

LESTER P. ABELEDA, PETITIONER, VS. RODRIGO P. MAZO, CATHY CARDINO-SAMSON, BAYANI H. JACITO, AND GERARD A. MOSQUERA, RESPONDENTS.

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GALAPATE-LAGUILLES, J:

Before Us is a Petition for Review[1] assailing the Decision[2] dated September 15, 2014 of the Office of the Deputy Ombudsman for Luzon, in OMB-L-A-14-0017 for Grave Misconduct. The dispositive portion of the assailed Decision is herein quoted as follows:

WHEREFORE, respondents AMADO M. BLOR, Provincial Agrarian Reform Officer II[;] JESUS R. BARRERA, Chief Agrarian Reform Program Officer, Administrative and Finance Division, and Chairman, Bids and Awards Committee[;] ANGELINA O. QUIJANO, Chief Agrarian Reform Officer, Beneficiaries Development Coordinating Division[;] POTENCIANO VICEDO, OIC, Chief Agrarian Reform Officer[;] LESTER P. ABELEDA, Legal Officer[;] MIRAFLORES B. SOLIVEN, OIC-Accountant II[;] and ANNIE CONSTANTINO, Acting Budget Officer/Bookkeeper, all of the Department of Agrarian Reform Provincial Office (DARPO), San Jose, Occidental Mindoro, are hereby found GUILTY of Grave Misconduct and are meted with the penalty of DISMISSAL from the service with cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office, as well as in government owned-and-controlled corporations, pursuant to the Revised Rules on Administrative Cases in the Civil Service.

SO ORDERED.

A perusal of the Petition reveals that the same does not contain certified true copies of the complaint-affidavit, counter-affidavits, reply, rejoinder, sur-rejoinder, position papers and other pertinent pleadings filed with the Office of the Deputy Ombudsman for Luzon (ODOL). Likewise, the duplicate original or certified true copy of the Order dated November 14, 2014 denying the Motion for Reconsideration filed by the respondents in OMB-L-A-14-0017 was not attached to the Petition. These procedural lapses are sufficient grounds to warrant its outright dismissal as provided under Section 7, Rule 43 of the Revised Rules of Court, viz:

Sec. 7. Effect of failure to comply with requirements. The failure of the petitioners to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, xxx and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

The petitioner, however, tried to justify the absence of the required copy of the November 14, 2014 Order by stating that he was not furnished a copy thereof because he went home to Sablayan, Occidental Mindoro after the expiration of his contract with the Department of Agrarian Reform Provincial Office (DARPO). The excuse proffered by petitioner is not only flimsy but also unsupported by evidence. Such excuse is easy to concoct and has been used so many times by unscrupulous litigants as a smoke-screen for their negligence.

The records bare out that petitioner, a lawyer employed as Legal Officer of the DARPO, had signed the motion for reconsideration, along with his co-respondents in OMB-L-A-14-0017, on October 31, 2014 and the same was denied by the ODOL on November 14, 2014. A circumspect lawyer would have waited and kept himself updated

in the resolution of his case. Also, if it is indeed true that he needed to go home to his town, petitioner could have very well notified the ODOL of the change in his address so that a copy of the subsequent Orders will be sent to him. Why petitioner did not endeavor to notify the ODOL in his change of address bespeaks of his inexcusable negligence. Moreover, it was not physically impossible for petitioner to secure a copy of the said Order from DARPO since he admitted that his hometown of Sablayan is only 86 kilometers away from the said office.[3]

At this point, We emphasize that the right to appeal is a statutory right and one who seeks to avail of the right must comply with the statute or rules.[4] The requirements for perfecting an appeal specified in the law and the rules must be strictly followed as they are considered indispensable interdictions against needless delays.[5]

At any rate, even if We disregard the procedural lapses, the Petition must still fail for being patently without merit. The petitioner insists that he had no participation in the procurement of the iPad units that were distributed to the officers of the DARPO, including himself; and that as a member of the BAC Secretariat, he had no discretion to make decisions regarding procurement. The arguments do not sway in view of the exhaustive findings of ODOL that the petitioner as a member of the BAC Secretariat[6] had participated in the anomalous transaction and he benefited therefrom as an end-user of the iPad, viz:

xxx [A]ll other respondents are members of the BAC, which has all the power to recommend the awarding of contracts to the Head of the Procuring Entity. While they merely recommend the awarding of the contract to Tiny.Com Computer, Inc., Section 12 of R.A. No. 9184, last paragraph, however, provides that “[T]he BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR.”

