in bad faith;
b) Allowed the falsified bid.

4

xxx

The above named persons from No. 1 to 14 (inclusive) above may also be held administratively liable for dishonesty.

xxx

Finding No. 2:

Purchases from Hundred Years Trading and General Merchandise (HYTGM) were found to be higher compared with independent canvass by other Government Agencies from the same store.

An analysis of prices of procured supplies and materials at the DA-RO-IX disclosed that purchases made from the HYTGM were higher compared with independent canvasses using the canvass forms of TELOF-IX xxx and those purchases made by the City Government of Zamboanga (Z.C.) and Telecommunications Office Region IX (TELOF-IX) from the same store, HYTGM. xxx Nine Disbursement Vouchers were sampled hereto attached as Annex K-1 to Annex K-9. The total price difference-over amounted to P667,772.30 as per working papers attached as Annex L-1 to Annex L-4. In the purchase of polythelene bags (Annex K-9), the price difference was arrived at by subtracting actual test purchase price at the Zamboanga Central Trading per Official Receipt hereto attached as Annex M, from the price per voucher. The test purchase was done because when we tried to canvass the same items from the participating bidders as indicated in the voucher, the item sizes were not available. The price difference in the purchase of polythelene bags was P526,000.00 (Annex L-4).

It was noted that despite the big amount involved (over 1 million pesos) in the said purchase, no wide publicity was given for the supposed bidding as the participating bidders were limited to only three (3). Thus, not in accordance with Sec. 433 of the GAAM Vol. 1 being cited in Finding No. 1 above. The same violation is true with the other purchasers. An irregularity was likewise noted in the purchase of office supplies under disbursement voucher No. 12-98-1920 (Annex K-4). In the supposed bidding, one bid (Annex K-4.5) bearing unit price but has no name of bidder nor signed by the bidder, was awarded to Hundred Years Trading and General Merchandise despite the latter's non-participation in the bidding. Granting that the bid bearing no name of dealer and unsigned by the dealer belongs to Hundred Years Trading and General Merchandise, the same (bid) should have been declared invalid and should have been excluded by the Bids and Awards Committee. Had there been an honest bidding conducted, the discrepancy could have been detected during the opening of the bids and during committee deliberation. But obviously, the Bids and Awards Committee members already [knew] who is going to win the contract even without examining the bids as in did (sic) it awarded the contract to its favored supplier, the

Hundred Years Trading and General Merchandise. Bad faith is evident unless proved otherwise and as a result, the State had incurred a loss of P12,012.10 (see annex L-3) due to higher cost of procurement.

It is indeed very surprising that whenever the suppliers submit their bids with the DA-RO-IX, they have to jack-up their prices while at the City of Zamboanga and TELOF-IX, they have to lower them xxx. Yet, it is even more surprising that HYTGM (without prejudice to the other vouchers not yet examined), had won in the bidding for construction/hardware materials and wearing apparel when it (HYTGM) is licensed to sell only office and agricultural supplies per license hereto attached as Annex "N". When we canvassed the same materials from the same bidders using the canvass forms of TELOF-IX, xxx, we noted that the prices per our independent canvass were lower by P11,429.65 xxx. The Hundred Years Trading and General Merchandise obtained 83 contracts out of the total 186 contracts awarded in 1998, or 44.62 %.

xxx

The following were determined to be personally liable for probable violation of Sec. 3e of RA 3019 to wit:

NAME POSITION EXTENT OF
PARTICIPATION NO.OF
COUNTS

xxx

5.Estelita P. Pacardo BAC Member Awarded contract in faith bad

9

xxx

7.Salvador P.Penaflor BAC Member Awarded contract in bad faith

8

xxx

The persons named above from numbers 1 to 14 (inclusive) were also determined to be administratively liable for dishonesty, xxx.[26]

The authority to discipline government officials emanates from the constitutional provision that a public office is a public trust, hence, public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice and lead modest lives.[27] Such strict accountability of government officers is however, not wholly tilted against the latter as it is balanced by another constitutional requirement of the existence of a cause and due process before such disciplinary authority may be validly exercised.[28]

Whether such cause justifying the exercise of disciplinary authority exists is the main issue to be resolved in the instant petitions.

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This Court rules the said issue in the affirmative.

