

RUFINO M. SERRANO, CESAR S. FLORES, EMMANUEL M. PANTOJA, PERFECTO C. CRUZ, JR., MIGUEL P. SERRANO, JR., AND SUSANA N. GONZALES, PETITIONERS, VS. JOSE A. RUIZ AND CRISTINA RUIZ, ...

Ponente: DICDICAN, J.

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DICDICAN, J.:

Before us is a Petition for Review[1] filed by the herein petitioners pursuant to Rule 43 of the 1997 Revised Rules of Court seeking to annul and set aside the Joint Resolution[2] issued by the Office of the Ombudsman on September 13, 2013 in OMB-C-A-11-0146-C insofar as it found the petitioners to be administratively liable for simple misconduct and imposed upon them the penalty of six (6) months suspension from the office. Likewise assailed in the instant petition is the subsequent Order[3] of the Office of the Ombudsman dated November 25, 2013 denying, for lack of merit, the motion for reconsideration of the September 13, 2013 Joint Resolution that was filed by herein petitioners in the said case.

The material and relevant facts of the case, as culled from the record, are as follows:

The City of Navotas holds a week-long celebration in the month of January of each year in order to commemorate the foundation of the said city. One of the activities during the aforesaid celebration is the annual sunset wedding or “Kasalang Bayan” held at the Navotas City Centennial Park. On January 5, 2011, the Secretariat of the Bids and Awards Committee (BAC) of Navotas City posted at the Philippine Electronic Procurement System (PhilGEPS) website the Request for Quotation (RFQ) No. 1394593[4] for the procurement of certain materials to be used during the aforesaid wedding with an approved budget contract of Three Hundred Eighty Four Thousand Three Hundred Fifty Pesos (Php384,350.00). As reflected in the said RFQ, the date of publication and the deadline for submission of quotation or bid were on January 6, 2011 and January 13, 2011, respectively.

On January 11, 2011, herein respondent Cristina Ruiz submitted a quotation to the BAC Secretariat in relation to the said materials for the “Kasalang Bayan” with a total bid of One Hundred Ninety Two Thousand Eight Hundred Seventy Seven Pesos and Fifty Centavos (Php192,877.50) “exclusive of 1 lot AVP”. Respondent Cristina Ruiz was the registered owner of Angat Navotas General Merchandise while her spouse, herein respondent Jose A. Ruiz, was a former official of Navotas City. However, on January 11, 2011 or two (2) days before the January 13, 2011 deadline that was set for the submission of the bids for the sunset wedding and as reflected in the PhilGEPS website, the “Kasalayang Bayan 2011” was held at the Centennial Park along C4 Road in Navotas City.

The foregoing antecedents prompted herein respondents to file a Complaint Affidavit[5] in the Office of the Ombudsman against all the members of the BAC of Navotas City, herein petitioners, for falsification of public document, violation of Republic Act Nos. 9184 and 6713, grave misconduct and dishonesty. In the said complaint-affidavit, the respondents averred as follows:

1. That the award to the winning bidder, Rizzar General Merchandise, was illegal in that the said award was made before the deadline set for the submission of quotation or bid and, thus, it constituted a violation of

Article 171 of the Revised Penal Code;

2. That the petitioners did not notify respondent Cristina Ruiz of the date, time and place of bid opening and refused to post the notice of award in the PhilGEPS portal in order to inform the public of the award as mandated under Republic Act No. 9184 and its revised implementing rules and regulations; and

3. That the other RFQs divided the procurement into smaller quantities in order to circumvent the requirements of public bidding under Republic Act No. 9184.

The petitioners, on the other hand, in their Joint Counter-Affidavit[6] dated July 18, 2011, denied the allegations that were hurled against them by the herein respondents and further averred that:

1. There was no bidding to speak of in the first place in that the procurement was governed by Annex “H” of the revised implementing rules and regulations of Republic Act No. 9184;

2. To commemorate the Navotas Day which is on January 16 of each year, the city government of Navotas holds a week-long celebration every second (2nd) or third (3rd) week of January. Among the activities that are scheduled for the said Navotas Day celebration is the annual “Kasalang Bayan” or mass wedding;

3. For the 105th Navotas Day celebration, the week-long celebration commenced from January 9, 2011 and lasted until January 16, 2011. The Kasalang Bayan, on the other hand, was held on January 11, 2011;

4. In anticipation of the 105th Navotas Day celebration in January 2011, the procurement of materials that would be used by the city government of Navotas for the said event was already submitted to the City Budget Office as early as on December 16, 2010 for certification of available appropriation;

5. The City Budget Office made a notation in the aforesaid request, however, that the budget for the event should instead be charged against the budget of the city government for the year 2011. As a result of the said directive, the purchase request for the procurement of materials was transmitted to the BAC secretariat only on January 4, 2011;

6. On January 5, 2011 and, in compliance with the requirements of posting under Republic Act No. 9184, otherwise known as the “Government Procurement Reform Act”, the BAC secretariat caused the posting of the RFQ with Reference No. 1394593 at the PhilGEPS website;

7. It was only on January 6, 2011 that the posting of the RFQ was reflected in the PhilGEPS website and the said website does not allow the user to provide a deadline which is earlier than seven (7) days from the date of posting of the procurement activities. Neither does it allow the user to change the provided deadline in order to reflect the date when the said materials shall be used;

8. Thus, even though the materials that were the subject of procurement posted in the PhilGEPS website would be used for the January 11, 2011 Kasalang Bayan, the deadline that was reflected in the aforesaid website was still January 13, 2011 or seven (7) days from the posting of the RFQ therein; and

9. The details or informations that were posted in the PhilGEPS website were not provided by the petitioners. Moreover, the petitioners, in good faith, caused the posting thereof in compliance with Republic Act No. 9184 without any wrongful intent to injure a third (3rd) person.

On September 13, 2013, the Office of the Ombudsman rendered the herein assailed Joint Resolution the dispositive portion of which reads as follows:

“WHEREFORE, the charges of Falsification of Public Documents and Violation of R.A. 9184 against public respondents RUFINO SERRANO, CESAR FLORES, EMMANUEL PANTOJA, PERFECTO CRUZ, JR., MIGUEL SERRANO, JR., SUSANA GONZALES, MANUEL ENRIQUEZ are hereby DISMISSED for insufficiency of evidence.

“However, respondents are administratively liable for SIMPLE MISCONDUCT for which the penalty of SIX MONTHS SUSPENSION is hereby imposed upon them.

“SO ORDERED.”

Aggrieved by the foregoing disposition of the Office of the Ombudsman, herein petitioners filed a Motion for Reconsideration[7] of the aforementioned September 13, 2013 Joint Resolution insofar as it imposed a penalty upon them of six (6) months suspension. However, in the herein assailed Order dated November 25, 2013, the Office of the Ombudsman denied the said motion for reconsideration for lack of merit.

Hence, this petition for review wherein the petitioners raised the following errors committed by the Office of the Ombudsman:

I.

THE OFFICE A QUO ERRED IN FINDING PETITIONERS ADMINISTRATIVELY LIABLE FOR SIMPLE MISCONDUCT.

II.

GRANTING, ARGUENDO, THAT THERE IS FACTUAL OR LEGAL BASIS FOR THE FINDING OF ADMINISTRATIVE LIABILITY, THE OFFICE A QUO ERRED IN IMPOSING THE PENALTY OF SIX (6) MONTHS SUSPENSION UPON THE PETITIONERS.

In sum, the issues to be resolved by us in this case are: first, whether or not the petitioners failed to strictly adhere to the number of days required for the posting requirement under Republic Act No. 9184; and, second, whether or not the Office of the Ombudsman erred in finding the petitioners to be administratively liable for simple misconduct. After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant petition to be impressed with merit.

The Office of the Ombudsman, in ruling that the petitioners were guilty of simple misconduct, stated as follows:

“Nevertheless, respondents are administratively liable for Simple Misconduct. Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official. Misconduct is grave where the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are present. Otherwise, misconduct is only simple.”

In ruling that simple misconduct exists on the part of the petitioners, the Office of the Ombudsman ratiocinated that “respondents' claim that the PhilGEPS website automatically assigns the deadline for the procurement activities is inaccurate”. It further added that “The entries in the PhilGEPS website can only be filled up by a person through encoding of dates of the various procurement activities. It cannot, on its own, provide automatically the deadline of the activity as claimed by the respondents. xxx”

We agree with the contention of the petitioners in that the aforesaid function of posting notices of bidding on the PhilGEPS website devolves more particularly to the BAC Secretariat under Section 14 of the Revised Implementing Rules and Regulations (Revised IRR) of Republic Act No. 9184. The advertisement and/or posting of the subject RFQ is a function and responsibility of the BAC Secretariat pursuant to Section 14.1 (f) of the said Revised IRR, to wit:

“14.1 The Head of the Procuring Entity shall create a Secretariat which will serve as the main support unit of the BAC. An existing organic office within the procuring entity may also be designated to serve as Secretariat. However, to strengthen and promote the professionalization of the organizations' procuring unit, the Head of

the Procuring Entity may create procurement units that may serve concurrently as BAC Secretariat in accordance with the guidelines issued by DBM. The Secretariat shall have the following functions and responsibilities:

xxx

“f) Advertise and/or post bidding opportunities, including Bidding Documents, and notices of awards;xxx”

From the foregoing provisions of the IRR, it is quite explicit that the posting of the RFQs is a function that properly pertains to the BAC Secretariat or its head. Consequently, since the act of posting in the PhilGEPS website could not be attributed to herein petitioners, the finding of the existence of simple misconduct by the Office of the Ombudsman is unwarranted for being without any basis.

More importantly, the conclusion that was made by the Office of the Ombudsman in the herein assailed Joint Resolution was inconsistent with its finding of good faith as stated in the herein assailed Order dated November 25, 2013. Thus:

“The immediate posting by the BAC/BAC Secretariat is the only indicia of good faith on their part that there was an attempt to comply with the requirements of the law notwithstanding their failure to do so.”

In the case of *De Jesus, et al. v. Office of the Ombudsman, et al.*,^[8] the Supreme Court defined misconduct as an intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. It further held that misconduct is incompatible with good faith, to wit:

“Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. It is incompatible with good faith. Since petitioners were in good faith, they could not be held liable for simple misconduct.”

In other words, the finding of administrative liability for misconduct on the part of the petitioners in this case is clearly inconsistent with the finding of good faith in their actions by no less than the Office of the Ombudsman. On this note, the case of *Atty. Capuchino v. Apolonio, et al.*^[9], becomes relevant in that:

“Misconduct, on the other hand, is a transgression of some definite or established rule of action; more particularly, it is unlawful behavior by the public officer and refers as well to wrongful or improper behavior under applicable provisions of the Code of Ethics. The term 'gross' connotes something 'out of all measure; beyond allowance; flagrant; shameful such conduct as is not be excused.' For administrative liability to attach, it must be established that the respondent was moved by bad faith, dishonesty, hatred or other similar motives.”

It bears stressing that, in the herein assailed Joint Resolution and Order, there was no clear explanation or statement on how the petitioners deliberately or intentionally violated a rule of law or standard of behavior, apart from the finding of the Office of the Ombudsman that the petitioners “failed to comply with the requirements of R.A. 9184”. At this point, this Court fails to see how an act done in good faith which, at best, constitutes a mere error of judgment, could imply any wrong intention. Indeed, misconduct, as further defined in the case of *Pat-Og, Sr. v. Civil Service Commission*^[10], necessarily carries with it an intentional wrongdoing or deliberate violation of a rule of law. Thus:

“Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer.”

Petitioners further submit that good faith necessitates honesty of intention^[11] and necessarily excludes the intention to do otherwise, much more violate the law or commit any wrongdoing. We agree. Thus, absent any

direct and active participation in the erroneous posting of the RFQ in the PhilGEPS website, there could be no intentional wrongdoing or deliberate violation of a rule of law or standard of behavior which could be attributed to the herein petitioners as members of the BAC.

On a final note, it must be emphasized that suspension from public office is a serious incident that definitely blemishes a person's record in government service. It is an injury to one's reputation and honor which produces irreversible effects on one's career and private life.[12] In the case at bench, considering that the act of posting on the PhilGEPS website, which is the sole basis for the finding of simple misconduct on the part of the petitioners, was NOT undertaken by the petitioners themselves as members of the BAC, the herein Joint Resolution which imposed a penalty of six (6) months suspension without pay upon the petitioners, would be unjust under the circumstances.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case. The Joint Resolution issued by the Office of the Ombudsman on September 13, 2013 in OMB-C-A-11-0146-C and its subsequent Order dated November 25, 2013 in the said case are ANNULLED and SET ASIDE. The complaint for misconduct, dishonesty and violation of Republic Act No. 6713 that was filed by the respondents against the herein petitioners are DISMISSED for lack of merit.

SO ORDERED.

Peralta, Jr.,[*] and Paredes, JJ., concur.

[*]Acting Senior Member vice J. Elbinias per Office Order No. 221-14-ABR dated May 21, 2014. [1]Rollo, pages 10-23.

[2] Ibid, Annex "B", pages 33-45

[3] Ibid, Annex "A", pages 24-31.

[4] Ibid, page 63.

[5] Ibid, pages 49-58.

[6] Ibid, Annex "F", pages 83-88.

[7] Ibid, Annex "G", pages 90-98.

[8] G.R. No. 140240, October 18, 2007.

[9] A.M. No. P-04-1771, September 5, 2011.

[10] G.R. No. 198755, June 5, 2013.

[11] Faelnar v. Palabrica, A.M. No. P-06-2251, January 20, 2009.

[12] Baylon v. Fact-Finding Intelligence Bureau, 442 Phil 217, 2002.

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