

OFFICE OF THE OMBUDSMAN, VS. ROGELIO Q. TONGSON, SANNY BOY O. OROPEL, JAIME S.J. JAVELLANA, JOSE C. MARAVILLA, AND COURT OF APPEALS-CEBU (FORMER EIGHTEENTH DIVISION), RESPONDENTS.

G.R. NO. 169029. August 22, 2006

Ponente: CALLEJO, SR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-169029/>

CALLEJO, SR., J.:

Assailed before the Court in this Petition for Review is the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 84694, reversing the March 8, 2004 Decision and May 7, 2004 Order of the Office of the Ombudsman (Visayas), as well as the Resolution denying the motion for reconsideration thereof.

The Republic of the Philippines, through the Department of Public Works and Highways (DPWH), had decided to concrete the Bacolod City-Murcia-D.S. Benedicto-San Carlos City National Road, Murcia Section, from the Sum-ag Bridge extending beyond the Caliban Bridge. The Office of the District Engineer, 18th Engineering District, issued an Invitation to Prequalify and Bid for the project described as "Concreting of Bacolod City-Murcia-D.S. Benedicto-San Carlos City Road, Murcia Section, Murcia" at the cost of P14,582,000.00.[2]

On May 15, 2000, respondent Rogelio Q. Tongson, DPWH District Engineer, 1st Negros Occidental Engineering District, issued a notice of award[3] to Korona Construction ("Korona" for brevity) for the concreting of the said Bacolod City-Murcia-D.S. Benedicto-San Carlos City National Road, Murcia Section, Murcia, Negros Occidental for the price of P13,457,350.00. Ciro Y. King, the sole proprietor of Korona, conformed to the award on June 7, 2000.[4] A contract was forged on the same day between the Republic of the Philippines, represented by Sanny Boy Oropel, Officer-in-Charge of the Office of the DPWH Assistant District Engineer, 1st Negros Occidental Engineering District, and Korona, represented by King. Respondent Jaime S.J. Javellana, Engineer III, Office of the District Engineer and PBAC Chairman, signed the contract.[5] Respondent Jose C. Maravilla, Engineer IV of the Engineering District was assigned as Project Engineer.

Under the contract, Korona had to complete the project in 297 calendar days from receipt of notice to commence work, as follows:

ITEM
NO.

DESCRIPTION

UNIT

QUANTITY	
UNIT	
COST	
TOTAL	
105	
Subgrade preparation	
Sq.m.	
24,912.36	
11.61	
	P289,232.50
202	
Crushed Aggregate Base Course	
Cu.m.	
5,862.00	
292.20	
1,712,876.40	
311	
Portland Cement Concrete Pavement	
Sq.m.	
19,566.36	
562.01	
10,996,489.98	
Spl. Item	
Roadway	
Cu.m.	
1,447.00	
316.96	
458,641.12	

TOTAL

P 13,457,240.00

To guarantee faithful compliance with the terms and conditions of the contract, King obliged himself to post a performance bond, 10% of the contract price, and a security bond from the GSIS equivalent to 10% of the contract cost immediately after the project shall have been 100% completed. These bonds would answer for any defects that may arise out of the project within the period of one year.[6] The plans and specifications, as well as the general and special conditions and Certificate of Site Inspection were deemed to be part of the contract.[7] The performance bond was thereafter posted.

On May 24, 2000, the Office of the District Engineer issued a notice[8] to commence work which King received on June 7, 2000. According to the contract, the project was supposed to be completed by April 2001. On July 19, 2000, King received from the government P2,018,586.00 or 15% of the contract price as mobilization.[9] Per Accomplishment Report dated October 24, 2000 signed by Maravilla and Javellana and approved by Tongson, the project was by then 55% complete.[10] On October 31, 2000, or barely a week thereafter, Maravilla and Javellana certified that King had completed 88% of the project. Per Inspection Report and Accomplishment Report of Maravilla and Javellana dated December 15, 2000, King had already completed 95% of the work.[11] King had been paid the net amount of P1,844,253.58.[12]

On April 3, 2001, Maravilla and Javellana signed an Accomplishment Report[13] stating that 95% of the project had been accomplished. On the same day, a certificate of inspection,[14] signed by Maravilla and Javellana, was issued by the Office of the District Engineer. It was stated therein that the project had been inspected, and per approved plans and specification of Program of Works, was found 100% complete. Tongson approved the recommendation of Maravilla and Javellana,[15] which was thereafter approved by Oropel.

Forthwith, Maravilla and Javellana issued a certificate of project completion.[16] On April 4, 2001, King filed with the Office of the District Engineer a Progress Billing for the balance of the project price of P672,862.00.[17] Oropel, Maravilla, Javellana and Tongson approved King's Disbursement Voucher[18] for the full payment of the uncollected contract price. With the authority of Oropel and Tongson, King was paid the balance of the contract price, less value-added tax and withholding tax in the amount of P608,634.27.[19] However, it turned out that, as of April 3, 2001, only 95% of the project had been completed.

