



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated September 14, 2022 which reads as follows:

“G.R. No. 245895 (*Junio M. Ragragio v. The Office of the Ombudsman (Field Investigation Office)*). – This Petition for Review on *Certiorari*¹ (petition) seeks to reverse and set aside the Decision² dated 29 August 2018 and Resolution³ dated 11 February 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 145850,⁴ affirming with modification the Decision⁵ dated 11 December 2015 and the Order⁶ dated 06 December 2016 of the Office of the Ombudsman in OMB-C-A-14-0283.

Antecedents

The case arose from two contracts for procurement awarded by the Philippine National Railway (PNR) in 2011 in favor of Nikka Trading

¹ *Rollo*, pp. 03-35.

² *Id.* at 37-55; Penned by Associate Justice Ramon Paul L. Hernando (now a Member of this Court) and concurred in by Associate Justices Ricardo R. Rosario (now a Member of this Court) and Gabriel T. Robeniol.

³ *Id.* at 58-59; Penned by Associate Justice Ricardo R. Rosario (now a Member of this Court) and concurred in by Associate Justices Japar B. Dimaampao (now a Member of this Court) and Gabriel T. Robeniol.

⁴ CA-G.R. SP No. 145850 (*Junio M. Ragragio, Estelito A. Nierva, Ruben A. Besmonte, Divina Gracia D. Dantes, Neofito C. Perilla and Abdul Aziz M. Pangandaman v. The Office of the Ombudsman [Field Investigation Office]*) was consolidated with CA-G.R. SP No. 149631 (*Engr. Marlo D. Arias v. The Office of the Ombudsman [Field Investigation Office]*), CA-G.R. SP No. 149672 (*Engr. Cesar L. Bocanog v. The Office of the Ombudsman [Field Investigation Office]*), and CA-G.R. SP No. 149775 (*Rosendo C. Calleja v. The Office of the Ombudsman [Field Investigation Office]*). The foregoing petitions assailed the Decision dated 11 December 2015 and the Order dated 06 December 2016 rendered by the Office of the Ombudsman in OMB-C-A-14-0283 finding petitioners in the four (04) consolidated petitions guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and were, thus, meted the penalty of dismissal from the service. (*See rollo*, pp. 38-39.)

⁵ Penned by Graft Investigation and Prosecution Officer II Leilani P. Tagulao-Marquez, reviewed by Director, PIAB-D Nellie P. Boguen-Golez, and approved by Ombudsman Conchita Carpio Morales. (*See rollo*, p. 38.)

⁶ The Order denied the respective Motions for Reconsideration of the petitioners in the four consolidated petitions. (*See rollo*, pp. 38, 44.)

(Nikka) to supply and deliver wood joint ties and wood bridge ties for purposes of completing the rehabilitation project of the PNR line from Calamba to Bicol. Junio Norberto Mella Ragraio (Ragraio) was the General Manager (GM) of PNR at the time.

In November 2011, two biddings were conducted by the Bids and Awards Committee (BAC) of the PNR for the procurement of *yakal* wood bridge ties, joint ties, and switch ties. All bidding documents specifically required the supply and delivery of *yakal* wood for bridge, joint, and switch ties.⁷

During the bidding process, Supplemental Bid Bulletins (SBBs) dated 08 November 2011⁸ (for the bidding of “43M-Woodties”) and 29 November 2011⁹ (for the bidding of “9M-Woodties”) were issued with the following clarification: “NOTE: The ‘Goods’ referred herein shall mean [*Yakal*] Wood or other species or kind of wood as long as it conforms to the mechanical and related properties of Philippine woods x x x.” The SBBs were issued in consonance with the National Government’s policy to ban the logging of hard wood in the Philippines as embodied in Executive Order No. 23, series of 2011 (EO 23) which declared a moratorium on the cutting and harvesting of timber in natural and residual forests.