Petitioners Pacardo and Peñaflor were similarly charged and held administratively liable in their capacity as members of the Bids and Awards Committee (BAC) of the DA, Region IX, Zamboanga City. The questioned transactions pertained to the procurement of various goods, i.e., seeds of various vegetables and garden tools (under Finding No. 1); and office supplies, construction materials, cellular battery and computer supplies, and polyethylene bags (under Finding No. 2).[29]

In order to determine if petitioners' involvement in the above-described transactions constituted Conduct Prejudicial to the Best Interest of the Service as adjudged by the OMB, it is necessary to determine the governing law on procurement for government agencies at the time of the said transactions.

In the case of Abaya v. Sec. Ebdane,[30] the evolution of Philippine procurement laws has been described to have begun with the issuance by then President Corazon Aquino of Executive Order (EO) No. 301 in the Year 1987 that prescribed the guidelines for government negotiated contracts. Section 62 of the Administrative Code of 1987 reiterated the requirement of competitive public bidding in government projects. In 1990, Republic Act (RA) No. 6957 was enacted which authorized the financing, construction, operation and maintenance of infrastructure by the private sector. It was followed in 1991 by RA No. 7160, the Local Government Code, which governed the procurement of goods and locally-funded civil works by the local government units.

Then in 1996, President Fidel Ramos issued EO No. 302 providing guidelines for the procurement of goods and supplies by the national government. It was followed in the Year 2000 by the issuance by then President Joseph Estrada of EO No. 201 providing additional guidelines in the procurement of goods and supplies by the national government. Thereafter, he issued in the same year EO No. 262 amending EO No. 302 and EO No. 201. On October 8, 2001, President Gloria Macapagal-Arroyo issued EO No. 40 entitled "Consolidating Procurement Rules and Procedures for All National Government Agencies, Government-Owned or Controlled Corporations and Government Financial Institutions, and Requiring the Use of the Government Procurement System." On January 10, 2003, President Arroyo signed into law RA No. 9184 which took effect on January 26, 2004, expressly repealing, among others, EO No. 40, EO No. 262 and EO No. 302.[31]

The records indicate that the questioned transactions in the instant cases took place sometime in 1998 and they were the subject of respondent COA's Audit and Fact-Finding Investigation Report dated 07 July 1999. [32] As such, the applicable rules and guidelines governing the procurement of goods and supplies in National Government at that time was EO No. 302 which was issued in 1996.

EO 302 entitled "Providing Policies, Guidelines, Rules and Regulations for the Procurement of Goods/Supplies by the National Government" contains the following pertinent provisions, viz.:

> xxx
>
> SEC.3. To ensure efficiency and equitable treatment, awarding of contracts shall be done through public/open competitive bidding unless another type of procurement method is necessary as prescribed under the implementing rules and regulations of this EO.
>
> SEC.4. There shall be a Prequalification, Bid and Award Committee which shall be responsible for the conduct of bidding in each and every agency, subdivision and instrumentality of the National Government including Government-Owned or Controlled Corporations to be composed of the following:
>
> xxx
>
> SEC. 5. The primary function of the Committee shall be:

1. conduct bidding;

2. evaluate bidding results; and

3. recommend award of contract.

xxx

Notably, the enumeration in EO 302 of the primary duties of the Prequalification, Bid and Award Committee (PBAC) was couched in general terms, without details or specifics.

Since the duties were conferred in a broad and encompassing manner, the PBAC under EO No. 302 was purportedly granted the full authority to conduct the bidding as it may deem fit or appropriate. The general rule is that statutes couched in general terms are deemed to merely express the broad policy, purpose, objectives and remedies, leaving the details and the manner of carrying out the law to the administrative agency entrusted with its enforcement.[33]

Be that as it may, such general authority cannot be interpreted to mean that the PBAC under EO 302 can wield an absolute free hand on how it will conduct the bidding. This Court holds that such generalized authority was not meant to be an unfettered power that may be wielded in a wanton and despotic manner. Instead, it presupposes that the same must always be exercised within the bounds of what is lawful and consistent with public weal and order. Thus, concomitant with such seemingly encompassing authority of the PBAC, or the BAC as how petitioners' committees were called, is the responsibility to ensure that the entire bidding process, from beginning to end, is conducted properly pursuant to the essence of public bidding which aims to protect the public interest by giving the public the best possible advantages thru open competition, precluding suspicion of favoritism and anomalies in the execution of public contracts.[34]

Differently said, such full authority under EO 302 cannot be interpreted as an unbridled license for the PBAC to do as it pleases as instead, it cannot depart from its duty to observe the tenets of accountability and utmost responsibility to the people pursuant to the principle that its office is a public trust. As such, the members of the PBAC, who are government officials, are expected to adhere to the Code of Conduct and Ethical Standards for Public Officials and Employees[35] which enunciates, inter alia, the State policy of promoting a high standard of ethics and utmost responsibility in the public service. In particular, Section 4 (c) of the Code commands that "[public officials and employees] shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest." Thus, any conduct contrary to these standards would qualify as conduct not befitting a government employee.

