

RUDY P. ANTONIO, ROLANDO D. RAMIREZ, AND JIMMIE F. TEL-EQUEN, PETITIONERS, VS. HON. FRANCISCO A. VILLA, HON. GREGORIO VIGILAR, AND OMB TASK FORCE ON PUBLIC WORKS AND HIGHWAYS, R...

G.R. NO. 144694. March 28, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] to set aside the Decision[2] dated 2 March 2000 of the Court of Appeals (“appellate court”) in CA-G.R. SP No. 50324. Pursuant to a Resolution[3] dated 29 October 1998, this Court consolidated and referred to the appellate court three petitions against the Ombudsman and Ombudsman Task Force on Public Works and Highways. The petitioners were Romulo H. Mabunga (“Mabunga”) in G.R. No. 124913, Jimmie F. Tel-Equen (“Tel-Equen”), Rolando D. Ramirez (“Ramirez”), and Rudy P. Antonio (“Antonio”) in G.R. No. 124932, and Rolando C. Namuhe (“Namuhe”) in G.R. No. 124965. The appellate court affirmed and modified the Resolution[4] dated 28 March 1994 and the Order[5] dated 11 December 1995 of the Administrative Adjudication Bureau of the Office of the Ombudsman in OMB-ADM-0-91-0430. The appellate court decreed that Tel-Equen, Ramirez, and Antonio should be dismissed from service together with its accessory penalties.

The Facts

The facts as found by the appellate court are as follows:

On 26 February 1990, Alexander C. Aguana, Supply Officer II of the Mountain Province Engineering District (MPED, for short) prepared a requisition issue voucher (RIV) for:

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- 28 pcs. Bailey panels
- 4 pcs. Male and post
- 4 pcs. Female and post
- 15 pcs. Steel transom
- 84 pcs. Transom Clamps
- 14 pcs. Sway braces
- 64 pcs. Panel Pins
- 16 pcs. Raker Braces

- 32 pcs. Raker Bolts
- 14 pcs. Bracing Frames
- 8 pcs. Base Plates
- 56 pcs. Bracing Bolts”

for the construction of a bailey bridge in Barangay Mainit connecting Mountain Province and the Province of Abra. The requisition was favorably recommended by Rolando D. Ramirez, Assistant District Engineer, and approved by District Engr. [(DE)] Jimmie F. Tel-Equen. An Abstract of Bids was accomplished wherein it was made to appear that a public bidding was held at 10:00 a.m. on 10 May 1990 and Manzel General Merchandise, owned by Manuel Dangayo, was the winning bidder to supply bailey bridge components valued at P553,900.00. It was signed by members of the Public Bidding Awards Committee (PBAC, for short), namely: Rolando D. Ramirez, Francisco D. Miranda, Rudy P. Antonio, Rodolfo D. Camarillo, Alfredo C. Apolinar (now deceased) all of MPED. Felix A. Gasmena, Jr. (now deceased) also affixed his signature as COA representative.

Manzel General Merchandise was paid in two occasions, first in the amount of P214,000.00 under DB103-9-06 dated 21 June 1990, and second for P339,999.00 under DB103-7-512 dated 03 July 1990 or a total of P553,000.00.[6] These vouchers were signed by Rodolfo D. Camarillo, Rudy P. Antonio, DE Tel-Equen and Supply Officer Alexander C. Aguana. The bailey bridge components delivered to the Mainit jobsite did not, however, come from Manzel General Merchandizing but were borrowed from the Ifugao Engineering District (IED).

The borrowing came about when in the last week of April or first week of May 199[0,] DE Romulo H. Mabunga, district engineer of IED and DE Tel-Equen met at the DPWH-CAR Regional Office in Baguio City. DE Tel-Equen expressed his desire to borrow bailey bridge panels from IED. DE Mabunga replied he would see if there were available stocks. In the third week of May 1990, Manuel Aguana, supply officer of IED, was summoned to the office of DE Mabunga. Romeo C. Namuhe, construction engineer of IED, was at the office with DE Mabunga. The latter showed Namuhe the letter-request of DE Tel-Equen for bailey bridge panels. Aguana commented that he saw nothing wrong about it as similar requests had been granted in the past. Namuhe was, however, against the request because this stock of bridge panels was already programmed for construction. In that meeting, the field offices of Potia and Hapid, Ifugao were identified as possible sources of the requested bailey bridge components. DE Mabunga inscribed a marginal note: “Engr. Namuhe and Mr. Aguana for action,” on the letter.

With the use of the two gate passes prepared and signed by Aguana, the bailey bridge components were released from the DPWH Potia depot. Dangayo hauled the components using MPED trucks. The materials were received by Ramirez of MPED.

The Mainit Bailey Bridge was eventually constructed. Materials used were those borrowed from IED on the strength of the letter-request of DE Tel-Equen to DE Mabunga. All the borrowed bailey bridge components were returned to IED in January 1991.

Administrative proceedings were commenced on account of a letter-complaint of “Concerned Citizens of Ifugao to the Ombudsman” dated 11 September 1990 which reads: “We respectfully request your good office to please conduct an investigation on the delayed completion of a bridge under construction here in Hapid, Lamut, Ifugao Province. We came to know that the bailey bridge component intended for this particular project has been released under a Memorandum Receipt issued by the Supply Officer of the Ifugao DPWH Engineering District to the District Engineer of the Mountain Province. After further inquiry on the reasons for the great delay, the following information surfaced:

- That without the approval of the District Engineer of this Province, the said component was released by the

Supply Officer under the MR of the DPWH District Engineer of Mountain Province;

- That a truck of the Mountain Province DPWH came and hauled the components from here to Mountain Province;
- That this component was repainted by the DPWH of Mountain Province;
- That after the repainting, the necessary voucher/papers were prepared and made it appear that the said bailey bridge component was purchased;
- That the Mountain Province Engineering District used one named MANUEL DANGAYO of Lamut, Ifugao as the Dealer of the component and the amount transacted is half-a-million pesos (P500,000.00); and,
- That if the said component was just borrowed by the Mountain Province Engineering District, the same should be returned so that the bridge we needed must at this time be completed.

