OFFICE OF THE OMBUDSMAN, PETITIONER, VS. AMADO M. BLOR, JESUS R. BARRERA, ANGELINA O. QUIJANO, POTENCIANO G. VICEDO, MIRAFLOR B. SOLIVEN, AND ANNIE F. CONSTANTINO, RESPONDENTS.

G.R. No. 227405. September 05, 2018

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review on certiorari assails the Decision dated 22 January 2016[1] and Resolution dated 18 August 2016[2] of the Court of Appeals in CA-G.R. SP No. 138533. The case stems from a complaint against respondents for the alleged illegal procurement of six iPad units for the Department of Agrarian Reform Provincial Office (DARPO) in Occidental Mindoro.

The Antecedent Facts

Per Special Order No. 11-2013,[3] the Bids and Awards Committee (BAC) of DARPO-Occidental Mindoro was reconstituted as follows: respondent Jesus R. Barrera (Barrera), Chairman; respondent Angelina O. Quijano (Quijano), Vice-Chairman; and respondent Potenciano G. Vicedo (Vicedo), Agnes A. Caliboso (Caliboso), and the concerned Municipal Agrarian Reform Officer, Members. Further, under PARO Special Order No. 08-2012,[4] respondents Barrera and Annie R. Constantino (Constantino) would head the Inspection and Canvass Committees, respectively. Both administrative orders were issued by respondent Amado M. Blor (Blor), Officer-in-Charge (OlC)-Provincial Agrarian Reform Officer II (PARO).

On 17 June 2013, the Management Committee of DARPO-Occidental Mindoro held a meeting. The attendees were respondent Blor as PARO, respondent Barrera as Chief Agrarian Reform Officer (CARO) of the Administrative and Finance Division, respondent Quijano as CARO of the Beneficiaries Development Coordinating Division, respondent Vicedo as OIC-CARO of the Operations Division, and Caliboso, head of the Planning, Monitoring and Evaluation Unit. During the meeting, Rodrigo P. Mazo (Mazo), a procurement officer,[5] was summoned and instructed by respondent Blor to purchase six iPad units for the use of the PARO and CAROs. In other words, the Chairman, Vice-Chairman and two Members of the BAC, all of whom were part of the Management Committee, happened to be the end users of the requisition. An undated Requisition and Issue Slip (RIS)[6] was signed by respondents Barrera and Blor as the requesting party and approving authority, respectively. Notably, the RIS specified "IPAD," with the purpose indicated as "[f]or PARO and CARPO use."[7] Mazo created the online posting[8] at the Philippine Government Electronic Procurement System (PhilGEPS) and drafted the Request for Quotation (RFQ).[9] The approved budget for the contract was PhP239,940, or PhP39,990 per unit. Unlike the RIS, the RFQ did not specify "iPad," but described the article as "Tablet Computer" with the following specifications: "(1) 9.7 inch with Retina display; (2) A6x chip with quadcore graphics; (3) 5MP iSight camera with 1080p FED video rec; (4) Facetime FID camera; (5) up to lOhrs battery life; (6) built-in WIFI

(802.11 a/b/g/n); and (7) 64-GB WIFI + Cellular."[10]

Meanwhile, respondent Constantino, Chairperson of the Canvass Committee, sent RFQs[11] to three suppliers based in SM Megamall, Mandaluyong City, namely, Silicon Valley Computer Centre (Silicon Valley), Electroworld, and Accent Micro Products, Inc. The RFQ was dated 18 June 2013, and signed by respondents Constantino and Blor.[12] Also, per Travel Order No. 203 S-2013 dated 18 June 2013,[13] respondent Miraflor B. Soliven (Soliven), OIC-Accountant II, and respondent Constantino were scheduled to depart on 23 June 2013 and return on 26 June 2013 "to coordinate with central project office regarding the funds of ARISP3 and canvass Ipads."[14] The travel order was recommended by respondent Barrera and approved by respondent Blor.

On 20 June 2013, the three stores replied to respondent Blor. Apart from recommending the Apple iPad at PhP39,990 per unit,[15] the three stores also submitted their respective quotations for the keyboard case accessory: PhP2,000 by Silicon Valley; PhP4,000 by Electroworld; and PhP3,000 by Accent Micro Products, Inc. Incidentally, Mazo published on the same day at PhilGEPS the requisition he earlier created, for a seven-day posting period, or until 27 June 2013.

Having submitted the lowest bid, Silicon Valley, through its owner and operator Tiny.Com Computer, Inc., was issued Land Bank of the Philippines Check No. 127247 dated 24 June 2013 in the amount of PhP238,173.30. Respondent Blor, an authorized signatory, signed the check. Further, three undated documents were stamped "PAID," with the date "JUN 24 2013" superimposed and the number 127247 immediately below. These undated documents included the following: (1) a purchase order signed by respondent Blor as the authorized official and respondent Barrera as head of the requisitioning office;[16] (2) Obligation Slip No. 200-13-06-0478A signed by respondent Barrera as the requesting party and certifying that the allotment for the six iPad units amounting to PhP251,940 was necessary, lawful and under his direct supervision, and respondent Constantino as OIC-Budget Officer, certifying that the appropriation was available and obligated for the indicated purpose;[17] and (3) Disbursement Voucher No. 158-06569-13 in the net amount of PhP238,173.30 signed by respondent Soliven, certifying the availability of funds, and respondent Blor approving the payment, with the accounting entries having been prepared by respondent Constantino as bookkeeper and approved by respondent Soliven.[18] On 28 June 2013, DARPO-Occidental Mindoro was issued Official Receipt No. 1315,[19] evidencing payment in the amount of PhP238,173.30 to Silicon Valley. Based on the Acknowledgment Receipts for Equipment,[20] the six iPad units were acquired on 24 June 2013 and received on 1 July 2013. The recipients were respondents Blor, Barrera, Quijano, and Vicedo, and Lester P. Abeleda, Attorney III. Meanwhile, the iPad unit given to Caliboso, BAC member and head of the Planning, Monitoring and Evaluation Unit, was turned over to Provincial Agrarian Reform Adjudicator Ariel D. Maglalang.[21]

Notably, the requisition for six tablet computers was not included in the 2013 Annual Procurement Plan (APP)[22] of DARPO-Occidental Mindoro. However, on 14 November 2013, the 2013 APP was updated to include the requisition. The updated APP was signed by respondent Barrera who prepared the document, respondent Soliven who certified that funds were available, and respondent Blor who approved the updated APP.[23]

On 18 November 2013, Mazo filed with the Office of the Deputy Ombudsman for Luzon an Affidavit Complaint dated 2 October 2013,[24] charging respondents and Lester P. Abeleda with Violation of Republic Act No. (RA) 9184, or the Government Procurement Reform Act.

The Ruling of the Office of the Deputy Ombudsman for Luzon

Finding substantial evidence on the illegal procurement of the iPad units, having been purchased in violation of RA 9184, the Office of the Deputy Ombudsman for Luzon held respondents administratively liable for grave

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misconduct. The dispositive portion of the Decision dated 15 September 2014[25] reads:

> WHEREFORE, respondents AMADO M. BLOR, Provincial Agrarian Reform Officer I, JESUS R. BARRERA, Chief Agrarian Reform Program Officer, Administrative and Finance Division, and Chairman, Bids and Awards Committee, ANGELINA O. QUIJANO, Chief Agrarian Reform Officer, Beneficiaries Development Coordinating Division, POTENCIANO G. VICEDO, OIC, Chief Agrarian Reform Officer, LESTER P. ABELEDA, Legal Officer, MIRAFLOR B. SOLIVEN, OIC-Accountant II, and ANNIE CONSTANTINO, Acting Budget Officer/Bookkeeper, all of the Department of Agrarian Reform Provincial Office (DARPO) San Jose, Occidental Mindoro, are hereby found GUILTY of Grave Misconduct and are meted with the penalty of DISMISSAL from the service with cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office, as well as in government-owned and -controlled corporations, pursuant to the Revised Rules on Administrative Cases in the Civil Service.
>
> SO ORDERED.[26]

On 31 October 2014, respondents filed a Motion for Reconsideration. In its Order dated 14 November 2014,[27] the Office of the Deputy Ombudsman for Luzon denied their motion.

The Ruling of the Court of Appeals

The Court of Appeals affirmed the finding of the Office of the Deputy Ombudsman for Luzon that the procurement of the iPad units violated RA 9184. However, only respondents Barrera, Quijano, and Constantino were found administratively liable for being "members of the BAC who worked actively and conceitedly to realize the acquisition of [the] iPads."[28] The dispositive portion of the Decision dated 22 January 2016[29] reads:

> WHEREFORE, premises considered, the APPEAL is found PARTLY MERITORIOUS. The assailed Decision and Order dated 15 September 2014 and 14 November 2014, respectively, are hereby MODIFIED, to the effect that only petitioners Jesus R. Barrera, Angelina O. Quijano, and Annie [F.] Constantino are found guilty of GRAVE MISCONDUCT, and are meted the penalty of DISMISSAL and its attendant penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service.
>
> On the other hand, the complaint against petitioners Amado M. Blor, Potenciano G. Vicedo, and Miraflor B. Soliven is DISMISSED.
>
> SO ORDERED.[30]

Upon motion by respondents Barrera, Quijano, and Constantino, the Court of Appeals reconsidered its Decision dated 22 January 2016 and appreciated their length of government service and being first-time offenders to have mitigated their liability. On the other hand, the Court of Appeals denied the Motion for Partial Reconsideration filed by petitioner. The dispositive portion of the Resolution dated 18 August 2016[31] reads:

> WHEREFORE, premises considered, the Motion for Reconsideration filed by petitioners-movants is hereby found PARTLY MERITORIOUS.
>
> The 22 January 2016 Decision is hereby MODIFIED, to the effect that petitioners Jesus R. Barrera, Angelina Quijano, and Annie [F.] Constantino are hereby meted the penalty of suspension for one (1) year without pay in lieu of dismissal with its attendant penalties, for the offense of Grave Misconduct committed through flagrant disregard of R.A. 9184.
>
> On the other hand, the Motion for Partial Reconsideration filed by the Office of the Ombudsman is DENIED.
>
> SO ORDERED.[32]

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The Issues

In gist, petitioner and respondents raise the following two issues: first, whether the procurement of the iPad units is lawful; and second, if in the affirmative, whether respondents are administratively liable.

The Ruling of this Court

The petition is meritorious.

The purchase of the iPad units without prior public bidding violated RA 9184.

Petitioner argues that the purchase of the six iPad units was contrary to RA 9184. Respondents contend otherwise and pass on the blame to Lazo for failing to inform them that the requisition was posted on PhilGEPS.

Petitioner is correct. In fact, the Court of Appeals affirmed the finding of the Office of the Deputy Ombudsman for Luzon that the purchase violated RA 9184. The following disquisition of the Court of Appeals in its Decision dated 22 January 2016 is instructive, to wit:

> Evaluating now the DARPO's shopping for iPads in light of the above mentioned standards, We are persuaded that the law on procurement was not observed in the acquisition of these devices. We elaborate the reasons below.
>
> Principally, by no means can an Apple iPad be considered an ordinary or regular office supply. Petitioners have not satisfactorily explained why they specifically need an Apple iPad to carry out their transactions or duties. Their arguments that an iPad should be treated as an ordinary or regular office supply borders on the absurd. They would have an iPad be classified with pens, paper clips, bond papers, ink, and similar items and supplies normally used and consumed in a typical office in the course of its daily operations.
>
> x x x x
>
> Second, the acquisition of Apple iPads also contravened the "no brand name rule" in procurement, x x x.
>
> x x x x
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> Thus, assuming tablets were needed, the procurement need not have been limited to Apple products. We take judicial notice that an Apple iPad occupies the top rung on the tablet ladder and commands an expensive price. Notably, there are cheaper tablets available on the market and which perform substantially the same functions as an Apple iPad. Consequently, had Sec. 18 been observed, the government would have spent substantially less for each tablet.
>
> Aside from the nature of the goods procured by shopping, We also find that the requirement for posting has not been complied with. This has even been admitted by the petitioners. Sec. 54.2 of the RIRR elucidates on this condition, x x x.
>
> x x x x
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> The defects of the procurement, however, do not stop here. A more fundamental error lay with the non-inclusion of the purchase in the DARPO's Annual Procurement Plan ("APP"), which under the RIRR is indispensable, x x x.
>
> x x x x
>
> Another lapse is that no Resolution from the Bids and Awards Committee prescribed the resort to shopping. The argument that such a Resolution is necessary only when the procurement is included in the original APP, and not in an updated one, is weak and baseless.

x x x x

> Given the above observations, We are convinced that there was a deficient compliance with the law. The erroneous procedure to facilitate the procurement as well as the extraordinary nature of the subject goods, which cannot be shopped, all point to a procurement inconsistent with R.A. No. 9184 and its RIRR.[33]

The Court sees no reason to deviate from these findings.

Respondents Barrera, Quijano, Vicedo, and Constantino, as BAC members, are liable, and their length of service cannot mitigate their liability.

Petitioner argues that respondents Barrera, Quijano, Vicedo, and Constantino, as officers and members of the BAC, must be held administratively liable and dismissed from the service for the illegal procurement of the iPad units. Respondents Barrera, Quijano, and Constantino contend otherwise and insist that the procurement was justified, and that in any event, the imposable penalty must be mitigated by their length of service and lack of any previous offense. For his part, respondent Vicedo maintains that his administrative liability was not proven by substantial evidence, considering that he did not sign any document relating to the procurement of the devices.

Petitioner is correct.

Under RA 9184, the BAC shall ensure that the procuring entity abides by the standards set forth by the procurement law. In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement. Section 12 of RA 9184 reads:

> SECTION 12. Functions of the BAC. - The BAC shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative: Provided, That in the event the Head of the Procuring Entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.
>
> In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided for in Article XVI hereof.
>
> The BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the GPPB on a semestral basis. The contents and coverage of this report shall be provided in the IRR.

The functions of the BAC are echoed in Sections 12.1 and 12.2 of the Revised Implementing Rules and Regulations (RIRR), and even in the earlier IRR, of RA 9184.

Here, respondents Barrera, Quijano, Vicedo, and Constantino held the following positions in the BAC of DARPO-Occidental Mindoro: respondent Barrera as Chairman, respondent Quijano as Vice-Chairman, respondent Vicedo as Member, and respondent Constantino as part of the Technical Working Group. Further, respondents Barrera and Constantino were the heads of the Inspection and Canvass Committees, respectively. By law, respondents Barrera, Quijano, Vicedo, and Constantino were bound, not only to know, but also to ensure compliance by the procuring entity with the prescribed procedure on government procurement. However, they chose not to, as found by the Office of the Deputy Ombudsman for Luzon and the Court of Appeals.

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Respondents Barrera, Quijano, Vicedo, and Constantino are mistaken in invoking their length of service and lack of prior disciplinary record to mitigate their liability. In Office of the Ombudsman-Mindanao v. Martel,[34] the Court explained:

> 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, x x x.
>
> x x x x
>
> The Court disagrees.
>
> First, the element of misappropriation is not indispensable in an administrative charge of grave misconduct. 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.
>
> In University of the Philippines v. Civil Service Commission, 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, 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.

To recall, when the procurement of iPad units was broached during the Management Committee meeting on 17 June 2013, none of respondents Barrera, Quijano, Vicedo, and Constantino objected or raised that the purchase of the devices must undergo public bidding. What is more, respondents Barrera, Quijano, and Vicedo happened to be the end users of the requisition. Further, respondent Constantino sent RFQs to three stores in Manila the immediately following day, showing the lack of intent to follow the regular procedure. A week after the Management Committee meeting and well within the seven-day posting period of the requisition at PhilGEPS, a check dated 24 June 2013 was already issued in favor of the supplier with the lowest quotation. To the mind of the Court, all these undisputed facts constitute substantial evidence against respondents Barrera, Quijano, Vicedo, and Constantino on their clear intent to violate the law. Hence, their length of service in the government and lack of prior disciplinary record cannot mitigate their liability.

Respondents Blor and Soliven facilitated the illegal procurement.

Petitioner argues that respondents Blor and Soliven must also be held administratively liable for grave misconduct for facilitating the illegal procurement and the disbursement of public funds. On the other hand, respondents Blor and Soliven refute their liability because they were not part of the BAC of DARPO-Occidental Mindoro.

Petitioner is correct. The Decision dated 15 September 2014 of the Office of the Deputy Ombudsman for Luzon reads in pertinent part:

> As for respondents Blor x x x and Soliven, while they were not members of the BAC, the role played by them, in cahoots with the other respondents who were members of the BAC, [was] indispensable to the subject transaction.
>
> To stress, Blor was the head of the procuring entity. He approved the RIS and DV. He "gave the go signal" that prompted the BAC to procure the iPads through shopping. He also approved the payment of the iPads despite the lack of requisite documentation. On top of it, he is an end user. xxx. Meanwhile, respondent Soliven certified in the DV that supporting documents are complete and proper despite the absence of a BAC Resolution approved by the head of the entity which justifies] the use of the alternative mode of procurement, and notice of posting for seven days in the PhilGEPS, in the website of the Procuring Entity and its electronic procurement service provider, if any, and in any conspicuous place in the premises of the Procuring Entity.[35]

Further, respondent Blor issued Special Order No. 11-2013, enumerating the responsibilities of the BAC, and Special Order No. 8-2012, describing the functions of the Inspection and Canvass Committees. Hence, respondent Blor cannot feign ignorance about the rules on government procurement. Respondent Soliven also accompanied respondent Constantino, a BAC member, to Manila to canvass iPads and their travel order was signed by respondent Blor. Most telling, respondents Blor and Soliven signed the updated APP, inserting the requisition for the six iPad units previously not found in the original APP for 2013. Collectively, the acts of respondents evince a community of design between the BAC officers and members, on the one hand, and the head and the accountant of the procuring entity, on the other, to circumvent the proper procedure on government procurement.

Jurisprudence defines grave misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer,"[36] tainted with other "elements such as corruption or willful intent to violate the law or to disregard established rules."[37] Similarly, the purchase of the iPad units by respondents amounts to grave misconduct, considering that the unjustifiable failure to hold public bidding is a violation of RA 9184, and their direct resort to shopping was tainted with the intent to violate or to disregard established rules on government procurement.

To clarify, when a civil servant is disciplined, the object sought is not the punishment of the officer or employee, but the improvement of public service and the preservation of the public's faith and confidence in the government.[38] Serious offenses, such as grave misconduct, have always been and should remain anathema in the civil service.[39] The rationale is enshrined in Section 1, Article XI of the Constitution - public office is a public trust.

WHEREFORE, the petition for review on certiorari filed by the Office of the Ombudsman is GRANTED. The Decision dated 22 January 2016 and Resolution dated 18 August 2016 of the Court of Appeals in CA-G.R. SP No. 138533 are REVERSED and SET ASIDE. The Decision dated 15 September 2014 and Order dated 14 November 2014 of the Office of the Deputy Ombudsman for Luzon in OMB-L-A-14-0017 are hereby REINSTATED.

SO ORDERED.

Perlas-Bernabe, Caguioa, A. Reyes, Jr., and J. Reyes, Jr.,[*] JJ., concur

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[*] Designated additional member per Special Order No. 2587 dated 28 August 2018.

[1] Rollo, pp. 62-82. Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Ramon A. Cruz and Henri Jean Paul B. Inting concurring.

[2] Id. at 85-100.

[3] Id. at 154-155.

[4] Id. at 161.

[5] Id. at 155. Per Special Order No. 11-2013.

[6] Id. at 162, 342.

[7] Id.

[8] Id. at 175-177, 344-346.

[9] Id. at 178.

[10] Id.

[11] Id. at 397.

[12] Id. at 343.

[13] Id. at 351-352.

[14] Id.

[15] Id. at 179-181.

[16] Id. at 182.

[17] Id. at 183.

[18] Id. at 184.

[19] Id. at 194.

[20] Id. at 302-306.

[21] Id. at 369, 625.

[22] Id. at 171-174.

[23] Id. at 222.

[24] Id. at 144-153.

[25] Id. at 131-141.

[26] Id. at 140.

[27] Id. at 142-143.

[28] Id. at 80.

[29] Id. at 62-82.

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[30] Id. at 81.

[31] Id. at 85-100.

[32] Id. at 99-100.

[33] Id. at 74-77.

[34] G.R. No. 221134, 1 March 2017, 819 SCRA 131, 146-147.

[35] Rollo, pp. 136-137.

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

[37] Chavez v. Garcia, 783 Phil. 562, 573 (2016).

[38] Office of the Ombudsman-Mindanao v. Martel, supra note 34.

[39] Office of the Ombudsman-Mindanao v. Martel, supra note 34.

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