Every violation of duty or commission of a wrongful act or omission by a public official results in a three-fold responsibility such that he may be held civilly, criminally and administratively liable for the same act.[36] The penal and civil liability is separate and distinct from the administrative liability. It is the latter which is the subject matter of the instant petitions.

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The well-entrenched rule is that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer, has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded by his position.[37]

In particular, the OMB found petitioners liable for the administrative offense of Conduct Prejudicial to the Best

Interest of the Service. There is actually no exact definition of the said offense. Even EO No. 292, which is the Administrative Code of 1987, merely lists it as one of the grounds for disciplinary action, but does not define it. Nonetheless, jurisprudence has provided examples to illustrate it, and it

includes the following: misappropriation of public funds, abandonment of office, failure to report back to work without prior notice, failure to safe keep public records and property, making false entries in public documents and falsification of court orders; a Judge's act of brandishing a gun and threatening the complainants during a traffic altercation; and a court interpreter's participation in the execution of a document conveying complainant's property which resulted in a quarrel in the latter's family. The selling of fake Unified Vehicular Volume Program exemption cards during office hours, and forgery of receipts to avoid private contractual obligations, were also found to constitute conduct prejudicial to the best interest of the service. In all, it has been held that as long as the questioned conduct tarnishes the image and integrity of the public office, the corresponding penalty for the said offense may be meted on the erring public officer or employee.[38]

A review of the records of the instant cases reveals the following as the bases for finding petitioners administratively liable for the offense of Conduct Prejudicial to the Best Interest of the Service, to wit:

Respondent COA found the opening of bids for the procurement of seeds of various vegetables and garden tools allegedly conducted by the BAC in the months of July and October, and twice in April 1998, all at the same hour of 10:00 A.M., to have been simulated. Based on the two (2) affidavits of one supposed participant, Pacifica Agrivet Supplies (Pacifica) who denied that it was made to accomplish the requests for quotations, respondent COA found that the supposed biddings utilized falsified quotations purportedly to make it appear that Pacifica participated in the bidding, when in truth, it did not. Further, it was found that the prices of the items awarded by the BAC were higher than those in the official price list of Pacifica, thereby causing the Government to shoulder the additional cost of Php 675,623.59.[39]

Additionally, respondent COA found certain circumstances in the case that indicated the presence of collusion among the DA personnel, without whose knowledge and acquiescence the above-described events could not have been possible. It enumerated the circumstances to be the following: 1) Pacifica was not represented in the opening of the bids; and it was unbelievable for the BAC not to be aware of the falsification during the quotation and opening of bids or committee deliberations; 2) the canvassers deliberately failed to deliver the requests for quotation for Pacifica many times; 3) nobody questioned the proceedings of the supposed biddings; and 4) the biddings were not given the widest publicity but was only limited to three (3) participants.[40]

Respondent COA also found that the prices of various procured supplies and materials from Hundred Years Trading and General Merchandise (HYTGM) were higher compared with independent canvasses by other government agencies from the same store, yielding a price difference of P667,772.30 In the purchase of polyethylene bags, respondent COA found a price difference of P526,000.00. Another irregularity in the bidding was when one (1) bid which was unsigned and did not indicate the name of bidder was awarded to HYTGM despite the latter's non-participation in the bidding. According to respondent COA, the fact that such patent defect was unnoticed by the BAC indicated that it was pre-intended to award the contract to HYTGM without a careful scrutiny of the bid documents.[41]

As for the OMB, it validated the foregoing findings of respondent COA, concluding that the subject biddings were indeed flawed as Pacifica appeared in the documents as one of the bidders yet its participation was denied by it. The OMB pointed out that "[p]erusal of the Requests for Quotation which were denied by Pacifica Agrivet as theirs, show that the signature of the dealer appears to be different. For instance the signature in the bid of Pacifica Agrivet opened [o]n 4/12/98 is different from the bid of the same supplier opened [on] 4/13/98. The signatures