Due to the clarifications made in the SBBs, Nikka submitted bids to supply and deliver wood ties made of larch wood.¹⁰ The Technical Working Group (TWG) of the BAC evaluated the bids submitted and prepared a bid evaluation report and post-qualification report, which it submitted to the BAC.¹¹ The BAC-TWG reported that Nikka submitted the Lowest Calculated Responsive Bid.

Having determined that Nikka submitted the Lowest Calculated Responsive Bid, the BAC issued two resolutions recommending to the PNR Board of Directors, being the Head of the Procuring Entity (HOPE), that Nikka be awarded the supply contracts for wood bridge ties, switch ties and joint ties.¹² Subsequently, the PNR Board of Directors approved BAC’s recommendation and Notices of Awards were issued in favor of Nikka.¹³ Contract Agreements (contracts) were also executed between the PNR and Nikka.¹⁴

Given the difference between the goods to be supplied by Nikka and the language of the contract, Ragraio wrote a letter dated 16 February 2012 to Nikka, for purposes of clarification, “[signifying his] *conforme* that

⁷ *Rollo*, p. 39.

⁸ *Id.* at 104-105.

⁹ *Id.* at 77-78.

¹⁰ *Id.* at 41.

¹¹ *Id.* at 82, 110.

¹² *Id.* at 86-88, 115-117.

¹³ *Id.* at 89-90, 91, 118.

¹⁴ *Id.* at 92-93, 119-121.

[Nikka] may deliver ‘larch wood,’ as [it] had originally offered during the bidding process and approved by the [BAC] in view of [EO 23], subject to due diligence that [PNR] shall conduct through [its] Engineering Department and in accordance with DENR rules and regulations on importation of wood.”¹⁵ However, to foreclose any possibility that there were local suppliers which can provide *yakal* wood ties, Ragragio inquired twice with the Department of Environment and Natural Resources (DENR) “whether or not there [were] other authorized suppliers of *yakal/molave* wood.” At the first instance, the Secretary of the DENR assured Ragragio that he has not authorized any person or entity to sell *yakal/molave* wood.¹⁶ Further, the DENR, through Undersecretary Analiza Rebueta-The, issued a certification¹⁷ dated 06 July 2012 stating that:

[N]o entity, local or foreign, has been granted the authority/license to cut, process, supply and/or trade *yakal, molave* and its equivalent local wood species in the Philippines.

Consequently, *yakal, molave* and its equivalent local wood species being offered for sale in the Philippine market are illegal and without any authorization from this Department.

Therefore, any person or office/personnel of juridical entities, be it private or government, who sells, possesses, transacts, buys and/or uses *yakal, molave* and its equivalent wood species without authorization shall be held personally accountable criminally, administratively and/or civilly.

Pursuant to the issuance of the Notices to Proceed¹⁸ on 06 January 2012 and 31 January 2012 and the certification issued by the DENR, Nikka was allowed to commence the delivery of the wood ties on 17 July 2012. The Notices of Award, Notices to Proceed, and the Contracts were signed by Ragragio as the PNR GM.

The deliveries were inspected by an Inspection and Acceptance Commission, which confirmed that the wood delivered was technically acceptable.¹⁹ Subsequently, Disbursement Vouchers (DVs) were signed by (a) Engr. Edwin Balong-angey (Engr. Balong-angey), the OIC-Manager of the Engineering Department (which is the end-user) who certified that the expenses were necessary, lawful and incurred under his direct supervision;²⁰ (b) Jane Balong-angey (Ms. Balong-angey), the OIC-Manager of the Controllership Division, who certified that the supporting documents were complete and proper;²¹ and (c) petitioner, who approved the payment of the amounts indicated in the DVs following the certification from Balong-angey and Ms. Balong-angey. Payments were subsequently made in favor of Nikka for the delivery of the wood ties under the two batches of procurement in the

¹⁵ Id. at 123.

¹⁶ Id.

¹⁷ Id. at 124.

¹⁸ Id. at 95, 122.

¹⁹ Id. at 43.

