

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ARTURO O. MIÑAO,
Petitioner,

G.R. No. 231042

Present:

- versus -

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

OFFICE OF THE
OMBUDSMAN (MINDANAO),
Respondent.

Promulgated:

FEB 23 2022

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DECISION

HERNANDO, J.:

This petition for review on *certiorari*¹ seeks to reverse and set aside the August 23, 2016 Decision² and March 30, 2017 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 05743-MIN which affirmed the March 8, 2013 Decision⁴ and May 30, 2013 Order⁵ of the Office of the Deputy Ombudsman for Mindanao (OMB-Mindanao) in OMB-M-A-09-124-C, finding

¹ *Rollo*, pp. 24-47.

² *Id.* at 52-62. Penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Maria Filomena D. Singh and Perpetua T. Atal-Paño.

³ *Id.* at 64-65.

⁴ *Id.* at 66-86. Penned by Graft Investigation & Prosecution Officer II Samuel P. Naungayan, concurred in by Director IV Maria Corazon A. Arancon, and approved by Assistant Ombudsman Rodolfo M. Elman and Deputy Ombudsman for Mindanao Humphrey T. Monteroso.

⁵ *Id.* at 87-95.

petitioner Arturo O. Miñao (petitioner) together with Manolito G. Abapo (Abapo), and Clemente A. Tabiliran (Tabiliran), administratively liable for Grave Misconduct, Gross Neglect of Duty, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of Service, and imposing on them the penalty of dismissal from government service. The March 30, 2017 Resolution⁶ denied their motion for reconsideration.

Factual Antecedents:

The instant case stemmed from a letter-complaint⁷ dated October 14, 2005 from Aurelio Cadavedo (Cadavedo) pertaining to the alleged anomalous purchase of guardrails and guardrail posts worth ₱5,500,000.00 sometime in 2004 made by the 1st Engineering District of the Department of Public Works and Highways (DPWH) in Sta. Isabel, Dipolog City.⁸ The audit team of the Commission on Audit Regional Office No. IX (COA-IX), which was duly constituted to investigate the letter-complaint of Cadavedo, submitted an audit investigation report (AIR) dated October 5, 2006.⁹

The AIR provided that the 1st Engineering District of the DPWH in Sta. Isabel, Dipolog City committed splitting of contracts in procuring guardrails and guardrail posts amounting to ₱5,500,000.00 under the Special Allotment Release Order (SARO) No. ROIX-2003-353,¹⁰ issued by the Department of Budget and Management (DBM) for the Dipolog-Oroquieta and Dipolog-Sindangan national roads (National Roads).¹¹

In particular, the AIR alleged that the 1st Engineering of DPWH in Sta. Isabel, Dipolog City: (1) resorted to splitting of contracts by awarding 11 purchase orders worth ₱500,000.00 each to AUF Enterprises without public bidding; (2) purchased overpriced guardrails and guardrail posts from AUF Enterprises; and (3) left guardrails and guardrail posts at the project site resulting in wastage of government resources in the amount of ₱40,110.00.¹²

In their joint-counter affidavit,¹³ petitioner, who was then OIC District Engineer of the DPWH Zamboanga del Norte 1st District Engineering Office,

⁶ Id. at 64-65.

⁷ Id. at 53.

⁸ Composed of respondents of the complaint filed before OMB-Mindanao, who are the following: Manolito G. Abapo (Engineer III), Jovencio A. Hibaya (Administrative Officer III), Dannie D. Carreon (Engineer III), Roseller R. Morallo Sr. (Engineer III), Clemente A. Tabiliran (Supply Officer), Blandina A. Pajaren (Engineer III), Ray S. Cadavedo (Engineer II), Wilfredo B. Senarillos (OIC-Asst. District Engineer), Marilyn Sandueta Luna (Accountant III), and herein petitioner.

⁹ *Rollo*, p. 172-181.

¹⁰ Id. at 202-203.

¹¹ Id. at 67.

¹² Id.

¹³ Id. at 182-187.

Dipolog City, and his co-respondents,¹⁴ denied the aforesaid allegations. They claimed that under the SARO, the main project was split into 11 projects, and that said projects, with an aggregate amount of ₱5,500,000.00, were already divided in the amount of ₱500,000.00 per project under the SARO.¹⁵ They further maintained that they could not have violated Republic Act No. (RA) 9184¹⁶ or the Government Procurement Reform Act and its Implementing Rules and Regulation (IRR) in the procurement of the materials for the project, considering that RA 9184 took effect on October 8, 2003, whereas the SARO was issued only on December 16, 2003. Since RA 9184 took effect shortly before the issuance of the SARO, they insisted that the procurement of materials for the projects should be governed not by RA 9184 but by the old procurement law.¹⁷

Ruling of the Office of the Ombudsman – Mindanao:

After evaluation of the allegations and defenses of Cadavedo, and petitioner and his co-respondents in the case before the OMB-Mindanao, Graft Investigation and Prosecution Officer II Samuel P. Naungayan, in his March 8, 2013 Decision in OMB-M-A-09-124-C, found petitioner, together with Abapo and Tabiliran, administratively liable for Grave Misconduct, Gross Neglect of Duty, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of Service, and meted the penalty of dismissal from government service. The dispositive portion of the said Decision states:

Wherefore, this Office finds substantial evidence to hold respondents Arturo O. Miñao, Manolito G. Abapo, and Clemente A. Tabiliran liable for Grave Misconduct, Gross Neglect of Duty, Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service. On the other hand, this Office finds substantial evidence to hold respondent Marilyn S. Luna liable for Simple Misconduct.

The administrative charges against Roseller R. Morallo, Sr. are DISMISSED because he was not able to answer them by reason of his death. In conformity with the ruling in Office of the Ombudsman vs. Uldarico P. Andutan Jr., that resignation prior to the filing of an administrative case divests the Ombudsman of its right to institute an administrative complaint, the administrative charges against Jovencio A. Hibaya and Dannie D. Carreon are DISMISSED because this case was filed on 10 March 2009 after they retired from office in September 2007 and 08 February 2009, respectively.

On the other hand, the administrative charges against Blandina A. Pajaren, Ray S. Cadavedo and Wilfredo B. Senarillos are DISMISSED, for insufficiency of evidence.

¹⁴ Supra note 8.

¹⁵ *Rollo*, 182-183.

¹⁶ Entitled "AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES." Approved: January 10, 2003.

¹⁷ *Id.* at 184-185.

Pursuant to Section 10(b), Rule III of Administrative Order No. 07, dated 10 April 1990, otherwise known as the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17, dated 07 September 2003, Arturo O. Miñao, Manolito G. Abapo, and Clemente A. Tabiliran are hereby DISMISSED from government service which shall carry with it the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for re-employment in the government service.

On the other hand, Marilyn S. Luna is hereby SUSPENDED from service for three (3) months without pay.

x x x x

SO DECIDED.¹⁸

The OMB-Mindanao observed that while the specific kind of project was not indicated in the SARO, the 11 abstracts of bids; 11 cost estimates; and 11 purchase orders indicate that there is only one kind of project for the National Roads. The OMB-Mindanao also observed that the abstracts of bids and purchase orders further show that the guardrails and accessories were all procured from one supplier, AUF Enterprises. In this regard, the OMB-Mindanao found it absurd for petitioner and his co-respondents to purchase in 11 installments the same materials from the same supplier when the budget for the procurement of the materials for the whole project was readily made available under the SARO.¹⁹

Since the materials to be procured for the 11 projects are identical and can be supplied by a single supplier, the OMB-Mindanao concluded that there could only be one procurement contract/project. Consequently, it held that petitioner, together with Abapo and Tabiliran, resorted to the prohibited act of splitting government contracts as defined in RA 9184.²⁰

The OMB-Mindanao also found that there was also failure to conduct public bidding under both the old and new procurement law.²¹ Findings of the COA-IX also show that the Concrete Posts and Machine Bolts delivered for the National Roads were substandard and overpriced since the materials used were substandard compared to the specifications in the purchase orders and approved plans.²²

Petitioner, together with Abapo and Tabiliran, filed a motion for reconsideration, but the same was denied by the OMB-Mindanao in its May 30, 2013 Order. Petitioner thus filed a petition for review²³ under Rule 43 of the

¹⁸ Id. at 81-84.

¹⁹ Id. at 70-73.

²⁰ Id. at 72.

²¹ Id. at 74.

²² Id. at 75-77.

²³ Id. at 116-142.

Rules of Court with prayer for preliminary injunction or temporary restraining order before the CA.

Ruling of the Court of Appeals:

On August 23, 2016, the CA rendered its Decision²⁴, the dispositive portion of which reads:

FOR THESE REASONS, the petition is denied for lack of merit. The assailed Decision dated 8 March 2013 and Order dated 30 May 2013 are AFFIRMED.

SO ORDERED.²⁵

In ruling against petitioner, the CA heavily relied on the findings of the OMB-Mindanao in its March 8, 2013 Decision and May 30, 2013 Order. The CA similarly observed that the intent behind the execution of 11 identical contracts involving the National Roads was to avoid the requirement of the law, particularly on public bidding as defined under Section 54.1 of the IRR of RA 9184. In this regard, the CA held:

In the present case, the procurement in question was the purchase of Concrete Posts, Guardrails, machine bolts and nuts were intended to be used for the entire project. Even if the project was composed of eleven sub-sections, still it is evident that all eleven sub-sections involve the procurement of the same materials of the same specifications. And so only one procurement contract is really needed for all subsections of the project, and it would be ridiculous and nonsensical for petitioner and his allies to enter into eleven identical contracts with one supplier – AUF Enterprises.²⁶

Petitioner filed a Motion for Reconsideration,²⁷ but the same was denied by the CA in its March 30, 2017 Resolution.²⁸

Hence the instant petition.