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being significantly different should have prompted respondent BAC members to verify from the supplier. As respondents claimed that Pacifica Agrivet is among the few known qualified suppliers in the city which they come to know in the series of transactions in the past, then they could have immediately noticed the discrepancy in the signature of the dealer, and would have been prudent enough to verify if indeed such quotation came from said supplier. With all due consideration given to the arguments of the respondents, the fact remained that an irregularity was committed. It is also observed [that] the members of [the] BAC all signed in the documents although they were not present during the opening of bids." [42]

Then, the OMB proceeded to zero in on petitioner Pacardo who it found to be absent "during the opening of the bids either because she was on leave or on official travel, yet she affixed her signature thereon despite the fact that she had all the reason to refuse to sign the same since she was not around during the opening of the bids. For instance, records show that respondent Pacardo was on official travel on October 15-29, 1998 and November 3-7, 1998, yet she signed in the questioned Request for Quotation of Pacific Agrivet supposedly opened on October 27, 1998, making it appear that she was present during the opening of the bids. She also signed in the Abstract of bids dated November 03, 1998. This indicated her wanton disregard of the bidding procedures. This shows that the rules on the opening of bids were not strictly observed by the entire BAC."[43]

Perforce, the OMB then concluded that petitioners' lack of prudence and vigilance in the performance of their duties as members of the BAC thereby, paving the way for irregularities in the subject biddings, warranted finding them administratively liable for Conduct Prejudicial to the Best Interest of the Service, viz.:

> Even though the evidence failed to directly establish the author of the falsification, the circumstances show that the respondents BAC members had been remiss in their duties, thus allowing a falsified bid in the bidding process. The conduct of the respondents facilitated the consummation of the transactions in question. It resulted to loss in government funds as the government failed to get the most advantageous contract or offer, considering that the prices quoted for the items in those Requests for Quotation were much higher than the price list furnished by Pacifica Agrivet which such supplier could have quoted had it actually participated. Considering the amount of the transaction, it is expected that the BAC members should exercise not only prudence but vigilance as well. Based on the circumstances so established, there is sufficient basis to hold respondents BAC member namely xxx Finance and Mgmt. Officer (sic)[44] Estelita P. Pacardo and Sr. Agriculturist Salvador Penaflor for Conduct Prejudicial to the Best Interest of the Service.[45] (emphasis omitted)

All the foregoing indicates that petitioners' administrative infraction consisted of their repeated failure to exercise the required vigilance and prudence in the discharge of their duties as members of the BAC thereby allowing some irregularities such as falsification of bids and overpricing to happen, resulting in tarnishing the integrity of the DA as a government institution, in addition to causing the Government to incur substantial monetary losses. This Court rules that such misdeeds by petitioners fall within what the law contemplates as Conduct Prejudicial to the Best Interest of the Service, and the same is more than sufficiently supported by the evidence on record.

Considering that the above-described infractions border on negligence, carelessness or lack of regard of duties, this Court was compelled to make a closer evaluation to determine if petitioners' misdeeds fall within the other administrative offenses founded on negligence such as simple neglect of duty or gross neglect of duty. Simple neglect of duty is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference. On the other hand, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty.[46]

This Court holds that petitioners' infractions cannot fall within the ambit of either. The subject infractions cannot

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be considered as gross neglect of duty as it was not shown that petitioners displayed a conscious disregard for the consequences of their lack of vigilance. Neither can the same be deemed a simple neglect of duty considering the serious impact that ensued from their lack of prudence, not to mention the substantial monetary losses incurred by the Government. Therefore, notwithstanding the presence of negligence in the questioned actions, this Court agrees with the OMB that petitioners' infractions properly fall within Conduct Prejudicial to the Best Interest of the Service.

It is an oft-repeated rule that findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight. As long as there is substantial evidence in support of the Ombudsman's decision, that decision will not be overturned.[47] Such is the situation in the cases herein, and this Court finds no reason to deviate from the detailed and substantiated findings of respondent COA and the OMB. The latter's conclusions being backed by substantial and convincing evidence, this Court is not minded to arrogate upon itself the task of substituting its own findings and judgments over a matter that undeniably falls within the expertise, specialized training and knowledge of respondent COA and the OMB.

In order to extricate themselves from liability, petitioners proffer the theory of absence of conspiracy in the instant cases. The same, however, had already been countervailed when respondent COA identified certain circumstances that convinced it of the presence of conspiracy, namely: 1) Pacifica was not represented in the opening of the bids; and it was unbelievable for the BAC not to be aware of the falsification during the quotation and opening of bids or committee deliberations; 2) the canvassers deliberately failed to deliver the requests for quotation for Pacifica many times; 3) nobody questioned the proceedings of the supposed biddings; and 4) the biddings were not given the widest publicity but was only limited to three (3) participants.[48] It must be noted that unlike in criminal cases where the fact of conspiracy must be proven as indubitably as the elements of the crime itself,[49] only substantial evidence is required in administrative cases,[50] which evidence, as discussed, is clearly present herein.