²⁰ Id.

²¹ Id. at 43.

gross amounts of Php 9,918,888.92 and Php 39,885,999.88.²²

A Notice of Disallowance was thereafter issued.²³ Consequently, the Field Investigation Office (FIO) under the Office of the Ombudsman (OMB) conducted an investigation and thereafter filed an administrative complaint against Ragrario and his then co-respondents for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service because of the alleged irregularity in the award of the contract to Nikka, which submitted bids to supply larch wood ties instead of wood ties made of *yakal* as explicitly specified in the bid documents.

Ruling of the Ombudsman

On 11 December 2015, the OMB rendered its Decision, the dispositive portion of which reads:

WHEREFORE, this Office finds **Junio Norberto M. Ragrario**, x x x GUILTY of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and are meted the penalty of DISMISSAL FROM THE SERVICE and all its accessory penalties, pursuant to the Revised Rules on Administrative Cases in the Civil Service (CSC Resolution No. 1101502 dated November 21, 2011). In the event that the penalty can no longer be enforced against these named respondents due to separation from service, the penalty of FINE EQUIVALENT TO ONE YEAR SALARY shall be imposed, payable to the Office of the Ombudsman, and may be deductible from respondents' retirement benefits, accrued leave credits or any receivable from their office. It shall be understood that the accessory penalties attached to the principal penalty of Dismissal shall continue to be imposed.

x x x x

SO ORDERED.²⁴

The OMB found that petitioner awarded the contracts to Nikka and approved the payment of the transactions involving the supply and delivery of wood ties despite receipt of a report regarding the problems and low quality of larch wood.²⁵

Petitioner subsequently moved for reconsideration, but the OMB denied the motion in its Order²⁶ dated 06 December 2016. He sought relief from the CA through a Petition (with Urgent Prayer for the Issuance of Temporary Restraining Order [TRO] and Injunction).²⁷

²² Id. at 91.

²³ Id. at 11, 142.

²⁴ Id. at 43-44.

²⁵ Id. at 42.

²⁶ Id. at 38, 44.

²⁷ Id. at 44.

Ruling of the CA

In its Decision²⁸ dated 29 August 2018, the CA affirmed with modification the assailed OMB decision, thus:

ACCORDINGLY, the assailed *Decision* dated December 11, 2015 and the *Order* dated December 6, 2016 rendered by the Office of the Ombudsman in OMB-C-A-14-0283 which found petitioners Junio Norberto M. Ragrario[,] x x x administratively liable is **AFFIRMED**, with the **MODIFICATION** that they are found GUILTY of Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service and reducing the penalty from dismissal from service to suspension of six (6) months without pay.

The Court hereby orders that petitioners in these four consolidated petitions, if their dismissal was implemented by their office, be forthwith reinstated to their respective positions with backwages and other monetary benefits, if any. No pronouncement as to costs.

SO ORDERED.²⁹

The CA ruled that there was no sufficient evidence that Ragrario and his co-respondents deliberately neglected to declare a failure of bidding to benefit themselves or some other person. In its discussion, the CA explained that for grave misconduct to be present, the elements of corruption, the clear intent to violate the law or the flagrant disregard of an established rule must be manifest. In Ragrario's case, the CA held that the OMB "has not presented sufficient evidence to show that petitioners benefited from the absence of a re-bidding due to a significant amendment to the terms, conditions and specifications of the project."³⁰

Nonetheless, Ragrario and his co-respondents failed in their duty to perform due diligence when they awarded the contracts to Nikka and paid the contracts notwithstanding the report that larch wood did not match the strength of *yakal* wood. Hence, they should only be held administratively liable for gross neglect of duty, not grave misconduct. Additionally, they are also guilty of conduct prejudicial to the best interest of the service.³¹

In so finding, the CA modified the penalty imposed by the OMB. Instead of dismissal, as it was the penalty for the more serious charge of gross neglect of duty, Ragrario and his co-respondents were meted the penalty of six (6) months suspension without pay.³² The CA deemed the penalty of dismissal from the service too harsh, as it was their first time to be administratively sanctioned. Further, the CA found the entire bidding process would have been in order except for the circumstance that BAC accepted the offer of Nikka to supply larch wood in its bid documents,

²⁸ Id. at 37-55.

