

OFFICE OF THE OMBUDSMAN-MINDANAO, PETITIONER, VS. RICHARD T. MARTEL AND ABEL A. GUIÑARES, RESPONDENTS.

G.R. No. 221134. March 01, 2017

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari seeking to reverse and set aside the February 4, 2015 Decision[1] and the October 16, 2015 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 05473-MIN, which reduced the administrative penalty imposed upon respondents Richard T. Martel (Martel) and Abel A. Guiñares (Guiñares) by the Office of the Ombudsman-Mindanao (Ombudsman) in its February 25, 2011 Decision and February 28, 2013 Order in Case No. OMB-M-A-05-450-L.

The Antecedents

In 2003, Martel was the Provincial Accountant of Davao del Sur while Guiñares was its Provincial Treasurer. They both served as ex officio members of the Provincial Bids and Awards Committee (PBAC) of Davao del Sur, together with Victoria Givero Mier (Mier), Provincial Budget Officer; Edgar Cajiling Gan (Gan), Provincial Board Member; and Allan Putong (Putong), Provincial General Services Officer (PGSO).

In the Purchase Requests, dated January 24, 2003, February 18, 2003 and July 15, 2003, the Office of the Governor of Davao del Sur requested the acquisition of five service vehicles, namely: two (2) Toyota Hilux 4x4 SR5, one (1) Mitsubishi L300 Exceed DX, and two (2) Ford Ranger XLT 4x4 M/T, for the use of the Governor and the Vice-Governor.

The procurement of the five (5) vehicles was not subjected to a public bidding as it was immediately effected through direct purchase pursuant to the recommendation of Putong as PGSO. The recommendation was approved by the members of the PBAC, which included Martel and Guiñares. Accordingly, the said vehicles were purchased and delivered to the provincial government. The disbursement vouchers for the five (5) vehicles were signed by Martel and Guiñares as Provincial Accountant and Provincial Treasurer, respectively.[3]

Subsequently, a concerned citizen wrote to the Ombudsman, reporting the lack of public bidding of the said procurement. Acting thereon, the Ombudsman launched an investigation concerning the acquisition of the said vehicles.

The Ombudsman's Ruling

In its Decision, dated June 14, 2012, the Ombudsman found Martel, Guiñares, Putong, and Mier guilty of grave misconduct and gross neglect of duty. The Ombudsman opined that these PBAC officers improperly resorted to direct purchase, completely disregarding the required public bidding. Gan, however, was relieved of his administrative liability due to his re-election as provincial board member. The decretal portion reads:

WITH THE FOREGOING PREMISES, this Office finds substantial evidence to sanction respondents Richard Tan Martel, Allan Cudera Putong, Victoria Givero Mier and Abel Arquillano Guiñares for Grave Misconduct

and Gross Neglect of Duty. Pursuant to Administrative Order No. 17, this Office hereby orders said respondents DISMISSED from service together with all its accessory penalties. The incumbent Honorable Governor of the Province of Davao del Sur is hereby directed to implement this Office's Decision and to submit a compliance report within ten (10) days from the implementation thereof. As for respondent Edgar Cajilig Gan, the case is hereby rendered DISMISSED pursuant to the Doctrine of Condonation as declared in the case of Aguinaldo vs. Santos 212 SCRA 768.[4]

Martel, Guiñares, Mier, and Putong moved for reconsideration, arguing that they had no intent to commit any irregularity as they only approved the recommendation of the PGSO to directly purchase the vehicles. On the other hand, Putong asserted that he merely adopted the previous practice in his office where the vehicles would be purchased from the car dealers because no one participates in a public bidding of vehicles. He also added that he was removed as PGSO in 2004 and was not a party to the whole process of the procurement of the vehicles.

In its Order,[5] dated February 28, 2013, the Ombudsman partially granted the motion for reconsideration of Putong. Because Putong had been relieved from his position as PGSO in 2004 pursuant to Memorandum Order No. 221-2004, he had limited participation in the anomalous procurement of the vehicles. Thus, the Ombudsman lowered his penalty of dismissal to one (1) year suspension without pay. It, however, sustained the penalty of dismissal against Martel, Guiñares and Mier due to their full participation in the purchase and acquisition of the service vehicles. The fallo reads:

WITH THE FOREGOING PREMISES the subject Motions of RICHARD TAN MARTEL and ABEL ARQUILLANO GUIÑARES are hereby DENIED. The Decision 25 February 2011 stands in so far as respondents RICHARD TAN MARTEL, ABEL ARQUILLANO GUIÑARES and VICTORIA GIVERO MIER, are concerned. As for respondent Putong, the subject Motion for Reconsideration is granted. Accordingly, the Provincial Governor of Davao Del Sur is hereby directed to implement the penalty of DISMISSAL from service with all its accessory penalties for respondents Martel, Guiñares and Mier, and to submit to this Office his compliance report, within five (5) days from receipt hereof. With regard to respondent Putong, he is hereby suspended for a period of one (1) year without pay. The Provincial Governor is also directed to implement the suspension of respondent Putong and is likewise, directed to submit a compliance report, within five days from receipt hereof.

SO ORDERED.[6]

Undaunted, Martel and Guiñares appealed before the CA under Rule 43 of the Rules of Court.

The CA Ruling

In its assailed decision, dated February 4, 2015, the CA found that the PBAC members committed a violation when they resorted to a negotiated purchase even without a prior public bidding. Under Republic Act (R.A.) No. 9184 and R.A. No. 7160, negotiated procurement can only be resorted to when there are two (2) failed biddings. The CA ruled that there was no failure of bidding because no public bidding was ever conducted. It also observed that the PBAC violated (1) Section 18 of R.A. No. 9184 prohibiting the reference of brand names for the purpose of procurement; and (2) COA Circular No. 75-6 precluding government officials or employees from using more than one motor vehicle.

Further, the CA did not give credence to the excuse of Martel and Guiñares that they merely followed the recommendation of Putong as PGSO. The appellate court emphasized that under R.A. No. 9184, the PBAC had the final and independent authority to determine the mode of procurement.

The CA, however, lowered the penalty imposed on Martel and Guiñares from dismissal to one (1) year suspension without pay. The appellate court opined that the penalty should be lowered because aside from the fact that there

was no proof of overpricing or damage to the government, the length of service of Martel and Guiñares warranted a mitigated penalty. It explained that the penalty imposed upon them must be the same as that imposed on Putong, who was also a member of the PBAC which approved the mode of procurement; and that a graver penalty would violate their right to equal protection. The CA disposed the appeal in this wise:

WHEREFORE, foregoing premises considered, the 25 February 2011 Decision of the Office of the Ombudsman is AFFIRMED with MODIFICATION. The penalty of dismissal meted upon petitioners RICHARD T. MARTEL and ABEL A. GUIÑARES is hereby lowered to ONE YEAR SUSPENSION WITHOUT PAY.

SO ORDERED.[7]

The Ombudsman moved for reconsideration, but its motion was denied by the CA in its Resolution, dated October 16, 2015.

Hence, this petition.

ISSUE

THE COURT OF APPEALS COMMITTED AN ERROR IN THE INTERPRETATION OF LAW WHEN IT AUTOMATICALLY CONSIDERED LENGTH OF SERVICE AS A MITIGATING CIRCUMSTANCE IN FAVOR OF RESPONDENTS.[8]

The Ombudsman, through the Office of the Solicitor General (OSG), argues that the CA should not have decreased the administrative penalty of the respondents because of their length of service as "(l)ength of service can either be a mitigating or aggravating circumstance depending on the factual milieu of each case." In this case, the OSG argues that the respondents' length of service should have taught them "that integrity once destroyed will remain as such," and should have made them dutiful in the performance of their function. Because of their length of service, they should have known that the lack of public bidding was a gross and blatant violation of R.A. No. 9184, which constituted grave misconduct and gross neglect of duty, and that they should not have allowed themselves to be manipulated or dictated in reference to their duties as such illegal acts of bypassing the procurement laws would cater to the whims of their political padrinos.[9]

In addition, the Ombudsman asserts that the mitigation of the respondents' penalty from dismissal from service to mere one (1) year suspension is unwarranted; that Putong's penalty was mitigated because of his limited participation, unlike the respondents who actively participated in the entire procurement process; and that Martel and Guiñares knew of the illegal practice of foregoing public bidding but they still signed the five (5) disbursement vouchers for the vehicles, as Provincial Accountant and Provincial Treasurer, respectively.

In their Comment,[10] the respondents countered that the motion for reconsideration filed by the petitioners before the CA was improperly served on them rendering it a mere scrap of paper, and so, it could not have tolled the running of the period to appeal and allowed the judgment to attain finality; that the CA had the power to lower the penalty against them considering that there was no bad faith on their part; and that the penalty imposed on them should be the same penalty imposed on Putong because the latter was also a member of the PBAC.

The Court's Ruling

The Court finds the petition meritorious.

The procurement of the vehicles violated R.A No. 9184 and R.A No. 7160 and CO A Circular No. 92-386

At the onset, the applicable laws in the present case must be determined. Procurement of service vehicles by government is covered by R.A. No. 9184 or Government Procurement Reform Act, which took effect on January

26, 2003, and before that, by R.A. No. 7160, otherwise known as An Act Providing for a Local Government Code of 1991. COA Circular No. 92-386, which prescribes rules and regulation on Supply and Property Management in Local Government Units (LGUs), pursuant to Section 383 of R.A. No. 7160, also applies.

Section 10 of R.A. No. 9184 provides that "[a]ll procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act." Likewise, Section 27 of COA Circular 92-386 provides that "[e]xcept as otherwise provided herein, acquisition of supplies or property by local government units shall be through competitive public bidding." Hence, there is a clear mandate by R.A. No. 9184 and COA Circular 92-386 that public bidding is the primary process to procure goods and services for the government.

A competitive public bidding aims to protect public interest by giving it the best possible advantages thru open competition. It is precisely the mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts.[11] Strict observance of the rules, regulations, and guidelines of the bidding process is the only safeguard to a fair, honest and competitive public bidding.[12]

Only in exceptional circumstances that R.A. No. 9184 and R.A. No. 7610 allow the procuring entity to forego the strict requirement of a public bidding. Section 53 of R.A. No. 9184 provides that negotiated procurement may be availed by the procuring entity only in specific occasions, such as when there are two (2) failed biddings. Similarly, Section 369 of R.A. No. 7160 provides that negotiated purchase may be availed in case where public bidding has failed for two (2) consecutive times. Section 35 of R.A. No. 9184 provides, among others, that there is a failure to bid if no bids are received.

In this case, no public bidding was conducted in the procurement of the service vehicles for the Governor and Vice-Governor. The absence of public bidding was a glaring violation of R.A. No. 9184 and R.A. No. 7160 and COA Circular No. 92-386, unless the respondents could prove that the resort to a negotiated bidding, as approved by the PBAC, was proper.

The CA and the Ombudsman similarly found that the PBAC utterly failed to justify the negotiated procurement. There was no failure to bid because there was no invitation to bid and no bids could have ever been received.

The respondents, however, reasoned out that it was upon the recommendation of the PGSO that they resorted to the direct purchase of the vehicles and the PBAC merely approved the recommendation of the PGSO.

The argument utterly lacks merit.

Under the laws, the Bids and Awards Committee shall, among others, conduct the evaluation of bids, and recommend award of contract to the head of the procuring entity.[13] It shall ensure that the procuring entity abides by the standard set forth by the procurement law. In the LGUs, the committee on awards shall decide the winning bids on procurement.[14]

Accordingly, as members of the PBAC, the respondents were not bound by the recommendation of the PGSO to determine the mode of procurement. As an independent committee, the PBAC was solely responsible for the conduct of the procurement and could not pass the buck to others. As correctly stated by the CA, the PBAC had control over the approval of the mode of procurement and the respondents could not wash their hands from liability thereof. Their role in choosing the mode of procurement was clearly an active action, and not a passive one as the respondents would want to convey.[15]

A scrutiny of the records would show that the respondents committed other violations of the procurement laws and regulations. The Purchase Request,[16] with a stamp of direct purchase on its face, stated the specific brand of the vehicles to be purchased, instead of the technical specifications needed by the procuring entity, in clear

violation of Section 24 of COA Circular No. 92-386. Section 18[17] of R.A. No. 9184 plainly provides that reference to brand names for the procurement of goods shall not be allowed. The underlying policy behind this prohibition is to prevent undue preference on certain goods or products and ensure fair and equal competition among the bidders. In spite of the glaring display of the vehicles' brand names on the purchase request, the PBAC still approved the same. The CA observed that the PBAC itself made the bidding impossible because it pre-determined the suppliers as it indicated the preferred brand of the vehicles.

Another violation committed by the respondents was that they allowed the governor of Davao del Sur to purchase and use more than one vehicle, which was evidently contrary to COA Circular No. 75-6. The said provision dictates that a government official or employee is not allowed to use more than one service vehicle, to wit:

III. Officials entitled to use of more than one motor vehicle - With the exception of the President, no government official and employee authorized to use any vehicle operated and maintained from the funds appropriated in the decree shall be allowed to use more than one such motor vehicle; PROVIDED, HOWEVER that the Chief Justice of the Supreme Court may be allowed to use two motor vehicles.

Notwithstanding these glaring violations of the procurement laws and the illegal approval of the vehicles' procurement by the PBAC, Martel and Guiñares actively participated in the acquisition of the same by signing the disbursement vouchers as Provincial Accountant and Provincial Treasurer, respectively. Hence, due to the acts of the respondents, the government disbursed public funds for illegally procured service vehicles.

The Respondents committed Grave Misconduct and Gross Neglect of Duty

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer.[18] The misconduct is considered to be grave if it also involves other elements such as corruption or the willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule, must be evident.[19]

On the other hand, "gross negligence implies a want or absence of, or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them." [20]

In *Lagoc v. Malaga*, [21] where the members of the BAC did not conduct a public bidding because the invitation to bid was not published and they favored a specific contractor, the Court held that their actions constituted grave misconduct when they conducted the procurement process without a public bidding. The Court emphasized that it was the duty of the BAC to ensure that the rules and regulations for the conduct of bidding for government projects were faithfully observed.

In this case, respondents Martel and Guiñares, as members of the PBAC, being the Provincial Treasurer and the Provincial Auditor, respectively, committed the following transgressions:

- They failed to conduct a public or competitive bidding as a mode of procurement.
- Without any basis in law, they allowed the resort to negotiated procurement in violation of Sections 35, 48, 50 and 53 of R.A. No. 9184; Sections 356, 366 and 369 of R.A. No. 7160; and COA Circular No. 92-386.
- In the direct purchase of the vehicles, they specified the brand name of the units they wanted to procure, instead of technical descriptions only, which violated Section 18 of R.A. No. 9184.
- They approved the purchase of more than one service vehicle for the use of the governor, in violation of COA Circular No. 75-6.

- They signed and issued the disbursement vouchers for the vehicles despite their illegal procurement.

Length of service does not justify mitigation of penalty; Putong had a limited participation

Even though it affirmed the administrative guilt of the respondents for grave misconduct and gross neglect of duty, warranting the penalty of dismissal from service, the CA downgraded their penalty to one (1) year suspension without pay. The appellate court explained that aside from the fact that there was no proof of overpricing or damage to the government, the length of government service of the respondents should mitigate their penalty. Martel was appointed Provincial Accountant in 1992; while Guiñares was appointed Provincial Treasurer in 2001. The CA also stated that justice and fairness dictated that the respondents should suffer the same penalty meted out to Putong, who was also a member of the PBAC.

The Court disagrees.

First, the element of misappropriation is not indispensable in an administrative charge of grave misconduct.[22] Thus, the lack of proof of overpricing or damage to the government does not ipso facto amount to a mitigated penalty.

Second, length of service is not a magic phrase that, once invoked, will automatically be considered as a mitigating circumstance in favor of the party invoking it. Length of service can either be a mitigating or aggravating circumstance depending on the factual milieu of each case. Length of service, in other words, is an alternative circumstance.[23]

In *University of the Philippines v. Civil Service Commission*,[24] the length of service of the respondent therein was not considered; instead, the Court took it against the said respondent because her length of service, among other things, helped her in the commission of the offense. In *Bondoc v. Mantala*,[25] it was asserted that jurisprudence was replete with cases declaring that a grave offense could not be mitigated by the fact that the accused was a first-time offender or by the length of service of the accused. While in most cases, length of service was considered in favor of the respondent, it was not considered where the offense committed was found to be serious or grave.

Here, Martel and Guiñares had been the Provincial Accountant and the Provincial Treasurer, respectively, and both were members of the PBAC for a number of years. With their extensive experience, it was expected that they were knowledgeable with the various laws on the procurement process. Thus, it is truly appalling that the respondents failed to apply the basic rule that all procurement shall be done through competitive bidding and that only in exceptional circumstances could public bidding be dispensed with. As previously discussed, they also committed several violations during the course of the procurement which underscored the seriousness of their transgressions.

Third, as to the argument that the respondents should have the same penalty imposed on Putong, the same fails to persuade. As properly explained by the Ombudsman, there was a substantial distinction between the participation of Putong and that of the respondents. It found that Putong, after being relieved from his position as PGSO in 2004 per Memorandum Order No. 221-2004, no longer had any participation in the preparation of the purchase orders, inspection and payment of the vehicles. Thus, due to the limited participation of Putong, the Ombudsman reduced his penalty from dismissal to one (1) year suspension without pay.

In the case of Martel and Guiñares, the Ombudsman imposed the penalty of dismissal because of their full participation in the questionable procurement and the disbursement of funds. It was duly established that the disbursement vouchers for the five (5) vehicles were signed by Martel and Guiñares as Provincial Accountant and Provincial Treasurer, respectively. The continuous and active participation of the respondents led to the

acquisition of the illegally procured goods. Because of their indispensable role in the transactions, the taxpayer's hard-earned money were illegally disbursed. Thus, the Court finds that the respondents do not deserve a mitigated penalty.

On a final note, it must be stressed that serious offenses, such as grave misconduct and gross neglect of duty, have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee, but the improvement of public service and the preservation of the public's faith and confidence in the government.[26] Indeed, public office is a public trust.

WHEREFORE, the petition is GRANTED. The February 4, 2015 Decision and the October 16, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 05473-MIN are REVERSED and SET ASIDE. The February 28, 2013 Order of the Ombudsman in OMB-M-A-05-450-L, is hereby REINSTATED.

SO ORDERED.

Carpio, Acting C. J. (Chairperson), Velasco, Jr.,[*] and Peralta, JJ., concur.
Leonen, J., on official leave.

[*] Per Special Order No. 2416-U dated January 4, 2017.

[1] Penned by Associate Justice Pablito A. Perez with Associate Justice Edgardo A. Camello and Associate Justice Henri Jean Paul B. Inting, concurring; rollo, pp. 33-49.

[2] Id. at 56-58.

[3] Id. at 16.

[4] Id. at 35.

[5] Id. at 62-70.

[6] Id. at 69.

[7] Id. at 48

[8] Id. at 17-18.

[9] Id. at 19-21.

[10] Id. at 78-85.

[11] Rivera v. People, G.R. Nos. 156577, 156587 & 156749, December 3, 2014, 743 SCRA 477, 500-501.

[12] Republic v. Capulong, 276 Phil. 136, 152 (1991).

[13] Section 12, R.A. No. 9184.

[14] Section 364, R.A. No. 7160.

[15] Rollo, pp. 43-45.

[16] CA rollo, p. 34.

[17] R.A. No. 9184, Sec. 18. Reference to Brand Names. - Specifications for the Procurement of Goods shall be

based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed.

[18] Bureau of Internal Revenue v. Organo, 468 Phil. 111, 118 (2004).

[19] Chavez v. Garcia, G.R. No. 195054, April 4, 2016.

[20] Office of the Ombudsman v. Manalastas, G.R. No. 208264, July 27, 2016.

[21] G.R. No. 184785, G.R. No. 184890, July 9, 2014, 729 SCRA 421.

[22] Office of the Ombudsman v. Agustino, G.R. No. 204171, April 15, 2015, 755 SCRA 568, 585.

[23] Civil Service Commission v. Cortez, 474 Phil. 670, 685-686 (2004).

[24] 284 Phil. 296 (1992), citing Section 52 (A) (3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service.

[25] G.R. No. 203080, November 12, 2014, 740 SCRA 311.

[26] Medina v. Commission on Audit, 567 Phil. 649, 665 (2008).

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