Moreover, even assuming arguendo that there was no conspiracy, particular actions committed by the BAC of which petitioners were members still point to petitioners' culpability, e.g., The BAC allowed one unsigned bid which did not indicate the name of bidder to be awarded to HYTGM despite the latter's non-participation in the bidding. [51] Also, the records indicate that the BAC members affixed their signatures on the bid documents making it appear that they were present during the opening of bids, although they were not.[52]

Petitioners also challenge the OMB's finding that four (4) of the biddings were based on falsified requests for quotation. To denigrate the evidence of falsification established in respondent COA's Report prepared by Atty. Bernardo Sumicad, and the affidavit of Pacifica's supervisor Phoebe Taupan, petitioners submitted to this Court copies of the Transcript of Stenographic Notes (TSN) of their testimonies taken before the Sandiganbayan on 14 March 2007 and 06 August 2007 relative to the criminal aspect of the case against petitioner Peñaflor.[53] This Court, however, finds no basis to look into the substance of the said TSNs because the same pertain to testimonies taken in 2007, which are after the issuance of the assailed Order of 20 January 2005 of the Office of the Ombudsman. Naturally, the testimonies taken in 2007 could not have been considered by the Office of the Ombudsman in its previously-issued subject Order, hence, the said TSNs cannot be utilized to assail the same. In any event, while the testimonies of Pacifica's supervisor Phoebe Taupan and COA's Atty. Bernardo Sumicad were found by the Sandiganbayan insufficient to establish the guilt of petitioner Peñaflor for violation of Section 3 (e) of RA No. 3019 beyond reasonable doubt, it does not follow that the same may not constitute substantial evidence to establish the administrative liability of the petitioners for Conduct Prejudicial to the Best Interest of the Service.

In an obvious attempt to downplay their involvement in the questioned transactions, petitioners argue that they did

not have control and supervision over the conduct of the canvassers, and that they merely relied on the expertise and regularity of the conduct of their colleagues.[54] The same, however, fails to persuade.

As already discussed, in light of the encompassing and generalized enumeration of duties of the PBAC under EO No. 302, the same meant that the conduct of the entire bidding process was wholly under the control, responsibility and accountability of the BAC, of which petitioners were members. Hence, there is no basis for petitioners to shift the blame to the canvassers when the duties to conduct the bidding, evaluate the bidding results and recommend the award of contract under EO No. 302 were clearly conferred upon them as members of the BAC. Also, as government officials, they cannot escape from the responsibility to protect the Government's interest at all times by ensuring that the latter is not at a disadvantage in any contract, and to perform their duties as BAC members in accordance with the ethical standards of "respect [for] the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest."[55] As such, petitioners as members of the BAC have the bounden duty to ensure that the conduct of the biddings is above board, devoid of flaws and irregularities. Otherwise, the BAC members render themselves vulnerable to administrative liability, as what happened in the instant cases.

Furthermore, petitioners cannot belittle the significance of the affixing of their signatures on the bid documents and contend that their participation in the bidding was confined to the signing of the papers. It must be borne in mind that when BAC members affix their signatures on bid documents, they are in effect certifying that the bidding was above board and in order. Indeed, the affixing of signatures by the bid committee members are not mere ceremonial acts but proofs of authenticity and marks of regularity. [56] Unfortunately, in the instant cases, their signatures paved the way, as they allowed them to be so utilized, for the irregularities that were found to undermine the subject biddings.

Moreover, petitioners, particularly petitioner Peñaflor, cannot capitalize on the Sandiganbayan's Decision dated 03 March 2011 dismissing Crim. Case Nos. 27495-27496 for Violation of Section 3 (e) of RA No. 3019, and acquitting him of the charge based on reasonable doubt.[57] Such dismissal pertains only to the criminal case against him and not the administrative case herein. Considering that the quantum of evidence required in criminal cases is more stringent as it should be beyond peradventure of reasonable doubt, the dismissal thereof does not necessarily foreclose the administrative action which can be sustained on the basis of substantial evidence. Petitioner Peñaflor's absolution from criminal liability is not conclusive as to the administrative aspect, otherwise, it would undermine the very purpose of administrative proceedings which is to protect the public service and uphold the time-honored principle that a public office is a public trust.[58]

In sum, the totality of the evidence on record is more than substantial to establish petitioners' culpability for the offense of Conduct Prejudicial to the Best Interest of the Service. Hence, this Court finds no basis to depart from the assailed ruling of the OMB.