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Furthermore, Section 7, paragraph 2, R.A. No. 9184 provides that “No government Procurement shall be undertaken unless it is in accordance with the approved Annual Procurement Plan of the Procuring Entity.” Meanwhile, Section 7.5 of the Implementing Rules and Regulations (IRR) of R.A. No. 9184 provides that “[I]mplementation of any project not included in the procuring entity’s APP shall not be allowed.”

It is worthy to stress that the procurement of the six iPad units was not included in the APP dated 19 November 2012, and when respondents procured the iPads on 24 June 2013, they violated the law. It is of no moment that the procurement of the same was included in the amended APP. It is worthy to stress that the APP was amended only on 14 November 2013, a month after the instant complaint was filed. Seemingly, the amendment was a mere afterthought and an attempt on the part of the respondents to exculpate themselves from violating the law.

Finally, Section 10 of the same law provides that “[A]ll Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act,” which refers to alternative methods of procurement. “Shopping” as an alternative method of procurement of goods shall be employed only in any of the following cases: a) when there is an unforeseen contingency requiring immediate purchase, amounting to not more than P50,000.00; or b) procurement of ordinary or regular office supplies and equipment not available in the Procurement Service involving an amount not exceeding P250,000.00

In justifying the shopping method, respondents stated that the procure of the iPads was necessary because the latter has a special additional feature of built-in subscriber identification module (SIM) card for wireless internet connection which allows them to access their emails. They also aver that the same was also reasonable as it did not go beyond the Php500,000.00 threshold, as provided for in the IRR of R.A. No. 9184. However, this office deems otherwise.

Respondents who were recipients of the iPads were also previously issued a laptop computer. If their only purpose is to access their emails via internet, there are cheaper mobile broadband modems available which

respondents can plug into their laptop, and thereby access the internet via a mobile broadband connection. In fact, there are also wireless mobile broadband which are way cheaper than an iPad. Clearly, an iPad is not the most practical and affordable equipment to access the internet.

Also, an iPad is not an ordinary or regular office supply and equipment which therefore allows the respondents to avail of the alternative method of shopping under Section 52 (b) of the law. Under the “Manual of Procedures for the Procurement of Goods and Services,” the term “ordinary or regular office supplies” should be understood to include those supplies, commodities or materials which, depending on the procuring entity’s mandate and nature of operations, are necessary in the transaction of its official business; and consumed in the day-to-day operations of said procuring entity.

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Indeed, substantial evidence exists that there was intent on the part of the respondents to violate the law, or to disregard established rules, when they hastily procure iPad units in violation of the guidelines set forth in R.A. No. 9184.[7]

Lastly, this Court is empowered, under Section 8, Rule 43, to dismiss the petition for review “if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.”

WHEREFORE, the instant Petition for Review is DISMISSED.

SO ORDERED.

[*]Ybañez, E. A., Acting Chairperson and Macalino, F. S., J.J, concur.

[*] Vice J. Punzalan Castillo, M.P., per Office Order No. 33-15-ABR dated January 30, 2015

[1] Rollo, pp. 3-11.

[2] Id., pp. 12-22.

[3] Rollo, p. 4.

[4] Corporate Inn Hotel v. Lizo, G.R. No. 148279, May 27, 2004 citing Arnold Ginete v. Hon. Court of Appeals, G.R. No. 127596, September 24, 1998, 296 SCRA 38.

[5] Ibid.

[6] Under Republic Act No. 9184, the BAC Secretariat had the following functions:

- Provide administrative support to the BAC;
- Organize and make all necessary arrangements for the BAC meetings;
- Attend BAC meetings as Secretary
- Prepare Minutes of the BAC meetings;
- Take custody of procurement documents and be responsible for the sale and distribution of bidding documents to interested bidder;
- Assist in managing the procurement process;
- Monitor procurement activities and milestones for proper reporting to relevant agencies when required;

- Consolidate PPMPs from various units of procuring entity to make them available for review as indicated in Section 7 of this IRR-A;
- Make arrangements for the pre-procurement and pre-bid conferences and bid openings; and
- Be the central channel of communications for the BAC with end users, PMOs, other units of the line agency, other government agencies, providers of goods, civil workers and consulting services and the general public.

[7] Rollo, pp. 17-20.

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