Issues

Petitioner raised the following assignment of errors in his petition:

²⁴ Id. at 52-62.

²⁵ Id. at 62.

²⁶ Id. at 60.

²⁷ Id. at 264-283.

²⁸ Id. at 64-65.

1. The Honorable Court of Appeals committed serious and reversible error in disregarding the actions taken by Petitioner's Office in the interpretation and implementation of SARO No. RO-IX 2003-353 from the Department of Budget & Management (DBM).

2. The Honorable Court of Appeals committed serious and reversible error in finding Petitioner administratively liable for Grave Misconduct, Gross Neglect of Duty, Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service for not applying the provisions of R.A. 9184 and its Implementing Rules and Regulations in the implementation of SARO No. RO-IX 2003-353.²⁹

In compliance with this Court's Resolution³⁰ dated June 28, 2017, the OMB-Mindanao filed its comment³¹ on the petition, to which petitioner filed a reply.³² In a Resolution³³ dated October 5, 2020, this Court ordered the parties to submit their respective memoranda.

In his memorandum,³⁴ petitioner denied splitting or dividing a single procurement contract into 11 identical contracts to circumvent the requirements of public bidding under RA 9184. Petitioner maintained that his office was primarily and merely tasked to implement the said projects indicated in the SARO, which supposedly already identified the 11 projects for the National Roads, including the allocated budget per project. As the OIC District Engineer of the DPWH Zamboanga del Norte 1st District Engineering Office, Dipolog City, petitioner insisted that he implemented the SARO in good faith consistent with the basic guidelines stated therein,³⁵ and resorted to the use of the simplified bidding process under the Old Procurement Law.³⁶

For its part, the OMB-Mindanao maintains that the CA did not err in issuing its August 23, 2016 Decision and March 30, 2017 Resolution finding petitioner guilty of disregarding the provisions of RA 9184 on public bidding involving procurement activities.³⁷ The OMB-Mindanao further countered that petitioner's defense of good faith, *i.e.*, that he only acted in accordance with the guidelines stated in the SARO, is untenable since petitioner was duty-bound to ensure that the amounts provided therein shall be spent in accordance with the

²⁹ Id. at 32.

³⁰ Id. at 285.

³¹ Id. at 295-310.

³² Id. at 336-350.

³³ Id. at 357-358.

³⁴ Id. at 360-385.

³⁵ Id. at 369-373.

³⁶ Id. at 373-376.

³⁷ Id. at 395-401.

provisions of RA 9184.³⁸ Moreover, petitioner's reason that he was unfamiliar with the bidding process under RA 9184 does not excuse him from complying with the provisions of the law.³⁹

Our Ruling

The petition lacks merit.

Well-settled is the rule that a petition for review under Rule 45 of the Rules of Court is limited only to questions of law. As the Court is not a trier of facts, it is not within its functions to analyze and weigh all over again evidence already passed upon in the proceedings below.⁴⁰ While there are recognized exceptions to this rule,⁴¹ the Court observes that none of them are present in the instant case.

This notwithstanding, the Court shall discuss the issues raised by the petitioner in the instant petition.

Petitioner is accused of violating RA 9184 when he resorted to splitting of government contracts, failed to conduct public bidding as required by law, and according to the COA, procured substandard and overpriced materials from AUF Enterprises.

At the outset, petitioner does not question in his petition and memorandum the factual findings of the OMB-Mindanao and the COA as to his alleged procurement of substandard and overpriced materials from AUF Enterprises for the rehabilitation and improvement of the National Roads. Hence, the Court affirms these findings following the salutary rule that factual findings of administrative bodies are accorded great respect by this Court.⁴²

³⁸ Id. at 401-403.

³⁹ Id. at 403.

⁴⁰ See *Office of the Ombudsman v. Atty. Bernardo*, 705 Phil. 524, 534 (2013).

⁴¹ When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the findings set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by evidence on record. (*Office of the Ombudsman v. Bernardo*, 705 Phil. 524, 534-535 (2013)).

⁴² *Office of the Ombudsman v. Santos*, 520 Phil. 994, 1004 (2006).

Notably, the alleged acts of petitioner – splitting of government contracts and failure to conduct public bidding as required by law – were committed pursuant to the SARO for the National Roads, which was issued by the DBM on December 16, 2003. Moreover, procurements by petitioner’s office for the rehabilitation and improvement of the National Roads were initiated on July 12, 2004. As such, RA 9184, the governing law at that time, is controlling.

Having settled the issue of the governing law in the implementation of the SARO, we next determine whether the acts of petitioner constitute violations of current state of laws, particularly, RA 9184 and its IRR,⁴³ which would warrant the administrative penalties meted against him by the OMB-Mindanao.

