



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

BY: _____
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SECOND DIVISION

CESAR C. PAITA,

Petitioner,

G.R. No. 235595

Present:

-versus-

**TASK FORCE ABONO FIELD
INVESTIGATION OFFICE,
OFFICE OF THE
OMBUDSMAN,**

Respondent.

LEONEN, *Chairperson,*
LAZARO-JAVIER,
LOPEZ, M.
LOPEZ, J.
KHO, JR., *JJ.*

Promulgated:

DEC 07 2022

X-----X

DECISION

LOPEZ, J. J.:

This resolves the Petition for Review on *Certiorari*¹ filed by Cesar C. Paita challenging the Decision² dated May 31, 2017 and Resolution³ dated October 11, 2017, of the Court of Appeals in CA-G.R. SP No. 138817, which affirmed the findings of the Ombudsman that held him liable for Grave Misconduct and Conduct Grossly Prejudicial to the Best Interest of the Service and meted on him the penalty of dismissal from service.

¹ *Rollo*, pp. 3-24.

² Penned by Associate Justice Maria Filomena D. Singh (now a member of this Court), with Associate Justices Edwin D. Sorongon and Victoria Isabel A. Paredes, concurring; *id.* at 26-40.

³ *Id.* at 60-65.

Facts

In 2004, the Department of Budget and Management (*DBM*) released funds amounting to PHP 291,200,000.00 for the implementation of the Farm Inputs and Farm Implements Program of the Department of Agriculture (*DA*).⁴ One of the beneficiaries of the program was the Province of Camarines Norte, which received an allocation of PHP 5,000,000.00, for the purchase of agricultural supplies and inputs.⁵

In line with this initiative, a Memorandum of Agreement (*MOA*) was entered into between DA Regional Executive Director Hector M. Sales and then Governor Jesus O. Typoco, Jr. (*Governor Typoco*).⁶

At the time material to the controversy, Cesar C. Paita (*Paita*) was the Provincial Engineer of Camarines Norte.⁷ Likewise, he was designated as one of the members of the Provincial Bids and Awards Committee (*PBAC*) of the province.⁸

On April 16, 2004, the PBAC issued BAC Resolution No. 2004-01, which recommended "Direct Contract (Exclusive Manufacturer/Distributor) Procurement of Liquid Fertilizer" from the company Hexaphil Agriventures, Inc. (*Hexaphil*), amounting to PHP 5,000,000.00.⁹ Hexaphil certified that it was the sole distributor of Hexaplus products within Region V.¹⁰ Provincial Agriculturist Rodolfo B. Salamero and General Services Officer Jose Rene G. Ruidera also issued a Certification dated April 20, 2004, stating that there is no suitable substitute for Hexaplus 11-7-11, as indicated in their purchase request, considering its quality and low price.¹¹ As one of the PBAC members, Paita signed BAC Resolution No. 2004-01.¹²

Consequently, the provincial government issued the necessary disbursement vouchers and checks for the payment of the purchased liquid fertilizers.¹³

On May 2, 2011, pursuant to Civil Service Commission (*CSC*) Resolution No. 99136, the Task Force Abono, Field Investigation Office, Office of the Ombudsman (*Ombudsman*), filed an administrative charge

⁴ *Id.* at 27.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 28.

¹² *Id.* at 67-68.

¹³ *Id.* at 28.

against Paita, among others.¹⁴

As earlier mentioned, the Ombudsman issued a Decision dated November 12, 2013, which found Paita guilty of Grave Misconduct and Conduct Grossly Prejudicial to the Best Interest of the Service in connection with his participation in issuing BAC Resolution No. 2004-01. He was meted the penalty of dismissal from service.¹⁵ Paita moved for a reconsideration of the said ruling, but the Ombudsman denied the same, in its Order dated May 27, 2015.¹⁶

Undaunted, Paita brought the case before the Court of Appeals.¹⁷

In its Decision¹⁸ dated May 31, 2017, the Court of Appeals held that there was substantial evidence to hold Paita liable for grave misconduct when he signed the questioned Resolution which authorized direct contracting in the purchase of liquid fertilizers.¹⁹ He failed to present evidence that he observed the necessary precautions to determine the qualifications of Hexaphil, and to verify whether there were other suitable substitutes in the market.²⁰