²⁹ Id. at 54.

³⁰ Id. at 49.

³¹ Id. at 49, 51-52.

³² Id. at 53.

notwithstanding the specification of the use of *yakal* wood therein.³³

Dissatisfied with the findings of the CA, Rragragio filed his motion for reconsideration. In its Resolution³⁴ dated 11 February 2019, the CA denied the motion. Hence, the filing of the instant petition before this Court.

Issue

The sole issue is whether the CA correctly ruled that Rragragio is guilty of gross neglect of duty and conduct prejudicial to the best interest of the service.

Ruling of the Court

Rragragio avers that he should not be held administratively liable considering that “he cannot be deemed to have abandoned his duties as General Manager nor acted in such a way as to cause prejudice to his position.” He further stresses that he has performed his duties and functions as “could have been reasonably expected of him.”³⁵

After a careful review of the records of this case, the Court finds that the evidence on record does not show that Rragragio committed any act that would constitute Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service.

In *Trinidad v. Office of the Ombudsman*,³⁶ this Court clarified what constitutes as dereliction of duty. Dereliction of duty may be classified as gross or simple neglect of duty or negligence. Simple negligence is defined as the failure of an employee to give proper attention to a required task expected of him, or to discharge a duty due to carelessness or indifference. Gross negligence, on the other hand, is characterized by want of even the slightest care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, or by flagrant and palpable breach of duty. It denotes a **flagrant and culpable refusal or unwillingness of a person to perform a duty**. Gross negligence, thus, involves an element of intent, more than mere carelessness or indifference to do one’s duty. To be held liable for gross negligence, a public official must have **intentionally shirked his duty, fully aware that he is duty-bound to perform**. Simply, gross negligence involves consciously avoiding to do one’s work.³⁷ In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.³⁸

³³ Id. at 53.

³⁴ Id. at 58-59.

³⁵ Id. at 29.

³⁶ G.R. No. 227440, 02 December 2020.

³⁷ Emphasis supplied. Citations omitted.

³⁸ *Office of the Ombudsman v. Gatchalian*, G.R. Nos. 230679 & 232228-30, 10 February 2021.

Primordial in the issue of resolving any liability for dereliction of duty is the determination of the scope of duties and functions of the government employee – which he has purportedly breached or violated. In the case of Ragragio, he is accused of awarding the contract to Nikka despite the alleged irregularities that attended the bidding process. Further, given such alleged irregularities, he should have been prompted instead to declare a failure of bidding instead of continuing to award the contract to Nikka.

All of these purported acts of Ragragio cannot properly be attributed to him, so that any finding for Gross Neglect of Duty against him cannot be supported. As aptly pointed out by Ragragio, considering his duties and functions as the PNR GM, his participation in the actual procurement process is extremely limited. As he is neither a member of the BAC nor the HOPE, he has no discretion to accept or reject the recommendation of the BAC to award the contract, much less declare a failure of bidding. Thus, the assertion that he committed Gross Neglect of Duty must necessarily fail, absent any duty or obligation that he flagrantly and culpably refused to perform.

Rule V of the Implementing Rules and Regulations of Republic Act No. 9184,³⁹ as Amended (IRR-A)⁴⁰ is clear on what the functions of the BAC are:

SECTION 12. *Functions of the BAC.* --

12.1. 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**, resolve motions for reconsideration, **recommend award of contracts to the head of the procuring entity** or his duly authorized representative: *Provided, however,* 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 Rule XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group (TWG) from a pool of technical, financial and/or legal experts to assist in the procurement process, particularly in the eligibility screening, evaluation of bids and post-qualification. 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 Rule XVI hereof.