Splitting of Government Contracts:

On the matter of splitting of contracts, petitioner essentially claims that his office was not responsible in splitting the procurement project as indicated in the SARO and that it implemented the same in good faith. In this regard, petitioner relies on Annex “A” attached to the SARO, which supposedly specifies the names of projects and their location, and the amounts respectively allotted to each project, as follows:

Name of Project/Location	Amount
Zamboanga del Norte 2 nd District	
Roads, Highways and Bridges	P5,500,000.00
1 Rehab./Impv’t of Dipolog-Oroquieta National Road	1,500,000.00
a Km 1829 + 427 – Km 1832 + 000, Dipolog City	500,000.00
b Km 1832 + 100 – Km 1835 + 000, Dipolog City	500,000.00
c Km 1835 + 427 – Km 1837 + 000, Dipolog City	500,000.00
2 Rehab./Impv’t of Dipolog-Singan National Road	P3,500,000.00
a Km 1840 + 000 – Km 1844 + 000, Dipolog City	500,000.00
b Km 1844 + 000 – Km 1848 + 000, Dipolog City	500,000.00
c Km 1848 + 000 – Km 1851 + 000, Dipolog City	500,000.00
d Km 1851 + 000 – Km 1857 + 000, Dipolog City	500,000.00
e Km 1857 + 000 – Km 1862 + 000, Dipolog City	500,000.00
f Km 1862 + 000 – Km 1867 + 000, Dipolog City	500,000.00
g Km 1867 + 000 – Km 1872 + 000, Dipolog City	500,000.00
3 Rehab./Impv’t of Dipolog-Sindagan National Road	500,000.00
a Km 1837 + 000 – Km 1872 + 000, Dipolog City	500,000.00

⁴³ The Implementing Rules and Regulations (IRR) of R.A. No. 9184 was approved on January 10, 2003 and took effect on April 1, 2003. See *Re: Helen P. Macasaet*, A.M. No. 17-12-02-SC (Resolution), July 16, 2019. The Revised IRR was approved by the Government Procurement Policy Board (GPPB) through its Resolution 03- 2009, dated July 22, 2009, and published in the Official Gazette on August 3, 2009. It took effect thirty (30) days after its publication or on September 2, 2009.

*** nothing follows ***

Total Amount Released **5,500,000.00**⁴⁴

From the foregoing recitals, petitioner claims that it was DBM who did the first form of “splitting of contracts” by dividing or breaking up the project or projects into smaller quantities and amounts as contained in the SARO pursuant to Annex “A,” which is an integral part of the SARO. Specifically, petitioner argues that it was DBM which identified the projects to be implemented supposedly consisting of 11 stations of the two national roads and allocated ₱500,000.00 per station for a total cost of ₱5,500,000.00 for all the 11 identified stations. As the project was specified as “Urgent Infrastructure Including Local Projects,” the 11 projects needed to be implemented with dispatch. “Splitting” the project would then mean that petitioner’s office would have jurisdiction to approve purchase requests and other related matters to implement the projects pursuant to Department Order No. 319, series of 2002 (DO 319) dated November 20, 2002 of the DPWH, which limits the authority of District Engineers to sign purchase requests not exceeding the amount of ₱750,000.00. As it was DBM which supposedly made the “splitting” of the projects, petitioner insists that his office merely implemented the same, and that it had no discretion to consolidate the total amount released by the DBM pursuant to the SARO.

Section 54.1 of the IRR of RA 9184 expressly prohibits the splitting of government contracts. It provides that “[s]plitting of Government Contracts means the division or breaking up of [Government of the Philippines] contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or sub-contracts for the purpose of evading or circumventing the requirements of law and [the IRR], especially the necessity of competitive bidding and the requirements for the alternative methods of procurement.”⁴⁵

The Government Procurement Policy Board (GPPB), through GPPB Non-Policy Matter Opinion No. 136-2014 issued on December 6, 2014, clarified the meaning of splitting of contract in this wise:

[I]t does not follow that once a contract is divided into smaller quantities or phases, there is splitting of contract. In order to determine whether the division of the procurement project into two (2) packages amounts to splitting of contract, **it must be clearly shown that the act must have been done for the purpose of circumventing or evading legal and procedural requirements, i.e.,** there should be a determination that, despite resorting to

⁴⁴ *Rollo*, p. 203.