The following private persons and/or government employee requested to be investigated and charged if it warrants the filing of cases against those responsible in the noncompletion of the project which should have been finished last July or August are:

- The District Engineer of the Ifugao and the Mountain Province Engineering Districts;
- The Supply Officer of the Ifugao Engineering District;
- Mr. MANUEL DANGAYO of Lamut, Ifugao; and
- All the signatories involved in the alleged business transaction or purchase of the said component.”

Investigation by the National Bureau of Investigation (NBI), DPWH Central Office, DPWH District Office, Deputized OMBM Investigators, and OMB Task Force and Public Works [and] Highways followed. Unfortunately, these agencies came up with conflicting findings. The NBI report concluded of [sic] the existence of conspiracy among the Mountain Province Engineering District (MPED) officials as well as Manuel Aguana of the Ifugao Engineering District (IED) and Manuel Dangayo to defraud the government of more than half a million pesos. The NBI report recommended the exoneration of Romulo H. Mabunga and Romeo C. Namuhe. The OMB Task Force on Public Works and Highways, on the other hand, recommended the filing of charges against all the MPED officials as well as Mabunga and Namuhe. It excluded Manuel Aguana who was given immunity by respondent Ombudsman. (Emphasis supplied)[7]

The OMB Task Force on Public Works and Highways filed an administrative complaint for dishonesty, falsification of official documents, grave misconduct, gross neglect of duty, violation of office rules and regulations, and conduct prejudicial to the service against Tel-Equen, Ramirez, Antonio, Mabunga and Namuhe, along with Francisco D. Miranda (“Miranda”), Alfredo C. Apolinar (“Apolinar”), Rodolfo D. Camarillo (“Camarillo”), and Felix A. Gasmena, Jr. (“Gasmena”).

The Administrative Complaint

The administrative complaint docketed as OMB-ADM-0-91-0430 reads as follows:

That during the period from May, 1990 to the first week of July, 1990, the above-named respondents, taking advantage of their official and/or administrative functions, conspiring and confederating with each other and with MANUEL P. DANGAYO, alleged supplier, and mutually helping each other by common design and purpose of mutual gain and benefit, allowed Manuel P. Dangayo to collect the amount of P553,900.00 in payment of bailey bridge components that are actually owned by the government.

“1. By preparing, signing and submitting, on the part of JIMMIE F. TEL-EQUEN; ROLANDO D. RAMIREZ;

FRANCISCO D. MIRANDA; RUDY P. ANTONIO; RODOLFO B. CAMARILLO; ALFREDO C. APOLINAR; and FELIX A. GASMENA, JR., an abstract of bids in regard to a bidding purportedly held on 10 May 1990 at the MPED office in Bontoc, Mt. Province, with full knowledge of the fact that no such bidding ever took place because on that date, as shown by their daily time records (DTRs), respondents Tel-Equen; Gasmena; Apolinario; Camarillo; and Miranda were either on vacation leave or on official business outside Bontoc, Mt. Province; while respondents Antonio and Ramirez performed miscellaneous office work and that ALEXANDER AGUANA whose name appears (but did not sign) on the abstract of bids as the designated representative of respondent Tel-Equen in the opening of bids at said office was on official trip in Baguio and Manila;

2. By preparing and submitting on the part of respondents JIMMIE F. TEL-EQUEN; ROLANDO D. RAMIREZ; FRANCISCO D. MIRANDA; ALFREDO C. APOLINAR; RUDY P. ANTONIO; FELIX A. GASMENA, JR.; and MANUEL P. DANGAYO, various official documents which include, among others, a requisition and issue voucher, invitations to bid, abstract of bids/canvass, purchase order, sales invoices, delivery receipts and disbursement vouchers all of which falsely show: that a bidding had been conducted relative to the procurement of bailey bridge components for the Mainit Bridge, Mt. Province-Abra Road; that the MPED lawfully purchased said articles from Manzel General Merchandise which is owned by respondent Dangayo; and that, due delivery of said articles had been effected, when in truth and in fact, the said bailey bridge components had been taken and borrowed from the IED;

3. On the part of ROMULO H. MABUNGA and ROMEO C. NAMUHE, by their acts previous to the lending of said items and their acts subsequent to the payment thereof by the MPED all of which acts unmistakably show their close association and concerted action with the MPED officials in their common desire to defraud the government: 3.1 by their indispensable cooperation in approving the written request of respondent JIMMIE F. TEL-EQUEN dated 17 May 1990 for the aforementioned articles which request was handcarried by respondent DANGAYO, the supplier, despite the absence of any showing or indication in said letter that there was an immediate need or an emergency to be served by the lending of said articles and that without their approval, said items would never have left the IED;

3.2 by denying, during the investigations on the bailey bridge transaction that were conducted by Agents of the National Bureau of Investigation (NBI) and by Assistant District Engineer MANAO that they had approved or had knowledge of the lending of the article to the MPED despite the fact that they were in possession of the documents relative to the said lending which documents include a memorandum receipt covering all the articles lent duly signed by Respondent ROLANDO D. RAMIREZ, the Assistant District Engineer, MPED;