12.2. The BAC shall be responsible for **ensuring that the procuring entity abides by the standards set forth by the Act** and this IRR-A, and it shall prepare a procurement monitoring report that

³⁹ Government Procurement Reform Act.

⁴⁰ Issued on 03 August 2009.



shall be approved and submitted by the head of the procuring entity to the GPPB on a semestral basis. x x x

Likewise, Section 35 of the IRR-A provides that only the BAC can declare the bidding a failure and only on specific instances.

SECTION 35. *Failure of Bidding.* —

35.1. The BAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement and/or posting, as provided for in Section 21 of the Act and this IRR-A, after a re-evaluation of the terms, conditions and specifications of the first bidding, when:

- a) No prospective bidder submits an LOI or no bids are received;
- b) All prospective bidders are declared ineligible;
- c) All bids fail to comply with all the bid requirements or fail post-qualification, or, in the case of consulting services, there is no successful negotiation; or
- d) The bidder with the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid refuses, without justifiable cause to accept the award of contract, and no award is made in accordance with Section 40 of the Act and this IRR-A.

In this case, records show that even before the BAC recommended to the PNR Board of Directors the award of the contracts in favor of Nikka, the BAC-TWG had examined the bid submitted by Nikka and proceeded to conduct the post-qualification.⁴¹ In fact, as stressed by petitioner, among the notable and significant details that the BAC-TWG included in its post-qualification report dated 28 November 2011 are the following: (a) Nikka submitted a Forestry Bond, Certification from Associate of Philippine Wood Producers Association, Inc., and Certificate from Philippine Wood Producers Association; and (b) Nikka has 13 completed government projects, one of which is similar to the bidden project, while two have been delivered to PNR worth ₱77,590,000.00 and US\$ 1,825,000.00.⁴²

It was on the basis of the report and recommendation of the BAC-TWG that BAC proceeded to make its recommendation to the HOPE, which in this case is the PNR Board of Directors. In turn, HOPE approved the award to Nikka. HOPE then directed petitioner to sign the contract and issue the necessary Notices of Award and Notices to Proceed in favor of Nikka. Given the recommendation of the BAC-TWG and the BAC, as well as the approval and directive of the HOPE, petitioner was duty-bound to issue the Notices of Award and sign the contracts. At this point, petitioner was merely carrying out his duties as the authorized representative of the HOPE. With this, it is clearly evident that no dereliction of duty can be attributed to him – gross or otherwise.

The OMB concluded that petitioner should be held administratively

⁴¹ *Rollo*, pp. 82-85, 109-114.

⁴² *Id.* at 110-111.

liable for approving the payment in favor of Nikka despite having knowledge of the purported irregularity in the bidding process and the problems and low quality of the Larch wood supplied.

At this point, this Court stresses the finding made by the OMB itself, which noted that the Inspection and Acceptance Committee had issued a confirmation that the wood was technically acceptable. The role of the the Inspection and Acceptance Committee is indispensable before any payments may be made in favor of Nikka.

Volume 2 – Manual of Procedures for the Procurement of Goods and Services)⁴³ of the Generic Procurement Manuals states that “[p]ayment must only be made after the appropriate inspection and acceptance procedures, as mandated by existing government rules and regulations, have been complied with by the Procuring Entity.” This makes it even more relevant that Engr. Balong-angey, who also conducted inspections and accepted delivery of the larch wood ties signed the relevant DVs and certified that the expenses were necessary, lawful, and incurred under his direct supervision.⁴⁴

Engr. Balong-angey’s certification carries great weight not only because he is part of the team which conducted the inspection and acceptance, but also because he is a member of the end-user unit of the PNR, *i.e.*, the Engineering Division/Department, which will directly use the wood ties procured.⁴⁵