⁴⁵ Section 54.1 of the IRR of R.A. No. 9184.

public bidding for both packages, the division into two (2) packages was done to circumvent or evade the legal and procedural requirements under RA 9184 and its IRR.⁴⁶

Along the same lines, the COA states that there is deemed a splitting of contracts when a project is “funded under a single obligating authority and implemented in several phases whether by the same or different contractors x x x x x.”⁴⁷ COA Circular No. 76-41, dated July 30, 1976, while considered an old administrative issuance, is instructive on the matter of splitting of contracts. In fact, it even went a step further by stating that proof of loss or damage sustained by, or caused to the government, is immaterial before a government official can be considered guilty of splitting of contracts, thus:

But in whatever form splitting has been resorted to, the idea is to do away with and circumvent control measures promulgated by the government. It is immaterial whether or not loss or damage has been sustained by, or caused to, the government. In a celebrated administrative case wherein a ranking official was charged with and found guilty of splitting of purchases, the Office of the President of the Philippines was quite emphatic when it ruled that “*his liability is not contingent on proof of loss to the Government because of said violations of rules on procurement.*”⁴⁸

Notably, the foregoing recitals are consistent with Article 5 of the Civil Code, which states that “[a]cts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.”

To be clear, RA 9184, including its IRR, does not prohibit or penalize the splitting of projects into sub-sections. What the law penalizes is the splitting of contracts.⁴⁹ Hence, the government may enter into contracts with private individuals or entities for the implementation of several projects. The current state of laws, however, prohibit the splitting of contracts in order that the requirements of the law may not be evaded or circumvent to suit personal interests in government procurements.

In this case, the OMB-Mindanao, as affirmed by the CA, held that the implementation of the SARO necessitated only one procurement contract, thus:

⁴⁶ *Clarification on the interpretation the term splitting of contracts under Section 53.1 of the IRR of RA 9184.* Department of Budget and Management Government Procurement Policy Board, December 6, 2014 https://www.gppb.gov.ph/GPPBTSO_Non-Policy/1160 (visited February 10, 2022).

⁴⁷ *Re: Contracts with Artes International, Inc.*, A.M. No. 12-6-18-SC (Resolution), August 7, 2018 citing COA Circular No. 2009-002, May 18, 2009.

⁴⁸ *Prohibition against splitting of requisitions, purchase orders, vouchers and others, Commission on Audit*, July 30, 1976 <<https://www.coa.gov.ph/index.php/2013-06-19-13-06-41/1-circulars/category/4490-cy-1976>> (visited February 10, 2022). Emphasis supplied. Also cited in *(Re: Contracts with Artes International, Inc.*, A.M. No. 12-6-18-SC (Resolution), August 7, 2018.

⁴⁹ See Sec. 54.1, Rule XVI and Sec. 65.1.4, Rule XXI, IRR of Republic Act No. 9184.

The project has to be implemented in eleven (11) sections along the stretch of the National Roads specified in Annex "A": Dipolog-Oroquieta has three (3) sections; Dipolog-Singan has seven (7) sections; and Dipolog-Sindangan has only one (1) section.

The specific kind of project was not indicated in the SARO as well as in Annex "A", but the eleven (11) Abstracts of Bids, eleven (11) Cost Estimates; and eleven (11) Purchase Orders on record indicate that **there was only one kind of project for all the National Roads specified in Annex "A", i.e. Construction of Guardrails along sections of the National Roads specified in Annex "A".**

x x x x

Inasmuch as the materials to be procured for the Project are identical and the materials can be supplied by a single supplier – it is clear that there could be only one Procurement Contract/Project. It is not difficult to comprehend that the eleven (11) sections of the National Roads enumerated in Annex "A" refer to the specific SECTIONS or LOCATIONS x x x specified in Annex "A". However, the respondents who acted as members of the BAC and the respondent who approved their recommendations, divided the project worth P5,500,000.00 into eleven (11) contracts worth P500,000.00 each, as shown by eleven (11) Purchase Orders; and conducted eleven separate canvassing of prices, involving the same materials and suppliers.⁵⁰

We agree with the findings of the OMB-Mindanao. It was highly erroneous for petitioner to conclude that the implementation of the SARO necessitated the execution of 11 government contracts. While petitioner's office needed to purchase concrete posts and guardrails, including its accessories (machine bolts and nuts) for the 11 subsections indicated in Annex "A," it should be understood, however, that there could only be one procurement contract for all sub-sections of the project. As correctly observed by the OMB-Mindanao, the project was merely divided or "split" into sub-sections or phases in Annex "A" of the SARO for the convenience of DPWH that was tasked to implement the project. In fact, whether or not the project was split into 11 sub-sections, the same materials of the same specifications should still be procured for the eleven (11) sub-sections.

Petitioner's interpretation of the SARO – that the same requires the execution of 11 contracts – becomes even more implausible since 11 separate purchase requests, abstracts of bids, and purchase orders involve *identical materials and one supplier* of said materials. It is thus apparent in this case that petitioner is aware, or at least should have known, that the SARO necessitated the execution of only one procurement contract.

In other words, since the same materials and same specifications were procured for the National Roads' rehabilitation and improvement, common sense dictates that there could only be ONE procurement contract for all sub-

⁵⁰ Rollo, pp. 70-72. Emphasis supplied.

sections of the project. This conclusion holds true regardless of whether or not the project was split into 11 other projects. On the contrary, it was absurd for petitioner and his office to have entered into 11 identical procurement contracts involving the use of the *same* materials coming from only *one* supplier.