Suffice it to say, Paita failed to perform his duty as a member of the PBAC, which led to the consummation of a contract that was disadvantageous to the province of Camarines Norte and its constituents. His questionable conduct tainted the image and integrity of his office which made him also liable for conduct prejudicial to the best interest of the service.²¹

Thus, the Court of Appeals in its assailed Decision, affirmed the ruling of the Ombudsman. The dispositive portion of the Decision states:

WHEREFORE, the petition for review is **DENIED**.

Let a copy of this Decision be furnished the Secretary of Interior and Local Government and the Executive Director of the Government Procurement Policy Board.

SO ORDERED.²²

¹⁴ *Id.*
¹⁵ *Id.* at 29.
¹⁶ *Id.*
¹⁷ *Id.* at 26.
¹⁸ *Id.* at 26-40.
¹⁹ *Id.* at 33-35.
²⁰ *Id.* at 35.
²¹ *Id.* at 36.
²² *Id.* at 39.

Dissatisfied, Paita filed a motion for reconsideration, but the Court of Appeals denied the same in its Resolution dated October 11, 2017.²³

Unyielding, petitioner Paita elevated the case before this Court and raised the following assignment of errors: ²⁴

I.

WHETHER THE HONORABLE COURT OF APPEALS ERRED WHEN IT DID NOT DISMISS THE COMPLAINT AGAINST PETITIONER DESPITE THE VIOLATION OF HIS CONSTITUTIONAL RIGHT TO SPEEDY DISPOSITION OF CASES

II.

WHETHER THE HONORABLE COURT OF APPEALS ERRED WHEN IT AFFIRMED THE RULING OF THE OMBUDSMAN WHICH HELD PETITIONER GUILTY OF GRAVE MISCONDUCT

III.

WHETHER THE HONORABLE COURT OF APPEALS ERRED WHEN IT AFFIRMED THE RULING OF THE OMBUDSMAN WHICH ADJUDGED PETITIONER LIABLE FOR CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE

IV.

WHETHER THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO CONSIDER THE UNBLEMISHED LENGTH OF PUBLIC SERVICE OF PETITIONER AS A MITIGATING CIRCUMSTANCE

Preliminarily, Paita asserted that the Ombudsman took more than seven years to investigate, since the incident transpired in April 2004, but it was only concluded when the Ombudsman issued its Order on May 20, 2011.²⁵ When the investigation terminated in 2011, the Ombudsman took more than two years to resolve the case, thus the said office took a total of more than

²³ *Id.* at 65.

²⁴ *Id.* at 8.

²⁵ *Id.* at 9.

nine years to decide on the complaint against him.²⁶

With respect to the finding of Grave Misconduct, Paita claims that he signed the questioned Resolution in good faith.²⁷ Paita, a provincial engineer, admitted that he relied on the recommendation of the Technical Working Group and the attestation of the Provincial Agriculturist and General Service Officer that there was no available substitute for Hexaplus fertilizers since they had the expertise on these concerns.²⁸ He also pointed out that the BAC Chairperson, a lawyer and a retired judge, also approved the Resolution.²⁹

On his liability for Conduct Grossly Prejudicial to the Best Interest of the Service, Paita contends that his acts conformed with accepted practice.³⁰ There was no detriment since the fertilizers were distributed to the beneficiaries.³¹ In addition, Paita argues that his unblemished record in government service which spanned for 35 years should be considered a mitigating circumstance.³²

In refutation of these contentions, the Office of the Solicitor General (OSG) filed its Comment³³ and stressed that while the investigation took some time to complete, the delay was not unreasonable or arbitrary considering that when the fertilizer scam issue broke out in 2004, more than 140 lawmakers were involved and investigated.³⁴ Moreover, Paita failed to raise the same at the start of the proceedings.³⁵

As regards the finding of Grave Misconduct and Conduct Grossly Prejudicial to the Best Interest of the Service, the OSG contends that Paita patently disregarded the rules on government procurement under Republic Act (R.A.) No. 9184.³⁶ By signing the questioned Resolution, he allowed resort to direct contracting without the benefit of competitive public bidding for the procurement of liquid fertilizers.³⁷ While the law under certain circumstances allows direct contracting, none of the conditions precedent were met when Paita, as PBAC member, allowed such alternative mode of procurement.³⁸

²⁶ *Id.*

²⁷ *Id.* at 14.