The Court notes as well that the procuring entity’s end-user units are highly involved in the procurement of goods and services to be used by their office. From the very beginning, the end-user is the one tasked to prepare a Project Procurement Management Plan (PPMP) for the needs of their different projects, activities, and programs.⁴⁶ These PPMPs then become part of the basis for the entire procuring entity’s Annual Procurement Plan (APP), which is consolidated and prepared by the BAC Secretariat.⁴⁷ In other words, the end-user unit is the one responsible for the inception of any particular procurement, and has primary authority to determine what shall be procured and at what terms or specifications, subject to the approval of the HOPE – in this case, the PNR Board of Directors. In fact, the end-user unit is the one involved in the preparation of the bidding documents, which would contain

⁴³ <https://www.gppb.gov.ph/downloadables/forms/GPM%20-%20Vol.2.pdf> (18 August 2022).

⁴⁴ *Rollo*, p. 43.

⁴⁵ *Id.* at 21.

⁴⁶ 7.3.2. In the preparation of the indicative APP, the end-user or implementing units of the Procuring Entity shall formulate their respective Project Procurement Management Plans (PPMPs) for their different programs, activities, and projects (PAPs). x x x (2016 Revised Implementing Rules and Regulations of RA 9184, IRR of RA 9184, [2016]).

⁴⁷ 7.3.4. The PPMPs shall then be submitted to the Procuring Entity’s Budget Office for evaluation in order to ensure consistency with the Procuring Entity’s budget proposal and compliance with existing budgeting rules. The PPMPs included in the budget proposal shall be forwarded to the BAC Secretariat for consolidation into an indicative APP, and to the BAC for final recommendation of the appropriate procurement modality. x x x (2016 Revised Implementing Rules and Regulations of RA 9184, IRR of RA 9184, [2016]).

the technical specifications, among others, of the goods to be procured.⁴⁸ Accordingly, any person of reasonable discretion would be justified and entitled to rely on his certification in the disbursement vouchers.

Aside from Engr. Balong-angey's signature, the disbursement voucher likewise bears the signatures of Ms. Balong-angey, OIC of the Controllership Division, and Rosendo C. Calleja (Calleja), Division Manager of the Budget and Cash Division.⁴⁹ Ms. Balong-angey was tasked to process disbursement vouchers, record financial transactions, and prepare financial statements, among others. Likewise, part of her duties was to ensure that all disbursements are supported by complete documents. It is in this capacity and context that she signed Box B of the DVs.⁵⁰ Aside from this, Calleja certified that cash was available for the disbursement.⁵¹

This Court notes further that the certifications in boxes A and B of the DVs are not empty ceremonies to be done before the head of the agency signs in Box C. Sections 28 and 30 of the Manual on the New Government Accounting System⁵² provide insight on the significance of these signatures:

SECTION 28. *Basic Requirements for Disbursements.* – The basic requirements applicable to all types of disbursements made by national government agencies are as follows:

1. Existence of a lawful and sufficient allotment certified as available by the Budget Officer;
2. Existence of a valid obligation certified by the Chief Accountant/Head of Accounting Unit;
3. Legality of transactions and conformity with laws, rules and regulation;
4. Approval of the expense by the Chief of Office or by his duly authorized representative; and
5. Submission of proper evidence to establish the claim.

SECTION 30. *Certification on Disbursements.* – Disbursements from government funds shall require the following certifications on the DV:

1. Certification and approval of vouchers and payrolls as to validity, propriety and legality of the claim (Box A of DV) by head of the department or office who has administrative control of the fund concerned;

⁴⁸ Generic Procurement Manuals, Volume 2 – Manual of Procedures for the Procurement of Goods and Services), pp. 14-15.

⁴⁹ *Rollo*, pp. 140-141.

⁵⁰ *See rollo*, p. 25; Section 35, Chapter 3, Volume of the 2002 Government Accounting and Auditing Manual for National Government Agencies, which was the prevailing guideline at the time.

⁵¹ *Id.* at 51.

⁵² Prescribing the Manual on the New Government Accounting System (Manual Version) For Use in All National Government Agencies, COA Circular No. 002-02 [18 June 2002].