3.3 by failing to initiate any action toward the recovery of the articles from the MPED despite their receipt of oral and written reports that the articles lent may have been unlawfully taken by people who claimed to have the permission of Respondent MABUNGA one of which reports is a letter of State Auditor GUILLERMO S. CHANSUYCO of the Commission on Audit (COA) dated 27 September 1990 requesting investigation of the taking of the articles from the IED;

3.4 by concealing from the said investigators and the COA State Auditor the fact that it was MANUEL P. DANGAYO, the supplier, who handcarried the letter-request dated 17 May 1990 for said articles to MABUNGA and NAMUHE and the fact that before said date, DANGAYO had been a frequent visitor of MABUNGA at the IED indicating that there had been prior arrangements between and among MABUNGA and NAMUHE, on one hand, and the supplier and his co-conspirators at the MPED, on the other; and,

3.5 by concealing, on the part of MABUNGA, the original of the gate pass which bears his signature and approval that authorized the supplier who was unaccompanied by any DPWH official or employee to withdraw bailey bridge components from the DPWH compound in Potia, Ifugao;

4. As a result of the cooperative acts committed by the aforecited officials, [r]espondent DANGAYO was able to

deliver the bailey bridge components of the IED to the MPED and two (2) disbursement vouchers, Nos. 103-90-6-492 for P214,600.00 dated 21 June 1990 and 103-90-7-512 for P339,300.00 dated 3 July 1990 were prepared in which it was certified: by Respondent ANTONIO that the expenses incurred were necessary and lawful; and, by Respondent CAMARILLO that the vouchers were supported by documents appearing legal and proper, which vouchers were approved for payment by Respondent TEL-EQUEN;

5. On the basis of the approved disbursement vouchers covering the total amount of P553,900.00, the government was damaged/injured in the same amount as it was made to pay for its own property, which amount was paid to DANGAYO who was thereby given unwarranted benefits, preference and advantage by all the other Respondents; and,

6. Thereafter, Respondents MPED officials: JIMMIE F. TEL-EQUEN; ROLANDO P. RAMIREZ; ALFREDO C. APOLINAR; RODOLFO B. CAMARILLO; and RUDY P. ANTONIO, in an effort to conceal the unlawful/fictitious transaction over the bailey bridge components for which payment was made, caused to be attached to the disbursement vouchers a falsified certification purportedly issued by Bernabe Construction and Industrial Corporation dated 29 May 1990 which falsely states that the bailey bridge components delivered to and paid for by the MPED had been purchased by the supplier from said firm the truth of the matter being that the articles delivered by said supplier and which were paid for by the MPED were the very same articles that had been authorized by Respondents MABUNGA and NAMUHE to be taken from the IED for delivery to the MPED to justify payment to the supplier.”[8]

The Ruling of the Office of the Ombudsman’s Administrative Adjudication Bureau

In a Resolution dated 28 March 1994, the Administrative Adjudication Bureau of the Office of the Ombudsman concluded that there was conspiracy to defraud the government on the part of Tel-Equen, Miranda, Antonio, Apolinar, Camarillo, and Gasmene. Conspiracy was proved through the following circumstances: first, it was made to appear that there was an immediate need for the bridge components; second, it was made to appear that a bidding was conducted on 10 May 1990; and third, the government was made to pay for its own property.

The Administrative Adjudication Bureau of the Office of the Ombudsman also concluded that Mabunga and Namuhe had knowledge of the illegal transaction and cooperated with Tel-Equen. Mabunga and Namuhe’s cooperation was proved through the following circumstances: first, nothing in the records shows the immediate need for lending bridge components; second, Mabunga and Namuhe did not question Dangayo’s authority to transact with them in behalf of MPED; and third, Mabunga and Namuhe were less than candid with the NBI and denied that Dangayo made representations on behalf of Tel-Equen.

Although Mabunga and Namuhe blamed Manuel Aguana for Dangayo’s success in bringing out bridge components, the records do not show that Mabunga or Namuhe ever reprimanded Aguana. The Administrative Adjudication Bureau of the Office of the Ombudsman thus established that the government was defrauded P553,900 because of the fictitious transaction. The last paragraph of the resolution reads as follows:

From the foregoing, it is evident that the above-named respondents committed acts of dishonesty, falsification of public documents, misconduct and conduct prejudicial to the best interest of the service. Pursuant to Sec. 23 of Rule XIV, Book V of Executive Order No. 292, it is recommended that all the respondents, except Francisco Miranda and Felix Gasmene, Jr., who were dropped as respondents due to their deaths pending resolution of the case, be DISMISSED from the service together with its accessory penalties.

SO RESOLVED.[9]

In an Order dated 11 December 1995, the Administrative Adjudication Bureau of the Office of the Ombudsman denied the motions for reconsideration. The dispositive portion of the order reads:

WHEREFORE, for the foregoing consideration, let the resolution dated March 28, 1994 dismissing respondents Jimmie F. Tel-equen, Rolando D. Ramirez, Rudy P. Antonio, Rodolfo B. Camarillo, Romulo H. Mabunga, Romeo C. Namuhe, except Francisco Miranda and Felix Gasmene, Jr., be AFFIRMED.

SO ORDERED.[10]

Three separate petitions[11] were filed before this Court seeking the reversal of the resolution and order of the Administrative Adjudication Bureau of the Office of the Ombudsman. This Court ordered the consolidation of the three cases in a resolution dated 24 February 1997.[12] In *Namuhe v. The Ombudsman*,[13] we held that this Court had no jurisdiction over the petitions in light of the ruling in *Fabian v. Hon. Desierto*,[14] that appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the appellate court under Rule 43 of the 1997 Rules of Civil Procedure. The petitions were thus referred and transferred to the appellate court.

The Ruling of the Appellate Court

The appellate court modified the conclusion from the factual findings of the Administrative Adjudication Bureau of the Office of the Ombudsman. The appellate court found that there was no thread of evidence to tie Mabunga and Namuhe to the falsified 10 May 1990 public bidding, leaving Tel-Equen, Ramirez, Antonio and Camarillo[15] liable for the charges.

The appellate court stated that contrary to what was made to appear in the Abstract of Bids and its supporting papers, there was no public bidding on 10 May 1990. The daily time records of the PBAC members for the period showed that they were outside the MPED premises at the time of the bidding. Moreover, there was a disparity between a certification dated 27 May 1990 which stated that Dangayo's Manzel General Merchandise bought the bridge components from Bernabe Construction Industrial Corporation and Dangayo's sworn statement asserting that he bought the bridge components from STC Machine Shop and Engineering Works and the Viscaya Machine Shop. Moreover, STC Machine Shop's manager denied supplying bridge components for Dangayo. The appellate court concluded that the bailey bridge components which were borrowed from IED were subsequently used to build the Mainit bridge to justify the P553,900 expense.

In its Decision dated 2 March 2000, the appellate court held thus:

WHEREFORE, the appealed decision is hereby MODIFIED in that Romulo H. Mabunga and Romeo C. Namuhe are hereby EXONERATED of the administrative charge with backwages. In all other respects, the decision in OM[B]-ADM-0-91-0430 is AFFIRMED.

SO ORDERED.[16]

The Issues

Evidently dissatisfied with the appellate court's decision, Antonio, Ramirez, and Tel-Equen filed the present petition. They raised the following as errors of the appellate court:

I

The Honorable Court of Appeals committed a reversible error when it failed to resolve legal and constitutional issues raised squarely in the case before it that have important and vital bearing to the case considering that the said issues are determinative to the resolution of the case which issues squarely raised are as follows, to wit:

- Whether there was an utter violation of the constitutional rights of the petitioners to due process?
- In conjunction to the first issue above-stated – whether there was a violation of the constitutional prohibition on ex post facto law committed by the Ombudsman?
- Whether or not the government was defrauded?
- Whether or not there was conspiracy among the petitioners in the instant case to defraud the Government?
- Whether or not there was actually a bidding for the said materials on May 10, 1990?
- Whether there is basis on the part of the respondents in the instant petition to conclude that there was no immediate need for the bridge components for the Mainit Bridge but the Petitioners herein made it appear that there was a need for it?
- Whether or not the dismissal of the Petitioners can be justified rather than an outright deprivation of their very subsistence?

II

The Honorable Court of Appeals committed a reversible error when it failed to resolve the legal and constitutional issues raised squarely in the petition and more specifically, petitioner Jimmie F. Tel-Equen's motion for reconsideration by simply resolving that it [sic] that they are not persuaded that there exists a reversible error in point of fact and in law in the decision that mandates its modification much less reversal, which issues are as follows, to wit: The decision against the petitioner was premised on the assumption that he had conspired with the co-petitioners in the alleged malfeasance of the petitioners which supposedly resulted to the disbursement and payment of public funds in the sum of P553,900 erroneously alluding that the government was damaged to that extent.

The affirmation of the finding that there was no actual bidding on May 10, 1990 is not supported by substantial proof to that effect.

The presumption of regularity of official documents and regularity in the discharge of official duties and functions on the part of public officials were not taken into consideration in favor of the petitioners.

The Honorable Court had not ruled on the issue of the absence of authority on the part of the Ombudsman to dismiss public servants from the public service without the benefit of due process pursuant to the provision of Section 23[,] Rule XIV, Book V of Executive Order No. 292 of the Office of the President.

The penalty imposed against the petitioners assuming arguendo that there was malfeasance on their part under the circumstances is absolutely unjustified being an outright deprivation of their very subsistence.

III

The Honorable Court of Appeals erred and failed to appreciate properly the meritorious appeal of the petitioners under Rule 43 of the [1997] Rules of Civil Procedure.[17]

The Ruling of the Court

The petition has no merit.

Administrative Due Process

The Ombudsman has disciplinary authority over all elective and appointive officials of the government, except over officials who may be removed only by impeachment or over members of Congress, and the Judiciary.[18] Indeed, the administrative liability of a public official could fall under the jurisdiction of both the Civil Service

Commission and the Office of the Ombudsman.[19]

Tel-Equen, Ramirez, and Antonio point to the dismissal of the criminal cases against them as proof of violation of their right to due process in the present administrative case.

Justice Laurel, in *Ang Tibay v. The Court of Industrial Relations*,^[20] enumerated the cardinal primary requirements in administrative proceedings. We summarize them here: (1) The right to a hearing, which includes the right of the party interested to present his own case and submit evidence in support thereof; (2) The tribunal must consider the evidence presented; (3) The decision must be supported by evidence; (4) The evidence must be substantial; (5) The decision must be rendered on the evidence present at the hearing, or at least contained in the record and disclosed to the parties affected; (6) The administrative body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate; and (7) The administrative body should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered.

The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.^[21] Tel-Equen, Ramirez, and Antonio participated in all levels of the present proceedings, from the Ombudsman to this Court. In fact, during the preliminary conference held on 27 November 1992 before Graft Investigation Officer Lamberto T. Tagayuna, the parties agreed to submit the case for resolution on the basis of the evidence on record.^[22] Due process in an administrative context does not require trial-type proceedings similar to those in the courts of justice.^[23] Thus, Tel-Equen, Ramirez, and Antonio can no longer request for the cross-examination of the witnesses against them.

Findings of Fact

As a general rule, findings of fact of the appellate court are final and conclusive and cannot be reviewed on appeal by this Court. This rule, however, admits of exceptions. This Court may review the appellate court's findings of fact when the inference made is manifestly mistaken and when the judgment is based on a misapprehension of facts.^[24]

Was there a public bidding on 10 May 1990? Tel-Equen, Ramirez, and Antonio point to the investigatory report of the Department of Public Works and Highways ("DPWH"), which recommended that no charges ought to be filed against them. We consider the findings of the DPWH investigatory report:

Engr. Jimmie Tel-Equen claimed that xxx as regards the bidding held last May 10, 1990, xxx that was the bidding for bailey panels and bridge materials for the construction of a bailey bridge of Mainit, Mountain Province; that there was an approved Program of Work for the said project; that the project was undertaken by administration through pacquiao; that the bidding was not simulated; that since the project is to be undertaken by administration through pacquiao, no publication was necessary; that invitation to canvass was send [sic] to several suppliers and the invitation to canvass was nevertheless posted at [sic] the bulletin board of the district; that the different suppliers submitted their respective sealed bids; that the award was made to Manzel General Merchandise; that prior to the deliveries of these materials he send [sic] a letter to Engr. Romulo Mabunga, District Engineer of Lagawe, Ifugao requesting for bailey panels and bridge materials inspite of the bidding, as it was his policy of [sic] finished [sic] projects in his district ahead of [the] scheduled time or within the scheduled time, to help the people of Mainit because rainy season is fast approaching and words [sic] to comply with the order of Congressman Victor Dominguez to use their initiative for the immediate implementation and completion of all projects; xxx that he does not know the source of the materials delivered by Manuel Dangayo; and he does not know Manuel Dangayo personally except that he has participated from

[sic] previous bidding in his district.

Assistant District Engineer Rolando Ramirez, Chairman of the PBAC alleged that the bidding held on May 10, 1990 was for the purchase of bailey panels and bridge materials for the construction of a bailey to be undertaken by administration through pacquiao; that no publication on the newspaper was necessary; that invitation to canvass was furnished to different suppliers who submitted their respective sealed bids; that three (3) suppliers participated: the Manzel General Merchandise, Philippine Metal and the Bernabe Construction Corporation; that when the sealed bids were opened only one posted a bond, the Manzel General Merchandise; that he declared the bidding a failure; that since the subject of the bidding were not ordinary materials and knowing that they are not available to local suppliers, in their desire to avoid unnecessary delay for the construction, they decided to award it to Manzel General Merchandise; that they have complete documents like the Program of Work and its attachments for the subject bidding; that Manzel General Merchandise was pre-qualified and participated in previous public bidding[s] in the district and thinking that the materials are not ordinary materials and are not available to local suppliers, they awarded it to Manzel General Merchandise; that he remembered Engr. Tel-Equen send [sic] a letter to Engr. Romulo Mabunga, District Engineer of Lagawe, Ifugao, requesting for bailey panels and materials; that Engr. Tel-Equen made such request because it is his policy to finished [sic] their projects ahead of schedule or within the scheduled time; and to finished [sic] the project before the start of the rainy season and because they are always advised by Congressman Victor Dominguez to use all available means to finished [sic] scheduled and programmed projects; that the materials requested from the Lagawe, Ifugao Engineering District were delivered that for unknown reason, the NBI conducted an investigation; that Engr. Tel-Equen returned the materials borrowed from the Ifugao District; that the materials which were the subject of bidding held last May 10, 1990 were delivered; that he has no knowledge the materials delivered by Manzel General Merchandise were stolen as alleged in the NBI findings; and that the bidding held last May 10, 1990 was not simulated.

Mr. Francisco Miranda, Administrative Officer III claimed that he is a member of the PBAC Committee [sic]; that he was present at the time of the bidding last May 10, 1990; that he was on official travel last May 10, 1990 at DPWH CAR, Wangal, La Trinidad, Benguet, but was [notified] of the bidding on May 10, 1990 so he returned to Bontoc in the evening; that the bidding was about the bailey panels to be used in constructiong [sic] a bailey bridge at Mainit, connecting Mt. Province and Abra; that there was an Approved Program of Work for the said construction to be undertaken by administration through pacquiao and the contractor was Mr. Lino Geston, a former Vice Mayor and Councilor of Mainit; that Invitation to Canvass was [made] to several suppliers and a copy thereof was posted in the Bulletin Board of the District; that the participating suppliers were Philippine Metal, Manzel General Merchandise and Bernabe Metal Corporation; that Manzel General Merchandise represented by Mr. Manuel "Pana" Dangayo was pre-qualified; that Mr. Dangayo has participated in previous public bidding[s] held at the District and that he denied that the bidding held last May 10, 1990 was simulated.

Mr. Rodolfo B. Camarillo, Accountant III stated that he is a member of the PBAC; that he was on leave on May 10, 1990, but he was aware that a bidding is to be conducted so he reported to the Office; that the bidding was for the purchase of bailey panels to be used in the construction of a bailey bridge; that there was a Program of Work For the construction of a bailey bridge; invitation to canvass was send [sic] to suppliers who submitted their respective sealed bids; that he has knowledge that the bidding was the subject to an NBI Investigation because they received a Subpoena; that Engr. Jimmie Tel-Equen requested for a postponement and since then they received no other subpoena; that he denied that the bidding on May 10, 1990 was simulated; that they have complied with the provision of P.D. 1594; that they have a Program of Work, Invitation to Canvass was send [sic] to respective suppliers who submitted their sealed bids as reflected in the Abstract of Bids; that three suppliers participated namely: Philippine Metal, Manzel General Merchandise and the Bernabe Metal Corporation; that the winning supplier was Manzel General Merchandise; that it was their honest belief that Manzel General Merchandise is qualified as he participated in previous bidding held at the district; that the construction of the bailey bridge was to be undertaken by administration through pacquiao;

that the contractor was Lino Geston; that invitation to Canvass was send [sic] to suppliers and three contractors submitted their sealed bids namely: the Manzel General Merchandise; the Philippine Metal and Bernabe Metal Corporation; that when the sealed bids were opened only Manzel General Merchandise posted a cash bond; that the bidding is a failure; that since these bailey panels are not ordinary materials and are not available to local suppliers, they decided to award to Manzel General Merchandise in order not to delay the construction; that the materials were delivered by Manzel General Merchandise.

Engr. Alfredo Apolinar, Chief of the Maint. Section claimed that he is a member of the PBAC; that on May 9-16, 1990 he was on inspection at the Baguio-Benguet road but was aware of the bidding to be held at the District Office on May 10, 1990, so he returned to the office and after the bidding he returned to Baguio-Benguet road for inspection; that the bidding was about the bailey panels to be used in the construction of bailey bridge also at Brgy. Mainit, Bontoc, Mt. Province; that he is cognizant of the provisions of P.D. 1594; that invitation to canvass was send to several suppliers, the Manzel General Merchandise, the Bernabe Metal and Philippine Metal who submitted their respective seald [sic] bids; that the bid was awarded to Manzel General Merchandise represented by Manuel Dangayo; that he does not know personally Manuel Dangayo, except that he participated in previous public bidding held at the district making them to honestly believe that he is qualified; that the NBI went to their office and conducted an investigation; that the bidding held was not simulated; that there was an approved Program of Work for the construction to be undertaken by administration through pacquiao; that when the sealed bids were opened only the Manzel General Merchandise posted a cash bond; that to avoid delay in the construction, they awarded to Manzel General Merchandise who delivered them the materials; that they are not aware that the materials delivered was stolen as alleged by the NBI; that he was aware that Egr. Tel-Equen requested also bailey panels and bridge materials at the Lagawe, Ifugao Engineering District, inspite of the bidding because rainy season is fast approaching and in order to comply with the fast track method; that deliveries of the material represented were delivered by the Ifugao District; that his materials were investigated by the NBI so he returned them.

Mr. Felix [Gasmena, Jr.] alleged that he was the COA employee and representative during the bidding held on May 10, 1990; that the bidding was about the bailey panels to be used in the construction of a bailey bridge connecting Mt. Province and Abra at Mainit; that he was on leave but because he is aware of the bidding, he reported to attend the bidding; that the participating bidders were the Philippine Metal, Manzel General Merchandise, and Bernabe Metal Corporation; that when the sealed bids were opened only Manzel General Merchandise posted a cash bond so the PBAC decided to award it to Manzel General Merchandise because they want to start the project before the start of the rainy season; that they received a subpoena from the NBI but Engr. Tel-Equen requested for a postponement and no further subpoena was issued to them; and that the bidding was not simulated.

Engr. Rudy P. Antonio, Chief of the Construction Section claimed that he is a member of the PBAC; that he is aware of the provision of P.D. 1594; that the bidding last May 10, 1990 was about the bailey panels and bridge materials for the construction of the Mainit bridge; that the participating bidders was [sic] the Philippine Metal, Manzel General Merchandise, the winner bidder, and represented by Manuel Dongayo, Bernabe Metal Corporation; that Manzel General Merchandise was prequalified and participated in previous public bidding so it was their honest belief that he [sic] is qualified; that the construction of the bailey bridge is undertaken by administration through pacquiao; Invitation to Canvass was send [sic] to different suppliers and copy was posted in the Bulletin board of the District; when the sealed bids were opened only Manzel General Merchandise posted a bond so they decided/resolve[d] to award to Manzel General Merchandise; that he was aware of the NBI Investigation; and that the bidding was not simulated. (Emphasis supplied)[25]

In the 28 March 1994 resolution of the Administrative Adjudication Bureau of the Office of the Ombudsman, Apolinar, Camarillo, and Gasmena told a different story about the circumstances surrounding their signing the Abstract of Bids. Apolinar signed the Abstract of Bids to do away with the pestering lady who presented him the document. Camarillo signed the Abstract of Bids in the afternoon of 10 May 1990 because he found the papers in

order and also because majority of the PBAC members already signed the abstract. Gasmena explained that he was on sick leave on 10 May 1990 but was pressured to sign the Abstract of Bids on 14 May 1990.[26]

From these contradicting admissions, we ascertain the following facts: Ramirez, Miranda, Antonio, Camarillo, Apolinar, and Gasmena are PBAC members, with Ramirez as Chair and Miranda as Vice Chair. However, only Ramirez and Antonio can be definitely stated to be in the office premises on 10 May 1990 at 10 in the morning. Camarillo and Gasmena were on leave, Miranda was in Benguet for an official trip, and Apolinar was inspecting the Baguio-Benguet roads.[27]

Whether a bidding was done is a question of fact; whether a bidding was validly done is a question of law. Ramirez and Antonio maintain a bidding was done, but with qualifications. Their petition states that:

[T]he presence of all the signatories of the PBAC is not indispensable as the presence of two persons would be sufficient. This is more so in the case where there is only one prequalifying bidder so much so that the result would be a foregone conclusion even before the actual appointed date and time. Any common vote by two (2) members is enough. It is only in case of a tie that there has to be one more to break the tie, which often happens to be the Chairman. (Emphasis supplied)[28]

We agree with Tel-Equen, Ramirez and Antonio that the presence of only three PBAC members is necessary to constitute a quorum to conduct a bidding.[29] However, the documents supposedly proving that a bidding transaction took place show that all six PBAC members were present and actually attended the bidding on 10 May 1990 at 10 in the morning. Ramirez and Antonio should thus be held liable for this falsity.

Ramirez declared the bidding a failure yet decided to award the contract to Manzel General Merchandise anyway. In doing so, Ramirez effectively changed the method of procurement from bidding to emergency purchase.[30] Here lies one of the sources of controversy as seen by the Ombudsman Task Force on Public Works and Highways. Considering that the PBAC had time to conduct a first bidding, there was no emergency, or an imminent danger to life or property, to justify immediate procurement. Ramirez's decision to circumvent established procedure cast a cloud of suspicion on the entire procurement process given the relationships among Ramirez, Dangayo, Alexander Aguana and Manuel Aguana.[31] Also considering Tel-Equen's request to borrow materials from IED, there was no need to dispense with a second bidding. We allow Ramirez and Antonio's assertion that bidding was done on 10 May 1990. However, this bidding was done in accordance with their flawed definition. Thus, there was no valid public bidding done on 10 May 1990.

In its recitation of facts, the appellate court stated that:

The Mainit Bailey Bridge was eventually constructed. Materials used were those borrowed from IED on the strength of the letter-request of DE Tel-Equen to DE Mabunga. All the borrowed bailey bridge components were returned to IED in January 1991.[32]

Thus, Tel-Equen contends that considering the Mainit bailey bridge was constructed, and the borrowed bailey bridge components were returned, the government was not defrauded.

For all their protests, Tel-Equen, Ramirez and Antonio's documentary evidence betrayed their position. The appellate court found:

According to the Abstract of Bids, Manzel General Merchandise emerged the sole qualifying bidder. Among the documents submitted to the NBI in the course of the investigation of this transaction was a certification dated 27 May 1990 that "Manzel" bought the bailey bridge components from Bernabe Construction Industrial Corporation. However, Dangayo, owner of the "Manzel" in his sworn statement asserted he bought the bailey bridge components from STC Machine Shop and the Engineering Works and the Viscaya Machine Shop. This discordance in their evidence is sharpened by the circumstance that Bernabe Construction Industrial

Corporation was a losing bidder in the subject public bidding. Further, Dangayo presented an official receipt purportedly showing he secured the bailey bridge panels from the STC Machine Shop and Engineering Works. The machine shop's Manager belied Dangayo's avowal, as he denied having supplied or assembled any bridge panels or components for Dangayo.[33]

Indeed, Tel-Equen, Ramirez and Antonio's documentary evidences raise more questions than answers. As pointed out by the Solicitor General, the articles delivered by Dangayo to the MPED were the very articles lent by the IED pursuant to Tel-Equen's written request.[34] It was strange that Dangayo, the supposed winning bidder, was the person who took IED's bailey bridge components and delivered them to MPED. In effect, Dangayo delivered IED's bailey bridge components and passed them off as his own, thus collecting payment from MPED. The disbursement vouchers showing payment to Dangayo were certified by Antonio and approved by Tel-Equen. Tel-Equen's active participation in borrowing the bailey bridge components from IED and approving payment to Dangayo contradict his protestations of innocence. Tel-Equen knew that the bailey bridge components were only borrowed from IED and yet he still approved payment for the bailey bridge components as though sold and delivered by Dangayo.

We see no need to apply the exception to the general rule and thus affirm the findings of fact and the conclusions of the appellate court. Tel-Equen borrowed the bailey bridge materials from IED, approved the requisition of bailey bridge materials similar to those borrowed from IED, and certified the conduct of a public bidding on 10 May 1990. Ramirez also approved the requisition of bailey bridge materials. He even personally accepted the bailey bridge materials borrowed from IED from Dangayo. Antonio requested payment for the vouchers to Dangayo. Tel-Equen, Ramirez, and Antonio affixed their signatures to the Abstract of Bids. All of them participated in the preparation and submission of false documents to show that there was a public bidding, that MPED purchased the bailey bridge materials from Dangayo, and that delivery of materials were made for the construction of the Mainit Bridge.

The bailey bridge components borrowed from IED were returned to IED in January 1991, more than three months after the Concerned Citizens of Ifugao filed a letter-complaint to the Ombudsman on 11 September 1990 about the anomaly. Apparently, Tel-Equen, Ramirez and Antonio tried to cover up their misconduct by replacing the bailey bridge components borrowed from IED.

The Constitution provides that "[p]ublic office is a public trust. 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." [35] Tel-Equen, Ramirez, and Antonio's acts fail to show that they have lived up to this public trust.

WHEREFORE, the instant petition is DENIED. The decision of the Court of Appeals in CA-G.R. SP No. 50324 is AFFIRMED. Jimmie F. Tel-Equen, Rolando D. Ramirez, and Rudy P. Antonio committed acts of dishonesty, falsification of public documents, misconduct, and conduct prejudicial to the best interest of the service. They are DISMISSED from the service, and shall suffer the accessory penalties of dismissal.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Hilarion L. Aquino and Mercedes Gozo-Dadole, concurring.

[3] *Namuhe v. The Ombudsman*, 358 Phil. 781 (1998). Penned by Associate Justice Artemio V. Panganiban, with Associate Justices Hilario G. Davide, Jr. (now Chief Justice), Jose C. Vitug, and Leonardo A. Quisumbing, concurring.

[4] Penned by Graft Investigation Officer Eduardo R. Rodis, recommended for approval by Director Cesar T. Palaña, reviewed by Assistant Ombudsman Abelardo L. Aportadera, Jr., and approved by Ombudsman Conrado M. Vasquez.

[5] Penned by Graft Investigation Officer Ma. Isabel A. Alcantara, recommended for approval by Director Napoleon S. Baldrias, reviewed by Assistant Ombudsman Abelardo L. Aportadera, Jr., and approved by Acting Ombudsman Francisco A. Villa.

[6] See CA Rollo, Vol. 2, pp. 183-184. Vouchers attached to Tel-Equen's position paper before the Ombudsman show that Manuel Dangayo of Manzel General Merchandise presented two invoices: #183 for P429,200 and #184 for P124,700.

[7] Rollo, pp. 80-83.

[8] Rollo, pp. 60-63.

[9] Rollo, p. 71.

[10] *Ibid.*, p. 75.

[11] Per footnote 5 of this Court's resolution in *Namuhe v. The Ombudsman*, *supra* note 3, Tel-Equen's petition (G.R. No. 124932) was considered a special civil action for certiorari under Rule 65 and was dismissed by this Court on 19 June 1996. Tel-Equen moved to reconsider and manifested that his petition was an appeal by certiorari under Rule 45. The Solicitor General did not object to Tel-Equen's motion and, on 23 October 1996, even moved to file a consolidated Comment for the three petitions. The Solicitor General filed his consolidated Comment on 14 February 1997. See also CA Rollo, Vol. 2, pp. 261-265, 282-315.

[12] CA Rollo, Vol. 1, pp. 250-251 and Vol. 2, p. 281-A.

[13] *Supra* note 3.

[14] 356 Phil. 787 (1998).

[15] On 21 June 1996, Camarillo moved to intervene in Tel-Equen's petition (G.R. No. 124932). In a resolution dated 29 June 1996, this Court merely noted Camarillo's motion. As stated earlier, Tel-Equen's petition was considered a special civil action for certiorari under Rule 65 and was dismissed by this Court on 19 June 1996. However, on 24 February 1997, this Court ordered the consolidation of the three separate petitions. Camarillo no longer filed any pleading. See CA Rollo, Vol. 2, 74-79.

[16] Rollo, p. 95.

[17] *Ibid.*, pp. 23-25. Capitalized in the original.

[18] See Sec. 21, Republic Act No. 6770 (The Ombudsman Act of 1989).

[19] See *Fabian v. Desierto*, 356 Phil. 787 (1998).

[20] 69 Phil. 635 (1940).

[21] *Montemayor v. Bundalian*, G.R. No. 149335, 1 July 2003, 405 SCRA 264 citing *Umali v. Exec. Sec. Guingona, Jr.*, 365 Phil. 77 (1999); *Audion Electric Co., Inc. v. National Labor Relations Commission*, 367 Phil.

620 (1999).

[22] Rollo, p. 67.

[23] *University of the Phils. Board of Regents v. Court of Appeals*, 372 Phil. 287 (1999).

[24] See *Firme v. Bukal Enterprises and Development Corporation*, G.R. No. 146608, 23 October 2003, 414 SCRA 190.

[25] CA Rollo, Vol. 2, pp. 222-228.

[26] Rollo, p. 64.

[27] *Ibid.*

[28] *Ibid.*, p. 48.

[29] Annex “A,” Implementing Rules and Regulations, Executive Order No. 302, 26 February 1996, relied upon by Tel-Equen, Ramirez, and Antonio in their petition, defines a quorum for purposes of the PBAC on procurement of goods. Thus:

5. Quorum. A quorum of the PBAC shall be composed of the Chairman or his designated alternate plus two (2) members of the PBAC. The Chairman may call meetings at any time as required to expedite work presented to the Committee. Decisions shall be made by a simple majority vote of members who are present and voting except the Chairman, who shall cast his vote only in the case of a tie. The decisions of the PBAC shall however be merely recommendatory and shall be subject to the final approval/authority of the Head of Agency concerned or his duly authorized representative.

[30] Executive Order No. 301 (1987).

[31] See CA Rollo, Vol. 1, pp. 133-134. Namuhe alleged that Manuel Aguana, Supply Officer of IED, and Alexander Aguana, Supply Officer of the MPED, are brothers. Alexander Aguana is also said to be an uncle of Ramirez, Assistant District Engineer of MPED. Dangayo of Manzel General Merchandise, on the other hand, has a close relationship with Manuel Aguana. Dangayo’s father was a foster child of the parents of Manuel Aguana’s spouse.

[32] Rollo, p. 82.

[33] Rollo, pp. 92-93. See also Rollo, pp. 194-195.

[34] *Ibid.*, p. 126.

[35] Phil. Const., Art. XI, §1.

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