The foregoing brings to fore the next issue of whether petitioner, in splitting the procurement of guardrails component of the project into 11 ₱500,000.00 contracts, was made to circumvent the requirements of applicable laws, particularly, DO 319, series of 2002, dated November 20, 2002 of DPWH entitled "Increasing the Limits of Authority in the Approval of Purchase Requests and Other Related Matters," including the necessity of public bidding under RA 9184.

On the matter of DO 319, the same provides that district engineers, such as herein petitioner, has the authority to approve purchase requests orders involving infra-related supplies and equipment in the amount not exceeding ₱750,000.00. Petitioner contends that when DBM issued the SARO, it was cognizant of his limited authority as OIC District Engineer to approve purchase requests in the amount not more than ₱750,000.00 pursuant to DO 319. As such, the manner in which DBM divided or "split" the project into eleven sub-sections in Annex "A" of the SARO with each sub-section having an allocation of ₱500,000.00 meant that DBM empowered petitioner's office to approve purchase requests under the SARO as provided in DO 319. For this reason, petitioner argues that he merely discharged the functions of his office when he followed the directives of the DBM in implementing the SARO.

Petitioner's contention is highly speculative and merely theoretical, to say the least. Nothing in the SARO states that the rehabilitation or improvement of the National Roads should be implemented through 11 separate projects, which would thereby necessitate the execution of eleven 11 separate contracts. Nor does it appear that DBM had this supposed directive in mind to petitioner when it issued the SARO. In fact, it is not within the mandate of DBM to dictate the manner by which DPWH should implement the rehabilitation or improvement of the national roads.

In contrast, we agree with the findings of the OMB-Mindanao that the 11 sections enumerated in Annex "A" of the SARO merely refer to locations along the national roads, and the amount of ₱500,000.00 indicated opposite the 11 sections pertain to the budget allocation for each of the locations along said national roads, thus:

Inasmuch as the materials to be procured for the Project are identical and the materials can be supplied by a single supplier – it is clear that there could only be one Procurement Contract/Project. It is not difficult to comprehend that the eleven (11) sections of the National Roads enumerated in Annex “A” refer to specific SECTIONS or LOCATIONS along the National Roads where the guardrails shall be installed, NOT to the number of Procurement Projects; and that the amount of P500,000.00 indicated opposite the eleven (11) sections obviously refers to the budget allocations for each of the eleven (11) SECTIONS or LOCATIONS specified in Annex “A”.⁵¹

We are also inclined to believe the conclusion of the OMB-Mindanao that it was not the DBM which identified and listed the 11 projects supposedly contained in the SARO. The project in the SARO, which involves the rehabilitation or improvement of the National Roads, were split into 11 sub-sections along the National Roads, which appears to have been done for the convenience of the DPWH in implementing the project in terms of allocating the budget to the different sections along the National Roads, and not because the DBM intended DPWH to implement 11 separate and distinct projects for the rehabilitation and improvement of the National Roads.⁵²

Even on the premise that it was the DBM which identified and listed the 11 projects in the SARO, it was incumbent upon petitioner, as a public official, to ensure that the SARO is strictly carried out in accordance with relevant rules and regulations. A SARO is defined as follows:

Special Allotment Release Order (SARO) is a specific authority issued to one or more identified agencies to incur obligations not exceeding a given amount during a specified period for the purpose indicated. It shall cover expenditures the release of which is subject to compliance with specific laws or regulations, or are subject to separate approval or clearance by competent authority.⁵³

Thus, a SARO, as issued by the DBM, is an authority, much like a “green light,” given to government agencies to enter into contracts with private individuals or entities pursuant to the purpose or purposes indicated in the SARO. Accordingly, the release of the funds which will cover the implementation of the project should not exceed the amount stated in the SARO and utilized only for the purpose or purposes indicated therein. Notably, the funds released pursuant to the SARO is subject to compliance with specific rules or regulations, particularly DO 319, RA 9184, and its IRR.

From the foregoing recitals, petitioner cannot escape liability by claiming that he merely relied on DBM’s directive supposedly embodied in the SARO.

⁵¹ *Rollo*, p. 72.

⁵² *Id.* at 83.

⁵³ Commission on Audit Circular No. 96-002 dated February 27, 1996 or Accounting Guidelines and Procedure Relative to the Adoption of a Simplified Fund Release System in the Government.

Petitioner's acts should not have been guided by any such directive, if such was even the case, but by the relevant provision of law. Petitioner was duty-bound to take the necessary steps, which would ensure that the SARO was properly carried out by the proper office or agency and in compliance with applicable laws or regulations.