²⁸ *Id.* at 10.

²⁹ *Id.*

³⁰ *Id.* at 16.

³¹ *Id.*

³² *Id.* at 17.

³³ *Id.* at 78-101.

³⁴ *Id.* at 85.

³⁵ *Id.*

³⁶ *Id.* Entitled "Government Procurement Act" or An Act Providing the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for other Purposes.

³⁷ *Id.*

³⁸ *Id.* at 90.

Furthermore, Administrative Order No. 270 (*A.O. No. 270*), the implementing rules and regulations of the Local Government Code, also require that generally, procurements should be made through competitive public bidding.³⁹ By way of an exception, procurements without bidding shall be allowed under the condition that there must be a personal canvass of at least three responsible suppliers, which must not exceed the amount allowable by A.O. No. 270.⁴⁰ Assuming that Paita had no technical knowledge on the transaction, it did not excuse him from compliance with the requirement of personal canvass.⁴¹

On Paita's length of service, the OSG asseverates that it cannot be considered as a mitigating circumstance because he was found liable for a grave offense, which is punishable by dismissal from the service.⁴²

Paita also submitted a Reply to Comment of the Solicitor General,⁴³ which reiterated the main points he raised in his petition.

Issue

Essentially, the issues presented in this case are: 1) whether Paita's constitutional right to a speedy disposition of his cases was violated; 2) whether the Court of Appeals erred when it affirmed Paita's culpability for grave misconduct and conduct prejudicial to the best interest of the service; and 3) whether Paita's unblemished length of public service can be considered a mitigating circumstance in his favor.

This Court's Ruling

The petition is **partly** meritorious.

- I. *There was no violation of Paita's right to a speedy disposition of his case*

The right to speedy disposition of cases is enshrined under Article III, Sec. 16 of the present Constitution.⁴⁴ It states:

³⁹ *Id.* at 91.

⁴⁰ *Id.* at 92.

⁴¹ *Id.*

⁴² *Id.* at 97.

⁴³ *Id.* at 112-124.

⁴⁴ *Perez v. Office of the Ombudsman*, G.R. Nos. 225568-79, February 15, 2022 [Per C.J. Gesmundo, First Division].

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Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

The fundamental law expressly provides that “the constitutional right to a ‘speedy disposition of cases’ is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings.”⁴⁵

Verily, the right to a speedy disposition of a case is inextricably linked to a person’s constitutional right to due process.⁴⁶ “The protection of a person’s constitutional right to procedural due process warrants the State’s obligation to conform to the prescribed periods under our laws and rules.”⁴⁷

It bears to stress that even if the Constitution guarantees the right to speedy disposition of cases, it remains a flexible concept.⁴⁸ In *Ombudsman v. Jurado* (*Jurado*), this Court underscored that since the constitutional right to a speedy disposition of cases is relative, “[a] mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case.”⁴⁹ It is a balancing test because “[c]ourts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case.”⁵⁰

Just like the right to speedy trial, the right to a speedy disposition of a case is deemed violated only when the delays are unreasonable, arbitrary and oppressive.⁵¹ It is “inordinate delay in the resolution and termination of a preliminary investigation [that] will result in the dismissal of the case against the accused,”⁵² because in this instance, the accused’s constitutional rights to due process and speedy disposition of cases will be impaired. In *Palacpac v. Sandiganbayan*,⁵³ this Court enumerated four factors which must be considered to determine whether a person’s right to a speedy disposition of his or her case has been violated: (a) length of delay; (b) the reason for the delay; (c) the defendant’s assertion of his or her right; and (d) prejudice to the defendant.