ACCORDINGLY, the instant petitions are hereby DISMISSED for lack of merit.

SO ORDERED.

Lloren, J., Ch., and Contreras, JJ., concur.

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[1] The case was unloaded to the undersigned ponente pursuant to Office Order No. 03-14-JMBP dated 01 April 2014 as part of his initial caseload.

[2] Rollo of CA-G.R. No. 02556, pp. 60-98; Rollo of CA-G.R. No. 05468, pp. 7-42.

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[3] Id. at 201-249; Id. at 119-167.

[4] Rollo of CA-G.R. No. 02556, p. 491, Annex A (Report), Amended Petition.

[5] Id. at 490-502.

[6] Id. at 492, 496, 498, 501.

[7] Id. at 503-505, Annex B (Joint Counter-Affidavit), Amended Petition.

[8] Id. at 540-542, Annex C (Decision dated 15 April 2002), Amended Petition.

[9] Id. at 543-564, Annex D (Motion for Reconsideration), Amended Petition.

[10] Id. at 565-614, Annex E (Order dated 20 January 2005), Amended Petition.

[11] Id. at 611-613.

[12] Id. at 2-6.

[13] Id. at 437-439, Resolution dated 23 January 2009.

[14] Id. at 453-488; Rollo of CA-G.R. No. 05468, pp. 374-405.

[15] Id. at 795, Resolution dated 22 October 2009.

[16] Id. at 806-831.

[17] Id. at 836-843.

[18] Id. at 849-881.

[19] Id. at 884-887.

[20] Id. at 891-893.

[21] Id.. at 900-902, Resolution dated 15 August 2013.

[22] Id. at 903-922.

[23] Id. at 975.

24Rollo of CA-G.R. No. 02556, pp. 464-465; Rollo of CA-G.R. No. 05468, pp.383-384.

[25] Id. at 490-502.

[26] Id. at 492-498.

[27] Article XI, Sec. 1, 1987 Philippine Constitution.

[28] Article IX-B, Sec. 2, Par. 3, Id.

[29] Order dated 20 January 2005, Rollo of CA-G.R. No. 02556, pp.567-568, 586; Rollo of CA-G.R. No. 05468, pp.121-122,140.

[30] G.R. No. 167919, 14 February 2007.

[31] Id.

[32] Rollo of CA-G.R. No. 02556, pp. 490-502.

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[33] Victorias Milling Company, Inc. v. Social Security System, G.R. No. L-16704, 17 March 1962.

[34] Lagoc v. Malaga, G.R. 184785,09 July 2014.

[35] Republic Act No. 6713, 20 February 1989.

[36] Office of the President v. Cataquiz, G.R. No. 183445, 14 September 2011.

[37] GSIS v. Mayordomo, G.R.No. 191218, 31 May 2011.

[38] Largo v. Court of Appeals, G.R. No. 177244, 20 November 2007.

[39] Rollo of CA-G.R. No. 02556, p. 492.

[40] Id. at 492-493.

[41] Id. at 496.

[42] Id. at 581-582, OMB Order dated 20 January 2005..

[43] Id. at 582.

[44] Her proper designation should be Chief Agriculturist.

[45] Rollo of CA-G.R. No. 02556, p. 583, OMB Order dated 20 January 2005.

[46] Court of Appeals v.Manabat, Jr., A.M. No. CA-11-24-P, 16 November 2011.

[47] Lagoc v. Malaga, supra at Note 34.

[48] Rollo of CA-G.R. No. 02556, pp. 492-493.

[49] Quidet v. People, G.R. No. 170289, 08 April 2010.

[50] Office of the Court Administrator v. Lopez, A.M. No. P-10-2788, 18 January 2011.

[51] Rollo of CA-G.R. No. 02556, p. 496.

[52] Id. at 582.

[53] Rollo of CA-G.R. No. 02556, pp.472-479; Rollo of CA-G.R. No. 05468, pp.381-346.

[54] Id. at 467; Id. at 385-386.

[55] Republic Act No. 6713.

[56] Lagoc v. Malaga, supra at Note 34.

[57] Rollo of SP No. 02556, pp. 847-880.

[58] Office of the President v. Cataquiz, supra at Note 36.

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