2. Necessary documents supporting the DV and payrolls as certified and reviewed by the Accountant/Head of Accounting Unit (Box B of DV); and

3. Certification that funds are available for the purpose by the Accountant/Head of Accounting Unit (Box B of DV).

From the above provisions, it is clear that the most basic requirements for disbursements are satisfied by the certifications of the relevant officials in Boxes A and B of the disbursement vouchers. These basic requirements – legality of transactions, completeness of necessary documentation/evidence, existence of allotment and valid obligation – are all within the particular functions and duties of the officials signing in these boxes. In other words, they are the officials who would best know the truth as to these requirements. Thus, petitioner cannot be faulted for relying on these certifications.

Indeed, it would be counterproductive on the part of petitioner to refuse to sign the DVs – especially when the goods have been inspected and accepted by the Engineering Division. It bears stressing that these wood ties were procured to rehabilitate portions of the PNR railways. Part and parcel of petitioner's duty and function as the GM is to ensure that PNR delivers the necessary services to the public – which includes the timely rehabilitation of its railway. To refuse to sign the DVs despite a favorable Inspection and Acceptance Report will run counter to petitioner's duty and functions.

The Court in *Arias v. Sandiganbayan*⁵³ (*Arias*) held that all heads of offices have to rely to a reasonable extent on the good faith of their subordinates. The case specifically involved the liability of the head of office in the preparation of bids, purchase of supplies, and contract negotiations done by his subordinates. In the same fashion, petitioners in *Arias*, owing to their high ranks, cannot be expected to acquaint themselves with such minutiae as the flow of files and documents which leave their desks. Myriad details such as those are, by office practice, left to subalterns and minor employees. Delegation of function is part of sound management. In the case at bar, absent any irregularity, petitioner had the right to rely on the good faith of his subordinates.

In the same vein, the assertion that petitioner should have put a stop to the delivery and acceptance of the goods delivered by Nikka is erroneous as it totally disregards the SBBs that had been issued by the BAC in light of EO 23.

It cannot be denied that at the time the goods were being procured, the BAC became aware of EO 23, which disallowed the logging of Philippine timber, including *yakal*. It was on this basis that SBBs were issued

⁵³ 259 Phil. 794 (1989) cited in *Reyes v. Rural Bank of San Miguel*, 468 Phil. 254, 261-262 (2004).

modifying the nature of the goods to be procured and clarifying to all the bidders that the goods to be procured shall refer to “other species or kind of wood as long as it conforms to the mechanical and related properties of Philippine woods.”⁵⁴

The issuance of the SBBs was neither irregular nor improper. To be sure, they were specifically allowed under the IRR-A which provides that the bid documents may be modified through the issuance of the SBBs. Paragraphs (par.) 22.5.2 and 22.5.3, Section 22 of the IRR-A provide:

22.5. Supplemental/Bid Bulletins

x x x x

22.5.2. Supplemental/Bid Bulletins may be issued upon the procuring entity’s initiative for purposes of clarifying or modifying any provision of the bidding documents not later than seven (7) calendar days before the deadline for the submission and receipt of bids. Any modification to the bidding documents shall be identified as an amendment. Bidders who have submitted bids before the issuance of the Supplemental/Bid Bulletin must be informed and allowed to modify or withdraw their bids in accordance with Section 26.1 of this IRR-A.

22.5.3. Any Supplemental/Bid Bulletin issued by the BAC shall also be posted on the website of the procuring entity concerned, if available, and on the G-EPS.

Having complied with the seven-day period and the publication, the SBBs that were issued **precisely for the purpose of modifying any provision of the bid documents** were completely regular and above board. Accordingly, since the definition of goods was modified by the SBBs, the bid submission of Nikka to supply larch wood cannot be seen as irregular.

At this point, the Court notes that par. 22.5.3 above requires the posting of the SBB not only on the website of the procuring entity, but also at G-EPS.⁵⁵ To be sure, a simple resort to the G-EPS will readily reveal that the issuance of SBBs in different bidding activities are quite normal. And the Court is aware that par. 22.5.2 above provides that SBBs are issued when changes are made in the technical requirements.

In this regard, the belief of the CA that the publication of Supplemental Bid Bulletin No. 1 only on 08 November 2011, or seven days prior to the opening of the bid, was “too short for other interested bidders to signify their interest to bid”⁵⁶ is totally erroneous for the simple reason that this is completely allowed under Sec. 22.5.2 quoted above.

⁵⁴ *Rollo*, pp. 77, 104.

⁵⁵ Government Electronic Procurement System.

⁵⁶ *Rollo*, p. 54.

The same can be said for the determination by the BAC-TWG and the BAC that Nikka submitted the Lowest Calculated Responsive Bid. Since, as the facts bear out, the true intent of the parties was for Nikka to supply wood ties made of imported larch to PNR in view of the prohibition imposed by EO 23, then its bid constitutes the Lowest Calculated Responsive Bid.

In view of the foregoing true intent to bid for “other species or kind of wood as long as it conforms to the mechanical and related properties of Philippine woods,”⁵⁷ it cannot be asserted that the foregoing circumstances should have led petitioner to request for a declaration of failure of bidding.

Apart from the fact that Ragragio does not have the power to do so, the factual circumstances here are not among the instances where a failure of bidding may be declared as provided under Section 35 of the IRR-A. In this case, there were prospective bidders who submitted their bids. Upon evaluation of the bids submitted, the prospective bidders were not declared ineligible. Then, in light of the SBBs, it cannot be said that Nikka failed to comply with the bid requirements and post-qualification requirements. Neither did Nikka refuse to accept the award of the contract.

While it may be easy to assert that a failure of bidding should have been declared, a careful scrutiny of the grounds provided by law shows that petitioner could not have easily done so – even assuming that he had the duty and authority to declare the same, as the instances enumerated in Section 35 of the IRR-A when bidding can be declared a failure are not present.

But more importantly, there was no need to declare a failure of bidding because (a) the SBBs clarified the goods to be purchased and (b) the BAC-TWG and the BAC determined that Nikka submitted the Lowest Calculated Responsive Bid. Hence, there was absolutely no reason to put a stop to the delivery of the goods.

To stress anew, the SBBs already made the definition of the goods generic enough to allow suppliers of other wood species (with the same mechanical and related properties as Philippine woods) to submit their bids. Indeed, it has not been submitted by either party that only larch wood can be used as wood ties for PNR railways. Thus, there is no basis for PNR to conduct another bidding involving larch wood alone – as there may indeed be other species of wood that could have served as an alternative to *yakal*. Accordingly, the assertion that another bidding involving larch wood alone should have been conducted is without factual or legal basis.

Considering the foregoing and absent any showing that petitioner committed any act that can be characterized as a dereliction of his duties, the Court finds that the charges for Conduct Prejudicial to the Best Interest of

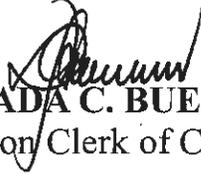
⁵⁷ Id. at 77, 104.

Service has also no factual leg to stand on, and must similarly be dismissed.

WHEREFORE, the petition is hereby **GRANTED**. The Decision dated 29 August 2018 and Resolution dated 11 February 2019 of the Court of Appeals in CA-G.R. SP No. 145850, affirming with modification the Decision dated 11 December 2015 and the Order dated 06 December 2016 of the Office of the Ombudsman are **REVERSED and SET ASIDE**. Accordingly, the complaint against petitioner Junio M. Ragragio before the Office of the Ombudsman is ordered **DISMISSED**.

SO ORDERED.” *Hernando, J., and Rosario, J., no part; Caguioa, J., and Lazaro-Javier, J., designated as additional Members.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
8/10/21

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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& 149775)

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