⁴⁵ *Ombudsman v. Jurado*, 583 Phil. 132, 145 (2008) [Per J. R.Reyes, Third Division].

⁴⁶ *Perez v. Office of the Ombudsman*, *supra* note 44.

⁴⁷ *Id.*

⁴⁸ *Ombudsman v. Jurado*, *supra* note 45.

⁴⁹ *Id.* at 138.

⁵⁰ *Palacpac v. Sandiganbayan*, G.R. No. 249243 (Resolution), November 10, 2021. [Per J. Inting, Second Division]

⁵¹ *Ombudsman v. Jurado*, *supra* note 45.

⁵² *Palacpac v. Sandiganbayan*, *supra* note 50.

⁵³ *Id.*

At this juncture, this Court underscores the doctrine laid down in *Cagang v. Sandiganbayan, Fifth Division*,⁵⁴ where it clarified that in cases before the Office of the Ombudsman where the party invoked his or her right to a speedy disposition of cases, “the fact-finding investigation is not deemed included in the preliminary investigation for the purpose of determining the existence of inordinate delay, because the investigations are not yet adversarial proceedings against the accused.”⁵⁵ In *Cagang*, this Court elucidated in this wise:

When an anonymous complaint is filed or the Office of the Ombudsman conducts a *motu proprio* fact-finding investigation, the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a formal complaint. At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused.

This period for case build-up cannot likewise be used by the Office of the Ombudsman as unbridled license to delay proceedings. If its investigation takes too long, it can result in the extinction of criminal liability through the prescription of the offense.

Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated.⁵⁶

In *Cagang*, this Court abandoned the old rule in *People v. Sandiganbayan, Fifth Division*,⁵⁷ that included fact-finding investigations in the period for purposes of determining inordinate delay. In other words, to determine the presence of inordinate delay, “a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation.”⁵⁸ Therefore, as it stands, the time spent on fact-finding investigations is excluded.

Further to this point, in *Cagang*, this Court shed light on the framework of analysis in situations where the right to a speedy disposition of cases or the right to a speedy trial is invoked:

First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is

⁵⁴ 837 Phil. 815 (2018) [Per J. Leonen, *En Banc*].

⁵⁵ *Id.* at 868.

⁵⁶ *Id.* at 867-868.

⁵⁷ 723 Phil. 444 (2013) [Per J. Bersamin, First Division].

⁵⁸ *Cagang v. Sandiganbayan, Fifth Division, supra* note 54.

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important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

Third, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove first, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and second, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove first, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; second, that the complexity of the issues and the volume of evidence made the delay inevitable; and third, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they

are deemed to have waived their right to speedy disposition of cases.⁵⁹
(Citations omitted)

Cagang was reiterated in the recent case of *Republic v. Sandiganbayan (Special Second Division)*,⁶⁰ where this Court emphasized that with respect to the cases before the Office of the Ombudsman, neither the Constitution nor R.A. No. 6770 or the Ombudsman Act of 1989 provided for a specific period to be observed in terms of disposition of the pending cases. Nevertheless, the Constitution mandates for the Ombudsman to act “promptly” on these cases. Acting promptly means that “the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case.”⁶¹

Guided by these pronouncements, Paita’s contention that the Ombudsman took more than nine years to resolve the administrative complaint against him is completely erroneous. While he was investigated for his participation in the promulgation of BAC Resolution No. 2004-01 on April 16, 2004, the formal complaint against him was only filed on May 2, 2011.⁶² Following *Cagang*, this *interim* fact-finding period is not included in the preliminary investigation for purposes of computing inordinate delay, since it is not an adversarial proceeding against him. Notably, the Ombudsman was able to resolve the administrative complaint when it rendered its Decision on November 12, 2013.⁶³ Thus, contrary to Paita’s claim, the Ombudsman took only two years, more or less, to rule on his administrative liability.

As for the two-year period that it took the Ombudsman to decide on the administrative complaint, it explained that the time frame was not unreasonable considering that when the fertilizer scam issue broke out in 2004, more than 140 lawmakers were involved and investigated.⁶⁴ Thus, the complexity lies in the number of individuals involved, which entailed a review of voluminous records.