Moreover, if this Court accepts petitioner's arguments, this will set a precedence for future cases where the implementation and administration of SAROs made in accordance to a public official's own interpretation, albeit erroneous, shall be considered valid despite the mandatory nature of RA 9184, and that the stand alone defense of "good faith" will exculpate him or her from liability. This we cannot countenance as it would lead to confusion and seriously hamper the proper enforcement of RA 9184, and other related laws, rules and regulations.

Failure to conduct public bidding:

We now address the next issue – whether the *splitting of contracts* as discussed above was done to circumvent or evade the legal and procedural requirements under RA 9184 and its IRR.

Petitioner maintains that he did not commit splitting of contracts since he did not circumvent or avoid the requirements of public bidding under RA 9184 or its IRR. Moreover, he merely resorted to the use of the simplified bidding process under the old procurement law.

There is no question at this point that the DBM issued the SARO on December 16, 2003, while procurements were initiated by petitioner's office on July 12, 2004 – all of which were done after the effectivity date of RA 9184 and its IRR on January 26, 2003⁵⁴ and October 8, 2003,⁵⁵ respectively.

Interestingly, petitioner admits in his petition that while he is aware of the existence of RA 9184 and its IRR during the implementation of the "projects" in the SARO, he resorted, in good faith, to the simplified bidding process under the old procurement law due to the difficulty of complying with the bidding process requirements under RA 9184 and its IRR. On this point, we emphasize that petitioner cannot simply disregard *prevailing* statutory requirements on

⁵⁴ *GPPB NPM 008-2003, Applicable Procurement Procedure Pending Approval of the IRR of R.A. 9184*, May 15, 2003, [https://www.gppb.gov.ph/GPPBTSO_NonPolicy/193#:~:text=9184%20\(R.A..15\)%20days%20following%20its%20publication](https://www.gppb.gov.ph/GPPBTSO_NonPolicy/193#:~:text=9184%20(R.A..15)%20days%20following%20its%20publication) (visited February 10, 2022).

⁵⁵ *GPPB NPM 024-2003, Applicability of R.A. 9184, December 8, 2003*, https://www.gppb.gov.ph/GPPBTSO_NonPolicy/210#:~:text=Regulations%20of%20R.A..No.,effective%20last%20October%208%2C%202003 (visited February 11, 2022).

bidding and procurement processes on the basis of his personal sentiment that they are difficult to carry out. This argument is unacceptable if not absurd. Petitioner, and this Court for that matter, is duty-bound to uphold and apply the law to the letter, more so under these circumstances where public funds are involved, and where the system of accountability in the implementation of procurement contracts must all the more remain transparent. At the very least, petitioner acted in gross negligence when he resorted to the public bidding process under the old procurement law which clearly negates the presumption of good faith on his part.

Petitioner also argues that while RA 9184 and its IRR took effect even before he implemented the projects in the SARO, the requirements of bidding under the law was not required pursuant to GPPB Resolution No. 010-2004,⁵⁶ which states, in part:

IN VIEW OF THE ABOVE PREMISES, all branches, agencies, departments, bureaus, offices and instrumentalities of the Government, including government-owned and/or controlled corporations (GOCCs), government financial institutions (GFIs), state universities and colleges (SUCs), and local government units (LGUs), are hereby encouraged to use the Philippine Bidding Documents as the standard forms in the preparation of their bidding documents for all of their procurement activities, provided that the use of these Philippine Bidding Documents shall be mandatory effective March 1, 2005.

Petitioner's argument is misleading. To be clear, GPPB Resolution No. 010-2004 standardized the bidding forms to be used for all procurement activities, the use of which is required by all procuring entities starting March 1, 2005. Nowhere in the said resolution states that the requirements of bidding under RA 9184 and its IRR were not required prior to such date.

In any case, the OMB-Mindanao, as affirmed by the CA, made clear in its findings that petitioner failed to conduct public bidding or any other method of procurement under the old procurement law or RA 9184 and its IRR, thus:

The respondents who acted as members of the BAC and the respondents who approved their recommendations did not only resort to splitting of government contracts, they also failed to conduct public bidding as required by law. While these respondents allegedly conducted public bidding under the old law, there is nothing on record that indicates that public bidding or any other method of procurement under the old or new law was observed in the *Procurement of Guardrails* component of the Project. The only documents on record relevant to their claim that they conducted public bidding are the eleven (11) Abstracts of Bids, showing that AUF Enterprises was the lowest bidder in all eleven (11) biddings for the supply of guardrails. However, the Abstracts of Bids could not be considered as evidence of public bidding, because they appear

⁵⁶ Dated August 20, 2004.

to have been manufactured by respondents whose signatures appear therein, inasmuch as the abstracts were not substantiated with the individual bid offers of the suppliers indicated therein. Also, while respondents alleged that they published the invitation to bid in the local newspapers, in accordance with the old procurement law, they failed to present any evidence to that effect. Thus, respondents' claim that they conducted public bidding under the old law is not believable.