On March 27, 2002, Jose Lindy Chan, Jr., a dismissed senior inspector of the Philippine National Police, discovered that the concreting project was far from complete. He reported the matter to the Bacolod Graftwatch on April 8, 2002.[20] He took photos[21] and video footages of the unfinished road area. The matter was published in the April 12, 2002 issue of the Philippine Daily Inquirer and broadcasted extensively in the Bacolod Super Radio.

In a letter[22] dated April 12, 2002 addressed to Graftwatch, Oropel, in behalf of Tongson, declared that while the contractor had accomplished only 95% of the project, full payment had been released since the project was considered substantially completed. Moreover, the 10% retention was more than sufficient to answer for the 5% deficiency in the project. He assured that the contractor was fast tracking the completion of the remaining portion of the contract. Since processing of contractor's claim for final billing of cash allocations for infrastructure projects was usually delayed, the certificate of turn-over and acceptance was signed by Mayor Coscocuella of the Municipality of Murcia just to facilitate the same and after assurances from the Engineering District that the government would not suffer any loss.[23]

On November 7, 2002, Chan executed an Affidavit-Complaint[24] charging Tongson, Oropel, Javellana and

Maravilla with "possible violation of (our) anti-graft law, falsification of official document, unethical conduct of public officers, dishonesty, and grave misconduct by taking advantage of their official functions and conspiring and confederating with each other in an attempt to defraud the government in the implementation of government projects, were it not for the timely discovery of the anomaly." [25] The complaint was then filed before the Office of the Ombudsman (Visayas). Chan asserted that the respondent engineers had made untruthful statements in their accomplishment reports, reports of inspection and certificates of project completion, which led to the premature full payment of the contract price. Chan claimed that Tongson instructed Oropel to resume construction and fast track the completion of the project only after the controversy had been reported to the media.

Chan also asserted that there was no legal reason why the respondents should not be charged and found guilty of violating Section 3(e), Republic Act No. 3019, considering Oropel's admission in his letter to the Graftwatch that the full payment was released for a project which was not yet completed. Thus, respondents committed falsification of public documents when they caused Mayor Coscuela to sign the certificate of turn-over and acceptance of the project of the city. Chan, likewise, sent a letter [26] dated November 25, 2002 to the Secretary of Public Works and Highways and made the same complaint against the respondents.

The Office of the Ombudsman considered the Affidavit-Complaint as charges against the respondents for violation of Section 3(e), Rep. Act No. 3019, and Malversation under Article 217 of the Revised Penal Code. The case was docketed as OMB-V-C-02-0710-K. The complaint was also considered an administrative complaint for dishonesty arising from the criminal complaint, docketed as OMB-V-A-02-0614-K.

In his Counter-Affidavit, Tongson averred that the case had been mooted by the completion of the project. He admitted that when he approved the accomplishment report on April 3, 2001, the project was not yet 100% complete. However, he discovered the mistake when King tried to collect the 10% retention money and directed Maravilla and Javellana to reassess the accomplishment of the contractor and whether the terms and conditions of the contract had been followed. After a joint resurvey, Javellana and Maravilla discovered that the construction of the project fell short by 1,341.75 square meters; that is, one kilometer of roadwork from the Caliban Bridge had not been completed. The discrepancy was caused by the belief of the Engineer's Office that the road section covered by the project was only from the Sum-ag Bridge to the Caliban Bridge. King agreed to complete the project by reblocking the damaged old-paved road at the Lopez Jaena Section, about one km. away from the Caliban Bridge. Tongson further claimed that he acted in good faith when he approved the Certification of Maravilla and Javellana that the project was 100% complete and when he allowed full payment to the contractor. He asserted that he honestly believed that the coverage of the project was only from the Sum-ag Bridge to the Caliban Bridge. He pointed out that the government did not suffer any loss or injury due to such oversight since the contractor's 10% retention money, more than the cost of the unfinished work, was not released until after the project was completed.

Tongson asserted that the complaint against him and the others was filed by Chan because the latter, not being a duly licensed or accredited contractor/supplier, had not been awarded any project by the Office of the District Engineer. Chan had also violated the rule on forum-shopping because he had likewise filed a complaint [27] in November 2002 against the respondents with the Secretary of the DPWH based on the same facts. The DPWH Fact-Finding Team, however, recommended that the complaint be dismissed and the case terminated on January 27, 2003. [28] Tongson attached the June 25, 2002 and the January 22, 2003 affidavits [29] of Arturo King.

Oropel submitted his Counter-Affidavit [30] where he adopted the claims of respondent Tongson. He added, however, that it is a common practice in the construction industry to consider a project that is 95% complete as substantially completed; a list containing the remaining work is thereafter prepared, indicating the time of completion, among others. He reiterated then that it is not unusual to process the full payment of the contractor.

He emphasized further that the contractor was paid because of his honest belief that the project was to end at Caliban Bridge.

Javellana and Maravilla, in their Joint Counter-Affidavit,[31] asserted, among others, that they did not make untruthful statements in their April 3, 2001 Report of Inspection and Certificate of Completion. At the time the said documents were made, the concreting from the Sum-ag Bridge to the Caliban Bridge was indeed 100% complete according to previous survey and computation. The shortfall of the finished work, vis-à-vis the quantity or items of work, was about 1,341.75 sq. m. corresponding to the reblocking of the damaged paved roads at the Lopez Jaena Section, more than one km. away from the Caliban Bridge. They discovered the shortfall when they made a reassessment of the project. They cannot, thus, be held liable for falsification of public documents as they made the statements in good faith and in the honest belief that the same were true. Javellana and Maravilla, likewise, adopted the contents of the counter-affidavits of Tongson and Oropel.

In his Affidavit, King declared that when the respondents released the 10% retention money, he was informed that the project had not yet been completed because the length of the project was short of what was stipulated in the contract. He and some DPWH officers conducted a resurvey and found that the road length fell short by 1,341.72 sq m. Hence, it was decided that a portion of the Lopez Jaena Section located more than one km. away from the bridge, the terminal of the project, would be concreted. He immediately commenced the work and completed it in May 2002.

Meantime, on January 27, 2003, the DPWH Regional Director approved the report-recommendation of the DPWH Fact-Finding Team dismissing the letter-complaint against respondents, but that they be sternly warned to be more careful and circumspect in their assigned tasks.[32] The Fact-Finding Team declared that the error or discrepancy was caused or occasioned by the contractor's belief and the project engineers that the subject project starts at the Sum-ag Bridge and will end at the Caliban Bridge. The Panel noted that the project did not specify the station limits but merely reflected the area covered in square meters. It concluded that such error was due to an honest oversight, which was immediately corrected upon discovery. Besides, the government did not incur any loss or additional cost for such oversight because the contractor thereof implemented the remaining works. It was pointed out that when the error was discovered, the contractor's retention money had not been released yet. In consonance with the well-settled Commission on Audit (COA) principle of "no loss-no injury on the part of the government," the Panel believed that the respondents should not be administratively sanctioned.[33]

On May 6, 2003, Oropel requested the COA to conduct a post-audit examination of the project. In a letter dated May 9, 2003, the COA informed Tongson that, upon actual inspection, the project was found to be 100% complete with the deficiencies noted by its inspector already corrected.

On March 8, 2004, Graft Investigation and Prosecution Officer I Gaudioso J. Melendez of the Ombudsman submitted a Resolution[34] in OMB-V-C-02-0710-K recommending the dismissal of the criminal complaint for insufficiency of evidence. However, in OMB-V-A-02-0614-K, he adjudged respondents administratively liable for conduct prejudicial to the best interest of the service and ordered their suspension from office for six (6) months without pay.

In his decision, the Ombudsman approved the recommendation of the Prosecution Officer, declaring that evidently, respondent Engr. Jose C. Maravilla and Engr. Jaime S.J. Javellana, on orders of their supervisors District Engineer Rogelio Q. Tongson and Asst. District Engineer Sanny Boy Oropel, inspected the work accomplishments of King and reported that the project had been completed, but it turned out that the project was still 20% deficient. They admitted that there was an error in the computation of the area coverage of the project from the Sum-ag Bridge up to the Caliban Bridge, resulting in the work deficit and premature disbursement of

public funds. The error could have been avoided had the respondents prudently inspected and assessed the work accomplishment of King as against the project specifications. The failure to thoroughly assess the project delayed the actual completion, and consequently, the use thereof by the public. The irregularity drew the attention of the media and the public, casting a bad image on public service. The Ombudsman further held that respondents cannot be exculpated by their claim that they acted in good faith; being seasoned DPWH engineers in possession of the bid documents, they could have discovered the irregularity earlier, and the fiasco could have been avoided. Such neglect of duty on the part of the respondents proved to be detrimental and prejudicial to their agency. The fact that they have remedied the work deficiency will not exculpate them from administrative liability, but such corrective measure can be considered a mitigating circumstance.[35] The dispositive portion of the decision reads:

WHEREFORE, District Engineer Rogelio Q. Tongson, Asst. District Engineer Sanny Boy Oropel, Engineer III James S.J. Javellana, and Engineer II Jose C. Maravilla are hereby found administratively liable for Conduct Prejudicial to the Best Interest of the Service. They are hereby meted the PENALTY OF SIX MONTH SUSPENSION without pay, with the warning that a repetition of a similar offense will be dealt with more severely.

However, PBAC Member Nila M. Guanco, Administrative Officer Rogelio S. Bat-og, Materials Quality Control Head Rodolfo J. Baguiro, Materials Quality Control Technician Pedrito L. Padadasaba, Acting Accountant Mary Jane N. Herida, and Internal Control Unit Officer Marvel V. Macainan, are exonerated from the charge as they did not have any hand in the inspection of the work accomplishment of the project. Likewise exonerated is State Auditor III Alfredo O. Carisma as he likewise has no involvement in the matter.[36]

The complainant filed a Motion for Reconsideration of the Ombudsman's resolution dismissing the criminal complaint. Respondents likewise filed a Motion for Reconsideration,[37] averring that the 5.60% deficiency on the project was a simple oversight. Respondents' motion was denied on May 7, 2004,[38] while Chan's motion was denied on June 8, 2004.[39]

Petitioners filed a petition for review before the CA, assailing the March 8, 2004 Decision in OMB-V-A-02-0614-K and the May 7, 2004 denial of their motion for reconsideration. On December 20, 2004, the appellate court rendered judgment[40] reversing the Decision of the Ombudsman, holding that petitioners' error or oversight was committed without malice, ill-motive or wrongful intention to defraud or deceive the government. Petitioners' good faith was strengthened by their efforts to immediately remedy the matter upon discovery. According to the CA, respondents had exercised caution when they denied the contractor's request for the release of the retention money until and unless the necessary remedial measures were made. The CA further acknowledged that respondents' oversight is further mitigated by their frank and open admission of the error. Respondents were reminded to be more circumspect in exercising the functions of their office.[41] The dispositive portion of the decision states:

In light of the over-all (sic) backdrop of the case, We hold to GRANT the petition for review and the 8 March 2004 Decision and 7 May 2004 Order of the Office of the Ombudsman (Visayas) finding the petitioners administratively liable for Conduct Prejudicial to the Best Interest of the Service and suspending them for a period of six (6) months without pay are REVERSED and SET ASIDE.

Consequently, the bond posted by petitioners to answer for any damages that may be sustained by respondents by reason of the injunctive relief issued by the Court in its Resolution of 24 September 2004 is hereby ordered CANCELLED.[42]

The Office of the Ombudsman filed its Motion for Reconsideration[43] on January 13, 2005, which the CA denied on July 18, 2005.[44]

The Office of the Ombudsman filed with this Court a petition for review on certiorari[45] under Rule 45,

questioning the Decision and Resolution of the CA on the following grounds:

I.

WITH ALL DUE RESPECT, THERE IS MORE THAN SUBSTANTIAL EVIDENCE PROVING THE ADMINISTRATIVE GUILT OF PETITIONERS FOR CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, THIS CONSIDERING THAT:

I.A

RESPONDENTS DID NOT CONDUCT THE REQUIRED DETAILED ENGINEERING.

I.B

RESPONDENTS ISSUED A FALSE CERTIFICATE OF COMPLETION.

I.C

RESPONDENTS DID NOT CONDUCT THE REQUIRED ACTUAL INSPECTION.

II.

THE FINDINGS OF THE OFFICE OF THE OMBUDSMAN DESERVE GREATER WEIGHT, AND MUST BE ACCORDED FULL RESPECT AND CREDIT.[46]

Petitioner contends that respondents neglected to perform a duty incumbent upon them. They did not specify the station limits of the concreting project (in km); when they agreed with the contractor that the project would be from Sum-ag to Caliban Bridges, they again did not specify the station limits or the length of the road between the two bridges. As alleged in Chan's complaint, respondents did not conduct the detailed mandatory engineering requirement prescribed by the Implementing Rules of Presidential Decree No. 1594. Had a detailed engineering plan been conducted, then the true station limits of the project would have been known to respondents from the very start. Further, respondents' defense of honest mistake was belied by the fact that, while they issued a certificate of 100% completion, the project was, in fact, still incomplete. The claim of respondents that they conducted an initial survey and discovered that the project from Sum-ag to Caliban Bridges was finished was not supported by evidence. Granting that an initial survey had really been conducted, respondents should have known before executing the contract for the project and awarding the same to King the very scope of the project vis-à-vis the stipulated items of work. Petitioner insists that respondents did not really conduct an initial survey and they designated the start and end of the project by mere guess work. The records further reveal that an additional work order was issued by the Office of the District Engineer, where there was a reduction of the items of work in the original contract. Petitioner stresses that respondents realized that there was an excess in the quantity required to concrete the road from the Sum-ag to the Caliban Bridge. While the additional work order was undated, it was issued before October 31, 2000, since the Accomplishment Report[47] of that date included the items of work in the additional work order. Respondents were therefore aware as early as October 2000, that the project would not be 100% completed after the concreting of the road from Sum-ag to Caliban Bridges.

Petitioner insists that respondents did not actually inspect the project; the actual accomplishment of the contractor was not checked or inspected in relation to the quantities stated in the contract. Had an actual inspection been made, then no error should have been committed. It further contends that the government sustained injury from the time the project was certified as 100% complete up to the actual discovery of the deficiency and the resumption of work, and for this, respondents must be accountable.

Petitioner claims that the doctrine in *Arias v. Sandiganbayan*[48] could not be invoked by respondents, as they

rest on different facts. Petitioner's findings must likewise be given greater weight and accorded full respect and credit.

For their part, respondents counter that the sworn statement and the subsequent joint supplemental complaint filed by Chan were hearsay, inadmissible in evidence, as the affiants were not presented to identify their statements. They cite the ruling of this Court in *Tapiador v. Office of the Ombudsman*[49] to support their contentions. Respondents further insist that the integrity and the credibility of the complainants were highly questionable and tainted with hatred, malice and bad faith, motivated as they were by hatred for respondents for not having been given construction projects. They point out that Chan was also of questionable character, having been dismissed from the police service for grave misconduct (extortion).

Respondents contend that they conducted the required detailed engineering survey of the project: A station limit of 2 km. and 673 m. was also specified in the engineering design/plans,[50] and a program of works and detailed estimates were also prepared and approved. They maintain that, per

the previous survey, the coverage of the project was from the Sum-ag to the Caliban Bridges; hence, the Accomplishment Report and Certificate of Completion, which respondents Maravilla and Javellana signed on April 3, 2001, were correct. It was only later that they discovered a deficiency and mistake. They insist that no loss was suffered by the government as the project was indeed completed after discovery of the deficiency. Since they had no direct supervision of the projects, the doctrine in *Arias* was applicable to them. Contrary to petitioner's allegations, the findings of the DPWH Fact-Finding Team should be given more credence.

The petition is meritorious.

This Court is to resolve the issue of whether or not the Decision of the CA granting respondents' petition for certiorari is erroneous, an issue which is factual in nature.

Under Rule 45 of the Rules of Court, only questions of law may be raised,[51] since the Court, after all, is not a trier of facts.[52] Unless for exceptional reasons, It is not to review the evidence on record and assess the probative weight thereof.[53] However, factual issues may be delved into and resolved where, as in this case, the findings and conclusions of the Office of the Ombudsman in its decision are frontally inconsistent with those in the assailed Decision and Resolution of the CA.[54]

Contrary to the contention of respondents, the findings of the petitioner in its decision were based on the records of the 1st Engineering District of the DPWH and their (respondents') admissions, and not merely on the allegations in the Complaint-Affidavit and Supplemental Affidavit of Chan and his counsel.

The parties, including the CA and the DPWH, have no dispute on the following basic facts: the project was to start from the Sum-ag Bridge to a distance of 1,341.75 sq. m. beyond the Caliban bridge; on April 3, 2001, respondents Maravilla and Javellana signed an Accomplishment Report in which they stated that, after their inspection of the project, King had accomplished 95% of the project. Respondents Maravilla and Javellana likewise signed a Certificate of Completion, stating that they had inspected the project and found it 100% completed as per approved plans and specifications of the Program of Work. It was also recommended that the balance of the project price of P672,862.00 be paid to King. Respondents Maravilla, Javellana and Tongson approved the release of P672,862.00. As ruled by petitioner, as of April 3, 2001, only 80% of the project had been completed and that, accordingly, the full balance of the contract price (excluding the 10% retention) should not have been paid to King. The Accomplishment Report and Certificate of Completion signed by respondent Maravilla and Javellana that the project was 100% complete is false; it was only on May 2, 2003, that the project was completed, or two years after the timeline for completion as fixed by the parties in their contract.

The CA and the DPWH, however, concluded that the deficiency in the project as of April 3, 2001 was caused by an honest oversight on the part of respondents. The DPWH sternly warned respondents to be more careful and circumspect in their assigned tasks, and the CA likewise warned respondents to be more prudent in the exercise of the functions of their office. Petitioner insists, however, that the acts/omission of respondents constitute conduct prejudicial to the public interest, for which respondents deserve a suspension of six (6) months without pay.

We agree with petitioner's contention that the deficiency in the project was caused by respondents' failure to state in their surveys, designs and program of work, the station limits of the project. According to the Implementing Rules and Regulations (IRR), implementing Presidential Decree (P.D.) No. 1594:

- No bidding and/or award of contract for a construction project shall be made unless the detailed engineering investigations, surveys and designs for the project have been sufficiently carried out and duly approved in accordance with the standards and specifications prescribed by the Head of office/agency/corporation concerned or his duly authorized representatives.
- Detailed engineering shall proceed only on the basis of the feasibility or preliminary engineering study made which establishes the technical viability of the project and conformably to land use and zoning guidelines prescribed by existing laws. The findings contained in the feasibility study, if undertaken for the project, shall be examined. If, in the course of [the] exercise, it is found that changes would be desirable in the design standards of principal features, as proposed, specific recommendations for such changes shall be supported by justifications, including their effects on the cost, and (if necessary) the economic justification.
- A schedule of detained engineering activities shall include the following:
 - Survey
 - Site Investigation
 - Soils and Foundation Investigation
 - Construction Materials Investigation
 - Preparation of Design Plans
 - Preparation of Technical Specifications
 - Preparation of Quantity and Cost Estimates
 - Preparation of Program of Work
 - Preparation of Proposed Construction Schedule (and estimated Cash Flow for Projects with Schedule over Six (6) Months
 - Preparation of Site or Right-of-Way Plans including Schedule of Acquisition
 - Preparation of Utility Relocation Plan
 - Preparation and Submission of Design Report
 - Environmental Impact Statement for Critical Project as defined by the Department of Environment and Natural Resources (DENR)
 - Preparation of minimum requirements for a construction Safety and Health Program for the project being considered
 - Preparation of Bid/Tender Documents

- Work under detailed engineering shall include but not necessarily be limited to the following:
- Design Standards – Design standards shall be in accordance with appropriate standards and accepted detailed engineering practice adopted by the office/agency/corporation concerned. Design standards for structures shall take into account, among other things, the seismicity of the area to determine the optimum safety of structures and to minimize possible earthquake damage.
- Field Surveys and Investigation –Necessary field surveys which may include aerial, hydrographic, topographic, hydrologic sub-surface, monumenting and other surveys shall be carried out in accordance with the design, guidelines, criteria, and standards adopted by the office/agency/corporation concerned. All survey and investigation works shall be prepared in a manner satisfactory to carry out accurate design and production of plans.
- Contract Plans – The following plans shall be prepared for each construction contract in accordance with guidelines and standards adopted by the office/agency/corporation concerned, incorporating at least the following:
 - (1) Site development plan
 - (2) Plans and profile sheet
 - (3) Typical sections and details
 - (4) Drainage details where applicable
 - (5) Structural plans at appropriate scales indicating all details necessary in order that the complete structure can be set out and constructed
 - (6) Other details which may be required by the Head of office/agency/corporation
- Quantities – All construction quantities shall be computed to a reasonable accuracy of plus or minus fifteen percent (15%).
- Special Provisions – Specifications shall be prepared for specific terms of work or methods of construction, measurement and payment under each contract, which are not covered by Standard Construction and Material Specifications adopted by the office/agency/corporation concerned.

Obviously, respondents failed to comply with these rules. If they had so complied, they would have known that, as of April 3, 2001, the project was not yet complete, since there was a remaining 1,341.75 sq m portion which had not yet been paved, and that the contractor was able to complete only that portion of the project up to the Caliban Bridge. In the first place, the road length or the station limits nearing the starting point of the project from the Sum-ag Bridge and its terminal point (1,341.75 sq. m. beyond the Caliban Bridge) would have been indicated in a detailed survey and project design fully compliant with such rules and regulations.

Respondents' failure to comply with P.D. No. 1594 cannot be trivialized and classified as a mere oversight. At the very least, it constitutes neglect of duty. It must be stressed that respondents were mandated to comply with P.D. No. 1594 to insure that the terms and conditions of the contract are clear and unambiguous and, thus, prevent damage and injury to the government, and the consequent prejudice to the beneficiaries of project like the commuters and other road users. It bears stressing that the cost of the project was no less than P13,457,240.00. The concreting had to be properly made especially considering that the Bacolod City-Murcia-D.S. Benedicto-San Carlos City is a national road used by commuters and those engaged in commerce in the two cities.

We also sustain the contention of petitioner that the error and the deficiency could have been avoided had respondents been prudent enough to conduct an actual and thorough inspection of the project. As engineers and employees of the DPWH, they are expected to render public service with utmost responsibility, integrity, loyalty, and efficiency.[55] Respondents in this case fell short of the expectation and trust which the public had a right to expect of them.

Respondents further failed to prove their contention that per surveys, designs and program of work, the length of the project was measured to be 2,673.00 m, from the Sum-ag Bridge to the Caliban Bridge; that the station limit specified in the engineering design/plan was from a distance of two km and 673 m; and that the road structure had an initial length of 2,673.00 m. They inexplicably failed to present the surveys, designs and specifications in the Office of the Ombudsman as evidence during the investigation. If they had done so, they could have established the factual basis for their claim that respondents Maravilla and Javellana had signed the Certification and Accomplishment Report on April 3, 2001 in good faith, and that respondents Oropel and Tongson approved the same and recommended the payment of the last tranche, likewise, in good faith. Respondents must have realized, however, that, if they did present these documents, they would inevitably prove that the station limits were not in fact stated therein, and that, therefore, the payment of the last tranche should have been disallowed. The said surveys, designs and program of work would have proved that the contractor had a shortfall of 1,341.75 sq. m. Moreover, there can be no better evidence of the administrative culpability of the respondents than their own admission of this 1,341.75-sq. m. shortfall.

It bears stressing that even the Report of the Fact-Finding Team to the DPWH Regional Director declared that "this project did not specify the station limit." This finding of the team frontally belies respondents' claim that, per their surveys and designs, the station limit had been specified.

The ineptual neglect of respondents was compounded when respondents Maravilla and Javellana falsely certified, on April 3, 2001, that the project was 100% complete, and that respondents Oropel and Tongson had allowed the payment of the last tranche of P608,634.25, per request of King, despite their knowledge that the project was not yet 100% complete. We note that respondents Oropel and Tongson alleged that they allowed payment of the balance of P608,634.25 despite the deficiency considering that 95% of the project had been accomplished; that it could be considered substantial compliance with the undertaking of the contractor under the contract; and for humanitarian reasons since the value of the deficiency was less than the 10% retention money. This argument, however, is belied by the evidence on record, hence, totally unacceptable. Respondents Maravilla and Javellana certified that the project was 100% complete, not merely substantially complete. Respondents Tongson and Oropel approved the payment of the last tranche despite the falsity of the Report and Certification of respondents Maravilla and Javellana. There is, likewise, no showing in the records that the contractor pleaded for respondents Maravilla and Javellana, for humanitarian reasons, to falsify their Report and Certification so that the last payment could be made.

Respondents must be reminded that government funds must be disbursed only under the terms of the contract and upon compliance with the requirements provided by law and the pertinent rules and regulations.

Respondents Maravilla and Javellana cannot feign ignorance of the fact that, as of April 3, 2001, only 80% of the project had been completed, since Oropel admitted the same in his April 12, 2002 letter to the Graftwatch, where he stated that although the contractor had completed only 95% of the project, he and Tongson, nevertheless, allowed payment of the last tranche because of their belief that the project was already substantially completed, and the 10% retention was more than sufficient to answer for the deficiency of the project. It was precisely because of Oropel's and Tongson's admission that prompted Chan to file his complaint against respondents. Respondent Oropel reiterated his claim in his counter-affidavit and further averred that it was a common practice in the construction industry that when a project is 95% complete, the same is considered as substantially completed, and that the processing of the full payment of the contract price may be given due course. The claim of Oropel is inconsistent with that of respondents Maravilla, Javellana, and Tongson, in their respective counter-affidavits, that they believed in good faith that, as of April 3, 2001, the project was already 100% complete.

Respondent Oropel's claim of substantial compliance has to be rejected in light of the Implementing Rules and Regulations of P.D. No. 1594, which pertinently provides as follows:

CI 7 - CONTRACT COMPLETION

- Once the project reaches an accomplishment of 95% of the total contract amount, the government may create an inspectorate team to make preliminary inspection and submit a punch-list to the contractor in preparation for the final turnover of the project. Said punch-list will contain, among others, the remaining works, work deficiencies for necessary corrections, and the specific duration/time to fully complete the project considering the approved remaining contract time as of the date of contract suspension. This, however, shall not preclude the government's claim for liquidated damages, nor the contractor's claim for incentive bonus, as the case may be.

In his Counter-Affidavit, Oropel stated that a punch-list was prepared prior to the payment of the last tranche on April 4, 2001. However, no document was shown to prove that an inspectorate team was created, and if so, that a punch-list containing the remaining work to be done had been submitted. Instead, what respondents did was to certify the project as 100% complete, contrary to the actual work done albeit without any punch-list.

The project was, indeed, eventually completed and, as stated by the COA and the DPWH Fact-Finding Team, the government did not suffer any losses,[56] since respondents discovered the error before the 10% retention money was remitted to the contractor. However, such facts by themselves do not absolve respondents from administrative liability. At best, the same merely mitigates their administrative liability. It must be stressed that the project remained unfinished for two years because of respondents' neglect. Respondent Oropel admitted as much to the Bacolod Graftwatch in his April 12, 2002 letter that the contractor, on that date, was fast tracking the completion of the unfinished work. It was only on May 2, 2003, as adverted to by King and confirmed by the COA in its letter dated May 9, 2003 to Tongson, that the project was completed. There was, thus, a delay of two years.

During the intervening period therefor, from April 2001 up to May 2, 2003, the public, not only the residents of Murcia, Negros Occidental, had to endure the inconvenience of passing through the unfinished portion of the road. Certainly, respondents' certifying the project as 100% complete when in fact the contractor still had unfinished work denigrates their integrity as public servants and mars the faith and confidence of the public in the government. It is well-enshrined that public office is a public trust.[57] Government officials and employees must, at all times, be accountable to the people and serve them with utmost responsibility, integrity, loyalty, and efficiency.[58] To reiterate, respondents' act of certifying the project as 100% complete, when the truth is it was not, is totally unacceptable. We quote, with approval, the following findings of petitioner Office of the Ombudsman:

Evidently, Engr. Jose C. Maravilla and Engr. Jaime S.J. Javellana, on orders of their supervisors District Engineer Rogelio Q. Tongson and Asst. District Engineer Sanny Boy Oropel inspected the work accomplishments of Korona Construction and reported that the project has been completed. It turned out that there was still a 20% work deficiency in the project. They admitted that there was an error in the computation of the area coverage of the project from Sum-ag Bridge up to Caliban Bridge, resulting in the work deficit and premature disbursement of public funds. Apparently, such mistake is imputable to them. It could have been avoided

had the said respondents prudently inspected and assessed the work accomplishment of Korona Construction as against the project specifications. This, they failed. Respondents' failure to take such step has resulted in the delay in the actual completion of the project and in the use thereof by the public. The irregularity drew the attention of the media and the public, thus casting a bad image to the public service.

It is a thin excuse for the said respondents to interpose the defense that the error in the computation of the area

coverage of the project should not constitute an administrative offense. While such error was not done in bad faith, the fact, however, remains that being seasoned engineers at the DPWH and possessor of the bid documents, they could have determined this irregularity earlier and avoided it. Such neglect of duty proved to be detrimental and prejudicial to their agency. The fact that they have remedied the work deficiency will not exculpate them from administrative liability, but such corrective measure can be made the basis of a mitigating circumstance.[59]

The doctrine that was laid in the cited *Arias Case* is completely inapplicable herein. In *Arias*, the transaction, including the falsification of the tax declaration, was done before petitioner therein joined the Pasig office (as auditor of the Bureau of Public Works). Also, Cresencio Data, the other petitioner therein, created a committee to handle the Mangahan Floodway Project, and did not take any direct and active part in the acquisition of land for the floodway. It was the committee which determined the authenticity of the documents, which was only delivered to Data for signing.

The facts are different in this case. Respondents were direct participants in the project, not only from the time the contract was awarded to Korona, but even up to the time the voucher for the release of the full payment was made. Respondents were even the ones who actively communicated and dealt with the contractor of the project. They were therefore fully aware of the specifics of the concreting project, and cannot validly claim that they merely signed the papers and relied on the representations of their subordinates.

Under the Civil Service law and rules, there is no concrete description of what specific acts constitute the grave offense of conduct prejudicial to the best interest of the service.[60] Considering all the cogent facts and circumstances obtaining in this case, including the mitigating circumstances, we find and so resolve that the respondents are guilty of simple neglect of duty, a less grave offense punishable by suspension for one (1) month and one (1) day to six (6) months for the first infraction. The failure to use reasonable diligence in the performance of officially-designated duties has been characterized as simple neglect of duty.[61]

As a final note, let it be emphasized that when an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.[62]

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. SP No. 84694 is REVERSED and SET ASIDE. The decision of the petitioner in OMB-V-A-02-0614-K is REINSTATED, with the MODIFICATION that respondents are found administratively liable for neglect of duty, and are hereby suspended for three (3) months without pay.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Pampio A. Abarintos, with Associate Justice Mercedes Gozo-Dadole (retired) and Vicente L. Yap, concurring; rollo, pp. 43-50.

[2] Rollo, p. 397.

[3] Id. at 340.

[4] Id. at 340-341.

[5] Id. at 81-83.

[6] Id. at 398-399.

[7] Id. at 81.

[8] Id. at 341.

[9] Id. at 350.

[10] Id. at 352.

[11] Id. at 354.

[12] Id. at 356.

[13] Id. at 358.

[14] Id. at 357.

[15] Id.

[16] Id. at 360.

[17] Id. at 414.

[18] Id. at 359.

[19] Id.

[20] Id. at 367.

[21] Id. at 361-366.

[22] Id. at 367-369.

[23] Id at 369.

[24] Id. at 329-336.

[25] Id. at 329.

[26] Id. at 170-171.

[27] Id. at 170-171.

[28] Id. at 173-177.

[29] Id. at 178-180.

[30] Id. at 185-186.

[31] Id. at 195-197.

[32] Id. at 173-177.

[33] Id. at 176.

[34] Id. at 234-237.

[35] Id. at 238-239.

[36] Id at 241.

- [37] Id. at 242-251.
- [38] Id. at 257-258.
- [39] Id. at 255-256.
- [40] Id. at 43-50.
- [41] Id. at 49.
- [42] Id at 50.
- [43] Id. at 56-80.
- [44] Id. at 54.
- [45] Id. at 10-41.
- [46] Id at 18-19.
- [47] Id. at 98-99.
- [48] G.R. Nos. 81563 and 82512, December 19, 1989, 180 SCRA 309.
- [49] G.R. No. 129124, March 15, 2002, 379 SCRA 332, 330.
- [50] Id. at 299.
- [51] *Desierto v. Ocampo*, G.R. No. 155419, March 4, 2005, 452 SCRA 789, 799.
- [52] *Nicolas v. Desierto*, G.R. No. 154668, December 16, 2004, 447 SCRA 154, 156.
- [53] *Heirs of Ernesto Conahap v. Heirs of Prosperador Regaña*, G.R. No. 152021, May 17, 2005, 458 SCRA 741, 747.
- [54] See *Desierto v. Ocampo*, *supra* note 51, at 800.
- [55] The Constitution, Article XI, Section 1.
- [56] *Rollo*, p. 305.
- [57] *Supra* note 55.
- [58] *Biteng v. Department of Interior and Local Government (Cordillera Administrative Region)*, G.R. No. 153894, February 16, 2005, 451 SCRA 520, 531.
- [59] *Rollo*, p. 239.
- [60] *Philippine Retirement Authority v. Rupa*, 415 Phil. 713, 720 (2001).
- [61] See *Ayo v. Violago Isnani*, A.M. No. RTJ-99-1445, June 21, 1999, 308 SCRA 543, 552.
- [62] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593, 608.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.