In this regard, *Cagang* stresses that the burden rests on the defense to prove two things: “*first*, that the case took much longer than was reasonably necessary to resolve, and *second*, that efforts were exerted to protect their constitutional rights.”⁶⁵

⁵⁹ *Id.* at 880-882. Citations omitted.

⁶⁰ G.R. No. 231144, February 19, 2020 [Per J. Leonen, Third Division].

⁶¹ *Cagang v. Sandiganbayan, Fifth Division, supra* note 54 at 880.

⁶² *Rollo*, p. 28.

⁶³ *Id.* at 29.

⁶⁴ *Id.* at 85.

⁶⁵ *Cagang v. Sandiganbayan, Fifth Division, supra* note 54 at 868.

Unfortunately, Paita failed to discharge this burden. A painstaking review of the records reveals that he did not endeavor to explain why the two-year period it took the Ombudsman to resolve the case against him was considered arbitrary, vexatious, and oppressive. In fact, his defense was anchored on the mistaken assumption that the Ombudsman took more than nine years to rule on his administrative liability. Moreover, it also appears from the records that this is the first time that he has raised the issue on the alleged violation of his constitutional right to a speedy disposition of his cases. Withal, the proceedings before the Court of Appeals are silent with respect to this issue, from which this Court can infer that he only raised the same for the first time on appeal before this Court.

On this score, jurisprudence⁶⁶ holds that “[f]ailure to timely raise the alleged violation of [the] right operates against the defendant because sleeping on the right indicates his or her acquiescence to the delay.”

It behooves this Court to ponder why Paita failed to invoke his right the moment he claims to have already suffered the consequences of the alleged delay. Certainly, “[t]he invocation of the constitutional right does not require a threat to the right to liberty. Loss of employment or compensation may already be considered as sufficient to invoke the right.”⁶⁷ Consequently, his belated assertion of his right also undoubtedly undermined his claim that he was prejudiced.

Furthermore, while this Court is cognizant that every type of prosecution may cause “financial drain, restrained freedom of movement, public ridicule, embarrassment, anguish, sleepless nights, restless moments, and isolation from friends and other people[,]”⁶⁸ which are indeed burdensome to the accused, the same “must be shown that they are of the nature and degree that it becomes oppressive, unnecessary[,] and notoriously disproportionate to merit the case’s dismissal.”⁶⁹ Lamentably, Paita also miserably failed in this undertaking.

All told, this Court finds that the two-year period it took the Ombudsman to resolve the administrative complaint against Paita was not attended by inordinate delay. Accordingly, he was not deprived of his constitutional right to a speedy disposition of his case.

⁶⁶ *Republic v. Sandiganbayan (Special Second Division)*, *supra* note 60.

⁶⁷ *Cagang v. Sandiganbayan, Fifth Division*, *supra* note 54 at 872.

⁶⁸ *Republic v. Sandiganbayan (Special Second Division)*, *supra* note 60.

⁶⁹ *Id.*

II. *Paita is liable for Simple Misconduct*

R.A. No. 9184 governs the rules with respect to all government procurement.⁷⁰ The law aims to ensure transparency, competitiveness, efficiency and accountability in the procurement process.⁷¹ To eliminate any suspicion of favoritism or partiality in the execution of public contracts⁷² “as a general rule, the law requires that all government procurement must undergo competitive bidding.”⁷³ However, resort to alternative methods of procurement, such as direct contracting, is allowed subject to certain conditions.⁷⁴ Nonetheless, in any of these alternative methods, the procuring entity must ensure that “it secures the most advantageous price for the government.”⁷⁵

Here, the Province of Camarines Norte, upon recommendation of its PBAC, resorted to direct contracting with Hexaphil for the procurement of its liquid fertilizers.⁷⁶

In direct contracting, otherwise known as single source procurement, “the supplier is simply asked to submit a price quotation or a *pro-forma* invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations.”⁷⁷ Direct contracting may be resorted to only in any of the following conditions:

- a) Procurement of Goods of proprietary nature, which can be obtained only from the proprietary source, *i.e.* when patents, trade secrets and copyrights prohibit others from manufacturing the same item;
- b) When the Procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of this contract; or,
- c) Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.⁷⁸

To ascertain these conditions, the BAC must observe the following process:

⁷⁰ *Aragones v. Department of Social Welfare and Development*, G.R. No. 227113, November 9, 2020 [Notice, Second Division].

⁷¹ *Id.*

⁷² *Bishop Pabillo, DD, et al. v. COMELEC, et al.*, 758 Phil. 806 (2015) [Per J. Perlas-Bernabe, *En Banc*].

⁷³ *Aragones v. Department of Social Welfare and Development, supra.*

⁷⁴ *Office of the Ombudsman v. De Guzman*, 819 Phil. 282, 298 (2017) [Per J. Leonen, Third Division].

⁷⁵ *Id.*

⁷⁶ *Rollo*, p. 27.

⁷⁷ *Pabillo v. COMELEC, supra* at 844.

⁷⁸ *Id.* at 844-845.

How can Direct Contracting be justified?

To justify the need to procure through the Direct Contracting method, the BAC should conduct a survey of the industry and determine the supply source. This survey should confirm the exclusivity of the source of goods or services to be procured. In all cases where Direct Contracting is contemplated, the survey must be conducted prior to the commencement of the procurement process. Moreover, the Procuring Entity must justify the necessity for an item that may only be procured through Direct Contracting, and it must be able to prove that there is no suitable substitute in the market that can be obtained at more advantageous terms.⁷⁹

Significantly, the requirement to conduct initial industry survey is also reflected in Section 366 in relation to Section 367 of the Local Government Code (LGC), which requires the personal canvass of suppliers when the procurement of supplies by local government units were made without the benefit of public bidding. In such instance, the law mandates the Local Government Units to observe the following parameters:

Section 367. Procurement through Personal Canvass. - Upon approval by the Committee on Awards, procurement of supplies may be effected after personal canvass of at least three (3) responsible suppliers in the locality by a committee of three (3) composed of the local services officer or the municipal or barangay treasurer, as the case may be, the local accountant, and the head of office or department for whose use the supplies are being procured. The award shall be decided by the Committee on Awards.

Purchases under this Section shall not exceed the amounts specified hereunder for all items in any one (1) month for each local government unit:

Provinces and Cities and Municipalities within the Metropolitan Manila Area:

First and Second Class - One hundred fifty thousand pesos (PHP 150,000.00)

Third and Fourth Class - One hundred thousand pesos (PHP 100,000.00)

Fifth and Sixth Class - Fifty thousand pesos (PHP 50,000.00)

Municipalities:

First Class - Sixty thousand pesos (PHP 60,000.00)

Second and Third Class - Forty thousand pesos (PHP 40,000.00)

Fourth Class and Below - Twenty thousand pesos (PHP 20,000.00)

Under R.A. No. 9184, the BAC is primarily responsible “to determine the eligibility and qualifications of a prospective bidder.”⁸⁰ Significantly,

⁷⁹ *Id.* at 855.

⁸⁰ *Ubalde v. Morales*, G.R. No. 216771, March 28, 2022 [Per J. J. Lopez, Third Division].

“this obligation holds true even if a procuring entity is justified to resort to alternative modes of procurement.”⁸¹ Under the circumstances, it is still the BAC’s responsibility to ensure that the procuring entity complies with the standards set forth by law and its implementing rules.⁸²

At this juncture, it is undisputed that the purchase of liquid fertilizers from Hexaphil did not undergo public bidding. Thus, Paita’s defense is hinged entirely on whether the conditions for the resort to direct contracting were met. “It is incumbent upon a party who invokes coverage under the exception to a general rule to prove the fulfillment of the requisites thereof.”⁸³ Viewed in this light, Paita failed to demonstrate why there was a need to avail of direct contracting to purchase the liquid fertilizers, as the records are bereft of basis to establish whether an initial industry survey or a personal canvass was made to ensure that “the local government would spend the lowest possible price for such purchase.”⁸⁴

Failure to observe the proper procedure on government procurement is considered a misconduct because it is “a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.”⁸⁵ The misconduct is grave “if it involves any of the additional elements of corruption, such as willful intent to violate the law or to disregard established rules, which must be established by substantial evidence.”⁸⁶

As an element of grave misconduct, jurisprudence⁸⁷ defines corruption as an “act of an official or fiduciary person who unlawfully and wrongfully uses his or her station or character to procure some benefit for himself or herself or for another person, contrary to duty and the rights of others.”⁸⁸ Accordingly, “**grave misconduct is not mere failure to comply with the law.** Failure to comply must be deliberate and must be done in order to secure benefits for the offender or for some other person.”⁸⁹ At the very least, the transgression must be tainted with bad faith which “connotes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.”⁹⁰

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Cabrera v. Hon. Marcelo*, 487 Phil. 427, 444 (2004) [Per J. Tinga, Second Division].

⁸⁴ *Id.* at 443.

⁸⁵ *Yamson, et al. v. Castro, et al.*, 790 Phil. 667, 704 (2016) [Per J. Reyes, Third Division].

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Office of the Ombudsman v. De Guzman*, supra note 74 at 305. Emphasis supplied.

⁹⁰ *Yamson v. Castro*, supra.

Consequently, “[a] person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave.”⁹¹

Applying these principles to the present case, this Court finds that none of the elements of grave misconduct were adequately proven.

Indeed, while there was a transgression of the established rules on public bidding, there was no evidence on record that Paita schemed or colluded with the other PBAC members to favor Hexaphil. Moreover, there was no evidence to establish that Paita benefitted from the lack of public bidding in the procurement of liquid fertilizers from the said supplier. To stress, “there must be evidence, independent from this transgression, which would show that [the offender] or some other person on his or her behalf benefitted from the x x x contract.”⁹²

Similarly, in *Office of the Ombudsman v. Miedes, Sr.*,⁹³ the respondents therein were BAC members who purchased 19 cellphones without public bidding and from an authorized distributor, and not from its manufacturer or exclusive distributor, which violated pertinent rules on auditing and procurement. As BAC members, the respondents were presumed to know all existing policies and guidelines in carrying out such purchase. The respondents therein were only held liable for simple misconduct because there was no substantial evidence to establish that they approved such purchase with a corrupt intention or a clear willful intention amounting to an open defiance or a flagrant disregard of the rules.

Considering that none of the qualifying elements were established, Paita cannot be held accountable for grave misconduct. Nonetheless, he can be held liable for simple misconduct since he should have exercised all the necessary prudence to ensure compliance with the proper procedure in the purchase of the said liquid fertilizers.

III. *Paita is guilty of conduct prejudicial to the best interest of the service*

At the outset, it bears to stress that a public office is a public trust. “As such, public officers must, at all times, be accountable to the people, serve

⁹¹ *Dator v. Carpio-Morales*, G.R. No. 237742, October 8, 2018, 882 SCRA 431, 469 [Per J. Tijam, First Division].

⁹² *Grageda v. Fact-Finding Investigation Bureau*, G.R. Nos. 244042, 244043 & 243644, March 18, 2021 [Per J. Carandang, First Division]. (Citations omitted)

⁹³ 570 Phil. 464 (2008) [Per J. Austria-Martinez, *En Banc*], as cited in *Domingo v. Civil Service Commission*, G.R. No. 236050, June 17, 2020. [Per J. Lazaro-Javier, First Division]

them with utmost responsibility, integrity, loyalty and efficiency.”⁹⁴ To ensure public accountability, the law punishes acts which are prejudicial to the best interest of the service. To determine whether a conduct is prejudicial to the best interest of the service, “the only question is whether the public officer's acts tarnished the image or integrity of the public office.”⁹⁵ In addition, “conduct grossly prejudicial to the best interest of the service may or may not be characterized by corruption or a willful intent to violate the law or to disregard established rules.”⁹⁶

Here, Paita, as member of the PBAC, was in a position to inquire into the regularity of the process which attended the procurement of the liquid fertilizers. However, it does not appear that he raised objections on the lack of personal canvass or initial survey of suppliers, which he should have done had he exercised the due diligence expected of him. His lackadaisical stance endangered government coffers and undoubtedly tarnished the image and integrity of public office. Hence, he is guilty of conduct prejudicial to the best interest of the service.

IV. *Paita is liable to pay a fine equivalent to one year of his salary deductible from his retirement benefits*

Foregoing considered, We find Paita liable for Simple Misconduct and Conduct Prejudicial to the Best Interest of the Service. It is well to note that the Ombudsman did not refute Paita's claim that this is the first time where he had been adjudged administratively liable.

Simple misconduct is classified as a less grave offense punishable by suspension for a period of one month and one day to six months for the first offense.⁹⁷ On the other hand, conduct prejudicial to the best interest of the service is classified as a grave offense with a corresponding penalty of suspension for six months and one day to one year for the first offense.⁹⁸

Pursuant to Uniform Rules on Administrative Cases in the Civil Service (*URACCS*), if the offender is found guilty of two or more charges, the penalty for the most serious charge shall be imposed and the other charges shall be considered as aggravating circumstances.⁹⁹ In

⁹⁴ *Office of the Ombudsman v. Borja*, 772 Phil. 470, 482 (2015) [Per J. Perlas-Bernabe, First Division].

⁹⁵ *Id.*

⁹⁶ *Office of the Ombudsman – Visayas, et al. v. Castro*, 759 Phil. 68, 79 (2015) [Per J. Brion, Second Division].

⁹⁷ *Office of the Ombudsman v. Millado*, G.R. No. 221506, June 16, 2021 [Notice, First Division].

⁹⁸ *Office of the Ombudsman – Visayas v. Castro, supra* at 81.

⁹⁹ *Id.*

addition, the same Rules also provide that the maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present,¹⁰⁰ as in this case. While Paita invoked his length of service as a mitigating circumstance, this Court cannot consider the same since he failed to attach his service record or any document that would prove such circumstance.

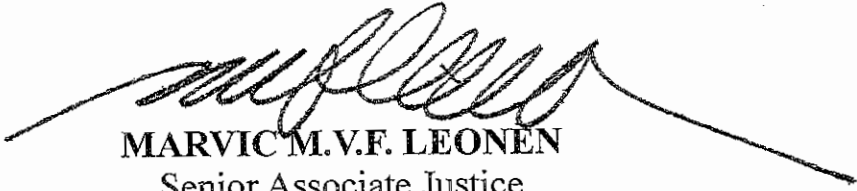
With Paita's commission of Simple Misconduct appreciated as an aggravating circumstance to his penalty for Conduct Prejudicial to the Best Interest of the Service, he is sentenced to suffer suspension for one year. However, the records¹⁰¹ show that he has already retired from service, thus we can no longer impose upon him the penalty of suspension from service. In lieu thereof, this Court imposes a fine equivalent to his one year salary, which may be deducted from his retirement benefits.¹⁰²

ACCORDINGLY, the Petition is **PARTIALLY GRANTED**. The Decision dated May 31, 2017 and Resolution dated October 11, 2017 of the Court of Appeals in CA-G.R. SP No. 138817 are **AFFIRMED** with the **MODIFICATION** that petitioner Cesar C. Paita is **GUILTY** of Simple Misconduct and Conduct Prejudicial to the Best Interest of the Service. Accordingly, he is sentenced to suffer suspension for a period of one (1) year. In view of his retirement from the service, his suspension shall be converted to a **FINE** equivalent to his one (1) year salary, which may be deducted from his retirement benefits.

SO ORDERED.


JHOSEPY LOPEZ
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

¹⁰⁰

Id.


¹⁰¹

Rollo, p. 24.

¹⁰²

Chen v. Field Investigation Bureau, G.R. No. 247916, April 19, 2022 [Per J. Inting, First Division].

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AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

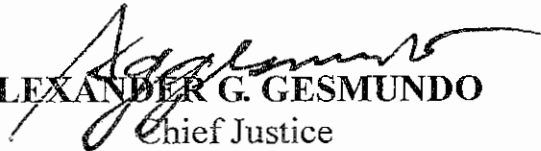
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 14, 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