Even granting that eleven (11) Abstracts of Bids can be considered as evidence of public bidding under the old law, they cannot be considered as evidence of public bidding for the eleven (11) procurements in this case, because the procurements in question should have been made under the new law, inasmuch as the procurements were initiated on 12 July 2004, almost a year after the effectivity of the IRR-A of R.A. No. 9184 on 8 October 2003.⁵⁷

We find no reason to deviate from the findings of the OMB-Mindanao and the CA.

Taken all the matters discussed above, it is apparent that petitioner's intent in entering into 11 identical contracts with AUF Enterprises was all too obvious – to avoid the requirements of public bidding as required under RA 9184 and its IRR.

At this point, it bears emphasis that the findings of the OMB are accorded great weight and respect, if not finality, by the courts considering its specialized knowledge and expertise over matters falling under their jurisdiction.⁵⁸ Along the same lines, findings of fact by the OMB are conclusive when supported by substantial evidence – or “such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming.”⁵⁹ Guided by the foregoing, the Court finds no cogent reason to overturn the OMB-Mindanao's conclusions, more so in this case when such findings and conclusions are affirmed by the CA.⁶⁰

Other matters:

Dismissal of the criminal case has no bearing on the administrative aspect of the instant case.

⁵⁷ *Rollo*, p. 74.

⁵⁸ *Office of the Deputy Ombudsman for Luzon v. Dionisio*, 813 Phil. 474, 487 (2017).

⁵⁹ *Id.*

⁶⁰ See *Diaz v. Office of the Ombudsman*, 834 Phil. 735, 743 (2018).

Petitioner also invites attention to the January 11, 2015 Joint Resolution⁶¹ of the Regional Trial Court (RTC), Branch 8 of Dipolog City in Criminal Case Nos. 18879 and 18880 acquitting petitioner and his co-defendants for violating Section 65 (A) (4), Article XXI of RA 9184 in relation to Section 56.1.4. IRR of RA 9184 for -

taking advantage of their respective official positions by conspiring together and helping one another in splitting a single procurement contract amounting to P5,500,000.00 for guardrails and accessories into eleven (11) P500,00.00 contracts to avoid competitive public bidding and to circumvent Department Order No. 319 series of 2002 limiting the authority of District/sub-District Engineers to approve purchase request to P750,000.00 less for infra-related supplies and equipment.⁶²

Petitioner claims that the dismissal of the criminal aspect of this case by the RTC in its January 11, 2015 Joint Resolution should absolve him from any administrative liability.

We disagree. The dismissal of Criminal Case Nos. 18879 and 18880 of the RTC does not have any bearing on the administrative case against petitioner as different degrees of evidence are required in these actions. In criminal cases, proof beyond reasonable doubt is needed whereas only substantial evidence will suffice in administrative proceedings.⁶³ Accordingly, petitioner's acquittal in the criminal aspect of this case does not affect the decision reached in the instant administrative case nor carry with it relief from administrative liability.⁶⁴

Finally, it should be noted that the OMB-Mindanao and the CA invariably found petitioner guilty of Grave Misconduct, Gross Neglect of Duty, Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service. The Court affirms these findings following the salutary rule that factual findings of administrative bodies, and as affirmed by the CA, are accorded great respect by this Court.

WHEREFORE, the petition is **DENIED**. Accordingly, the August 23, 2016 Decision and March 30, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 05743-MIN are hereby **AFFIRMED**.

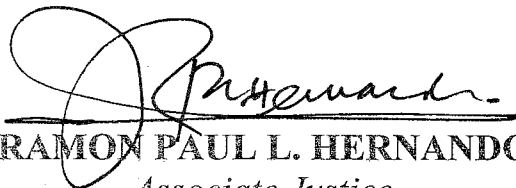
⁶¹ *Rollo*, pp. 253-263.

⁶² *Id.* at 258-259.

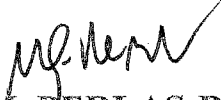
⁶³ See *Villaseñor v. Sandiganbayan* (Resolution), 571 Phil. 373, 382 (2008).

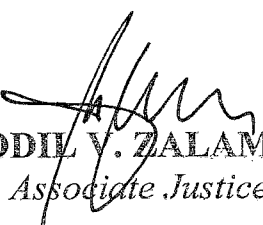
⁶⁴ See *id.* See also *Barillo v. Gervacio*, 532 Phil. 267, 279 (2006).

SO ORDERED.



RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

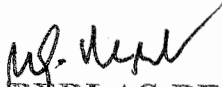

RODIL V. ZALAMEDA
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

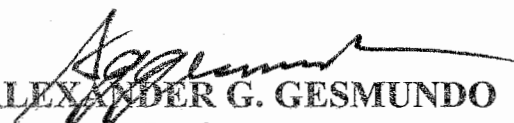
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice

