



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

**ROGELIM A. CABRALES and
 NOE CABRIDO GOZALO,**
Petitioners,

G.R. No. 254125

Present:

- versus -

CAGUIOA,* J.,
 INTING,**
Acting Chairperson,
 GAERLAN,
 DIMAAMPAO, and
 SINGH, JJ.

**THE OMBUDSMAN, NAHUM E.
 DOSDOS, PASCUAL R. PONGASE
 II, and RAUL P. LLAGAS,****
Respondents.

Promulgated:
October 12, 2022

X-----*Mis-DC-Bath*-----X

DECISION

GAERLAN, J.:

Before the Court is a Rule 45 petition for review of the August 30, 2019 Decision¹ and the August 10, 2020 Resolution² of the Court of Appeals (CA) in CA-G.R. SP No. 08750-MIN, which affirmed on review, under Rule 43 of the Rules of Court, the September 20, 2017 Decision³ of the Office of the Ombudsman (OMB) in OMB-M-A-16-0262.

* On official leave.

** Designated as Acting Chairperson per Special Order No. 2918-Revised dated October 12, 2022.

*** The Court of Appeals is impleaded in the petition but is hereby dropped as a party-respondent pursuant to Rule 45, Section 4, of the Rules of Court.

¹ *Rollo*, pp. 32-49. Penned by Associate Justice Loida S. Posadas-Kahulugan with Associate Justices Edgardo T. Lloren and Angelene Mary W. Quimpo-Sale, concurring.

² Id. at 27-31.

³ Id at 70-79. Signed by Graft Investigation and Prosecution Officer II Modesto F. Onia, Jr. and approved by Deputy Ombudsman-Mindanao Rodolfo M. Elman and Ombudsman Conchita Carpio Morales.

5

Sometime between November 2010 and May 2011, the Municipality of Tukuran, Zamboanga del Sur (the Municipality), conducted a procurement process for a motor grader.⁴ The purchase request, signed by then Mayor Francisvic S. Villamero (Villamero), specified one unit of *Chenggong* MG1320C Motor Grader.⁵ The records show that two (2) entities participated in the bidding: Eagle Equipment Company, Inc. (Eagle) and Ivan Carr Industrial Supply and Construction Inc. (Ivan Carr).⁶ It further appears that Ivan Carr's bid was calculated by the Municipal Bids and Awards Committee (BAC) as the Lowest Calculated and Responsive Bid; and said bid cleared the post-qualification phase.⁷ Accordingly, the BAC recommended the award of the procurement to Ivan Carr; and the Municipality proceeded to buy the motor grader from Ivan Carr for the price of ₱9,450,000.00.⁸

Claiming that the transaction was attended by irregularities, private respondents Nahum E. Dosdos, Pascual R. Pongase II, and Raul P. Llagas, filed a complaint⁹ with the National Bureau of Investigation (NBI) against the following officials of the Municipality: Villamero, Municipal Budget Officer/Bids and Awards Committee (BAC) Chairperson Roberto M. Sayson, Municipal Engineer/BAC Vice Chairperson Loreto L. Peñaranda, Municipal Planning and Development Coordinator/BAC Member Rogelim A. Cabrales (Cabrales), Municipal Assessor/BAC Member Wilfredo B. David, Sangguniang Bayan Member/Alternate BAC Chairperson Noe C. Gozalo (Gozalo), Administrative Aide II/Alternate BAC Member Ricardo T. Solis, Civil Defense Officer III/Alternate BAC Member Jovito S. Ondiano, and Administrative Aide III/Technical Working Group Member Roger G. Tabuada.¹⁰

The NBI investigation found that the motor grader was overpriced, and that the aforementioned public officers rigged the bidding process therefor. Villamero allegedly earned ₱1,500,000.00 from the rigged bidding, which he offered to share with the Sangguniang Bayan members.¹¹ The NBI further found the following irregularities in the procurement of the motor grader: 1) Villamero specified the brand *Chenggong* in the Purchase Request; 2) the Municipality could not have possibly posted the Invitation to Bid (ITB) and other pertinent bidding documents in the Philippine Government Electronic Procurement System (PhilGEPS) website because it was not registered therewith; 3) one of the bidders, Eagle, is not registered with the Securities and Exchange Commission (SEC); 4) the winning bidder, Ivan Carr, uses a residential house as its business address; and 5) the President/Chief Executive

⁴ Id. at 72. and 147.

⁵ Id. at 72.

⁶ Id.

⁷ Id. at 73.

⁸ Id.

⁹ Id. at 113, 116-119.

¹⁰ Id. at 70-71.

¹¹ Id. at 117.

Officer of Ivan Carr is an agent of the other bidder, Eagle.¹² On June 22, 2016, the NBI referred the findings of its investigation to the OMB. The administrative aspect of the case was docketed as OMB-M-A-16-0262, and the involved municipal officials were ordered to submit counter-affidavits.¹³

The OMB Ruling

The OMB found Cabrales and Gozalo, among others, guilty of grave misconduct. They were ordered dismissed from government service, with the accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits, and perpetual disqualification from government service.¹⁴ The OMB also found probable cause to charge Cabrales, Gozalo, and their co-respondents with violation of Section 3(e) of Republic Act No. 3019.¹⁵

The OMB found that the ITB for the grader procurement was not published in a newspaper of general nationwide circulation, as required by Section 21.2.1(a) of the 2009 Revised Implementing Rules and Regulations,¹⁶ Part A, of Republic Act No. 9184¹⁷ (2009 GPRA IRR): since the ITB was published in the Mindanao Gold Star Daily, which is a newspaper of regional circulation only. The OMB also sustained the NBI's finding that the ITB could not have been posted on the PhilGEPS website, since the finding that the Municipality was not registered with PhilGEPS was not disputed. It was also discovered that in the Municipality's Post-Qualification Evaluation Report, Ivan Carr was found to be a responsive bidder despite its failure to submit the following documents: (1) production/delivery schedule; (2) documents pertaining to after-sales service/parts; (3) commitment to extend a credit line or cash equivalent to 10% of the approved budget for the contract; and (4) documents pertaining to recurring and maintenance costs, as required by Section 34.3(b), Rule X in relation to Section 25.2(a)(iii), Rule VIII; Section 34.3(b)(iii), Rule X; and Section 34.3(c), Rule X of the 2009 GPRA IRR. Ivan Carr also failed to submit its PhilGEPS registration certificate and tax clearance, as required under the 2009 GPRA IRR. The specification of a brand name in the purchase request for the grader also violates Section 18 of the GPRA. Taken together, these irregularities betray the lack of transparency and competitiveness, such that they ensured that the contract would be awarded to Ivan Carr. Moreover, the BAC's failure to disqualify Ivan Carr despite its failure to submit the abovementioned requirements is contrary to the policy of

¹² Id. at 72.

¹³ Id. at 71-72.

¹⁴ Id. at 77.

¹⁵ Id. at 35.

¹⁶ GPPB Resolution No. 03-2009, effective September 2, 2009.

¹⁷ Also known as the Government Procurement Reform Act and hereinafter referred to as the GPRA. The 2009 GPRA IRR-A was issued on August 3, 2009.

equal opportunity bidding. However, the OMB rejected the allegation that the grader was overpriced, for lack of evidence.¹⁸

The CA Ruling

The CA dismissed Cabrales' and Gozalo's appeal and affirmed the OMB ruling. The appellate court limited the scope of its ruling to the administrative aspect, ruling that it had no jurisdiction to review orders or decisions of the OMB with respect to the criminal aspect of the latter's cases.¹⁹

The CA rejected Gozalo's invocation of the condonation doctrine, ruling that the doctrine only applies to administrative offenses committed by *elective* officials who were reelected during the pendency of the administrative proceedings. Since Gozalo was not serving as an elective official when he committed the offense, his subsequent election to the Sangguniang Bayan cannot operate as a "condonation."²⁰

The CA sustained the OMB's finding of grave misconduct. The CA found Cabrales and Gozalo guilty of the following violations in relation to the grader procurement: 1) specifying a brand name in the purchase request; 2) favoring Ivan Carr as a bidder despite failure to submit requisite eligibility and bid documents; 3) non-publication of the ITB in a newspaper of *nationwide* general circulation; and 4) conduct of the procurement despite the Municipality's non-registration with the PhilGEPS.²¹ The appellate court rejected petitioners' defense that they were mere alternate members of the BAC, finding that they attended meetings and proceedings of the committee and actively participated therein. In fact, Gozalo, who was alternate chairperson, even attended a meeting despite the presence of the principal chairperson, contrary to Subsection 11.2.4, Rule V of the 2009 GPRA IRR. Accordingly, there is no doubt that petitioners participated in the BAC proceedings which ensured the approval of the grader procurement despite the irregularities attendant thereto.²² In view of the violations committed during the procurement process, petitioners are guilty of grave misconduct.²³

Arguments in the Present Petition

Petitioners argue that they cannot be held liable for grave misconduct because: 1) the ITB was actually published in a newspaper of general

¹⁸ Id. at 74-77.

¹⁹ Id. at 42-46.

²⁰ Id. at 46-47.

²¹ Id. at 47-48.

²² Id. at 48.

²³ Id.

circulation;²⁴ 2) the requirement of PhilGEPS registration was mooted by the fact that both the municipal government and the town of Tukuran itself lacked stable internet connection at the time of the grader procurement;²⁵ 3) in a related case, two other members of the BAC were found guilty of simple misconduct only;²⁶ 4) Gozalo never became the regular chairman of the BAC;²⁷ 5) Cabrales actually voted to award the grader procurement to the other bidder, Eagle, thus, he cannot be held liable for the award of the procurement to Ivan Carr;²⁸ and 6) Gozalo should benefit from the condonation doctrine because he was subsequently elected municipal councilor in the 2013 and 2016 elections.²⁹

The OMB argues that the petition raises questions of fact which are outside the scope of a Rule 45 review. It asks the Court to give its findings great weight and respect bordering on conclusiveness and, perforce, to deny the petition outright.³⁰ At any rate, the anti-graft agency argues that: 1) Gozalo cannot invoke condonation because he was not an elective official when he participated in the grader procurement;³¹ 2) the finding of grave misconduct is supported by the evidence which show that the BAC approved the grader procurement despite the glaring irregularities;³² 3) the record refutes petitioners' claim that they acted as mere observers during the BAC proceedings;³³ 4) the Mindanao Gold Star Daily, where the ITB was published, is not a newspaper of *nationwide* general circulation, based on the information provided on its website;³⁴ 5) jurisprudence holds that BAC members who participate in a bidding conducted without publication and favoring a specific contractor are liable for grave misconduct, as the involvement of BAC members is not merely ceremonial;³⁵ and 6) mitigating circumstances cannot be considered in the imposition of the penalty for grave misconduct.³⁶

The Court's Ruling

The grader procurement in question violated procurement regulations.

As mentioned earlier, the OMB and the CA both found the grader procurement highly irregular. The OMB correctly points out that its findings

²⁴ Id. at 15.
²⁵ Id.
²⁶ Id. at 16.
²⁷ Id. at 17-18.
²⁸ Id. at 19.
²⁹ Id. at 20.
³⁰ Id. at 190-191.
³¹ Id. at 192-193.
³² Id. at 193-198.
³³ Id. at 195.
³⁴ Id. at 195-196.
³⁵ Id. at 196-197.
³⁶ Id. at 198-200.

4

are entitled to great weight and respect, moreso when they are affirmed by a higher court on appeal.³⁷ Moreover, petitioners do not even question the findings of the OMB with respect to the irregularities. Accordingly, it is already beyond cavil that the Tukuran BAC allowed the grader procurement to proceed despite the fact that the Purchase Request for the grader was inherently defective for specifying a particular brand of the item to be procured, and despite the winning bidder's failure to submit pertinent documents required by the 2009 GPRA IRR, among other irregularities. Having essentially admitted that the grader procurement was irregular, petitioners use two approaches: 1) providing justifications for the irregularities; and 2) pointing to circumstances which, they argue, release them from any liability in connection therewith.

On the first approach, we find that petitioners' justifications as regards the publication of the ITB and the conduct of the bidding without registration of the Municipality with the PhilGEPS hold no water.

Under Section 8.3.1., Rule II of the 2009 GPRA IRR, all procuring entities are mandated to register with the PhilGEPS and use the same for their procurement operations:

8.3.1. All procuring entities are mandated to fully use the PhilGEPS in accordance with the policies, rules, regulations and procedures adopted by the GPPB and embodied in this IRR. In this connection, all procuring entities shall register with the PhilGEPS and shall undertake measures to ensure their access to an on-line network to facilitate the open, speedy and efficient on-line transmission, conveyance and use of electronic data messages or electronic documents. The PS-DBM shall assist procuring entities to ensure their on-line connectivity and help in training their personnel responsible for the operation of the PhilGEPS from their terminals.

The provision clearly anticipated petitioners' excuse, and has therefore imposed on all procuring entities the *duty and responsibility* to obtain internet access, that they may register with PhilGEPS and use it in accordance with the GPRA and its IRR. Consequently, the lack of a stable internet connection cannot be used as justification for noncompliance with the clear mandate of the regulations, absent any proof that it was prohibitively difficult or impossible for the Municipality to obtain a stable internet connection, or that it sought the assistance of the Procurement Service – Department of Budget and Management in doing so.

On the issue of publication of the ITB in a newspaper of general nationwide circulation, we are more inclined to agree with the OMB. A

³⁷ *Saligumba v. Commission on Audit XIII*, G.R. No. 238643, September 8, 2020; see also *Yabut v. Office of the Ombudsman*, 303 Phil. 319 (1994).

J

newspaper of general circulation is defined as a newspaper that is published for the dissemination of local news and general information, which has a *bona fide* subscription list of paying subscribers, is published at regular intervals, and is available to the public in general.³⁸ Thus, a newspaper of “ nationwide general circulation” must satisfy these conditions with respect to the Philippines as a whole. Here, apart from the fact that they have not submitted a copy of the purported certification issued by the publisher of the *Mindanao Gold Star Daily*, petitioners likewise admit that the circulation of said paper outside Mindanao was limited to its Cebu and Manila offices for advertising purposes only.³⁹ We likewise sustain the OMB’s contention that the paper’s self-description of its circulation as posted in its official website is more persuasive. The “About Us” section of the *Mindanao Gold Star Daily* website states in part:

STRENGTH. The Mindanao Gold Star Daily is the only daily community newspaper that has a wide distribution network in the island of Mindanao. It has dozens of columnists and 80 bureau offices manned by highly competent correspondents and The Mindanao Gold Star Daily is strategically networked in 24 provinces and 20 cities throughout Mindanao.

CIRCULATION PROFILE. Mindanao Gold Star Daily has 60,600 circulation production daily which sales is relied not much on the street sales but on the subscription of its readers being delivered directly by corresponding bureaus and agencies assigned in strategic places in Mindanao. Mindanao Gold Star Daily rallies the following points in its editorial policy.

CROSSING BORDERS. The Mindanao Gold Star Daily has also trained its focus in the Internet. With its social media platforms, it aims to reach a wider audience across the globe. x x x.⁴⁰

Clearly, the *Mindanao Gold Star Daily* is a *community* newspaper which serves the Mindanao market, although it prints copies for its Manila and Cebu offices for purposes of attracting advertisers. While it has an internet presence which indicates that its news items can be accessed outside Mindanao, petitioners did not submit any proof that the paper publishes legal notices like ITBs on its website.

The condonation doctrine does not apply to Gozalo.

Gozalo admits that he was secretary of the Sangguniang Bayan at the time of the questioned transaction. Gozalo likewise admits that he was

³⁸ *Metropolitan Bank and Trust Company, Inc. v. Peñafiel*, 599 Phil. 511, 519 (2009); *Basa v. Mercado*, 61 Phil. 632, 635 (1935).

³⁹ *Rollo*, p. 14.

⁴⁰ <https://mindanaogoldstardaily.com/about-us>. Accessed June 27, 2022. Archive link at <https://archive.ph/fwOwj>.

appointed to that position, and then designated to the BAC, by Mayor Villamero. Being an appointive public official, the condonation doctrine cannot apply to Gozalo, because the doctrine only contemplates offenses committed by *elective public officials* during their incumbency *as such*. In the leading case of *Ombudsman Carpio Morales v. CA, et al.*,⁴¹ where we abandoned the doctrine, it was explained that:

The condonation doctrine — which connotes this same sense of complete extinguishment of liability as will be herein elaborated upon — is not based on statutory law. It is a jurisprudential creation that originated from the 1959 case of *Pascual v. Hon. Provincial Board of Nueva Ecija, (Pascual)*, which was therefore decided under the 1935 Constitution.

In *Pascual*, therein petitioner, Arturo Pascual, was elected Mayor of San Jose, Nueva Ecija, sometime in November 1951, and was later re-elected to the same position in 1955. During his second term, or on October 6, 1956, the Acting Provincial Governor filed administrative charges before the Provincial Board of Nueva Ecija against him for grave abuse of authority and usurpation of judicial functions for acting on a criminal complaint in Criminal Case No. 3556 on December 18 and 20, 1954. In defense, Arturo Pascual argued that he cannot be made liable for the acts charged against him since they were committed during his previous term of office, and therefore, invalid grounds for disciplining him during his second term. The Provincial Board, as well as the Court of First Instance of Nueva Ecija, later decided against Arturo Pascual, and when the case reached this Court on appeal, it recognized that the controversy posed a novel issue — that is, whether or not an elective official may be disciplined for a wrongful act committed by him during his immediately preceding term of office.

As there was no legal precedent on the issue at that time, the Court, in *Pascual*, resorted to American authorities and “found that cases on the matter are conflicting due in part, probably, to differences in statutes and constitutional provisions, and also, in part, to a divergence of views with respect to the question of whether the subsequent election or appointment condones the prior misconduct.” x x x

x x x x

Pascual's ratio decidendi may be dissected into three (3) parts:

x x x x

Second, an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor; and

[T]hat the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor. (43 Am. Jur. p. 45, citing *Atty. Gen. vs. Hasty*, 184 Ala. 121, 63 So. 559, 50 L.R.A. (NS) 553. 273 (emphasis supplied)

⁴¹ 772 Phil. 672 (2015).

Third, courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers: x x x

The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct to practically overrule the will of the people.⁴² x x x (citations and emphasis omitted)

In the foregoing passage, the Court clearly explains that the condonation doctrine contemplates only elective officials who have committed administrative offenses, who are subsequently re-elected to public office. Since these officials are chosen by direct vote of the electorate, their life, deeds, and character are deemed known to the electorate; and when these officials are elected again despite committing administrative offenses, the electorate, by their presumed knowledge of these officials' lives, must be deemed to have condoned said offenses. The foregoing logic does not apply to Gozalo's case, since he was clearly an appointive official when he was designated as alternate BAC chairperson. His subsequent election to public office is of no moment, since the offense for which he is being charged was committed in his capacity as an *appointive* public official. As the CA correctly points out, we have already ruled in *Office of the Ombudsman v. Torres, et al.*⁴³ that an appointive public official cannot invoke a subsequent election to public office as condonation of an offense committed while in appointive public office. In that case, the officer was a legislative staff assistant when she was accused of grave misconduct; and we held that her subsequent election as councilor cannot operate to absolve her from liability for the offense she committed when she was still holding appointive public office.⁴⁴

A BAC member's individual recommendation to award the contract to another bidder does not shield such BAC member from liability for an irregular bidding.

Cabrales claims that during the January 24, 2011 BAC meeting, he manifested his choice to award the grader contract to Eagle, and not to Ivan Carr.⁴⁵ He then argues that the liability of members of collegial bodies such as BACs are analogously governed by Section 31 of the Corporation Code,⁴⁶

⁴² Id. at 755-762.

⁴³ 588 Phil. 55 (2008).

⁴⁴ Id. at 58-59.

⁴⁵ *Rollo*, p. 19.

⁴⁶ Batas Pambansa Blg. 68.

which states that “[d]irectors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation x x x shall be liable jointly and severally for all the damages resulting therefrom x x x.” Since he did not assent to the award of the grader contract to Ivan Carr, he should not be held liable for the irregular bidding which resulted in the award of the contract to the latter.⁴⁷

The process of government procurement, inasmuch as it involves the expenditure of public funds and the efficient and transparent discharge of governmental functions, is governed by a specialized legal regime. In *Archbishop Capalla, et al. v. COMELEC*⁴⁸ we explained that the procurement for an automated election system

is not an ordinary contract as it involves procurement by a government agency, the rights and obligations of the parties are governed not only by the Civil Code but also by RA 9184. In this jurisdiction, public bidding is the established procedure in the grant of government contracts. The award of public contracts, through public bidding, is a matter of public policy. The parties are, therefore, not at full liberty to amend or modify the provisions of the contract bidden upon.⁴⁹

Thus, government procurement has long been regulated by laws specifically drafted for such purpose.⁵⁰ Today, government procurement is governed primarily by Republic Act No. 9184 (GPRA), which provides for the “*modernization, standardization and regulation of the procurement activities of the government.*” The BAC is a statutory creation of the GPRA, and its structure, composition, and functions are governed primarily by the GPRA and its implementing rules and regulations. Sections 11 and 12 of the GPRA provide in part:

SECTION 11. *The BAC and its Composition.* — **Each procuring entity shall establish a single BAC for its procurement.** The BAC shall have at least five (5) members, but not more than seven (7) members. It shall be chaired by at least a third ranking permanent official of the procuring entity other than its head, and its composition shall be specified in the IRR. Alternatively, as may be deemed fit by the head of the procuring entity, there may be separate BACs where the number and complexity of the items to be procured shall so warrant. Similar BACs for decentralized and lower level offices may be formed when deemed necessary by the head of the procuring entity. The members of the BAC shall be designated by the Head of Procuring Entity. However, in no case shall the approving authority be a member of the BAC.

⁴⁷ *Rollo*, pp. 19-20.

⁴⁸ 687 Phil. 617 (2012).

⁴⁹ *Id.* at 669.

⁵⁰ See *Abaya v. Sec. Ebdane, Jr.*, 544 Phil. 645 (2007).

4

X X X X

SECTION 12. *Functions of the BAC.* — The BAC shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, **conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative:** *Provided,* That in the event the Head of the Procuring Entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.

In proper cases, **the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement** as provided for in Article XVI hereof.

The BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the GPPB on a semestral basis. The contents and coverage of this report shall be provided in the IRR. (Emphasis supplied)

Verily, the BAC is essentially a special statutory committee created within every government agency, instrumentality, or unit which qualifies as a procuring entity, for the purpose of discharging the functions of government procurement under the GPRA. As such, the BAC is composed of certain officers of the procuring entity, who are designated as BAC officers in addition to their pre-existing roles and functions within the entity. Obviously, the BAC is not a corporation, since it has no legal personality distinct from the procuring entity to which it pertains. The Corporation Code only governs private corporations, which are further classified as stock or non-stock corporations. Since the BAC is neither private in nature nor may it be deemed a corporation as contemplated in the Corporation Code, the provisions of said law on the liability of individual directors or trustees do not apply to members of the BAC. Rather, the responsibilities of BAC members are defined primarily by the GPRA and its IRR, and suppletorily, by the laws on public expenditures and on public officers.⁵¹ Consequently, Cabrales cannot use Section 31 of the Corporation Code to evade liability for the irregular bidding for the grader. There is no dispute that he was a member of the Tukuran BAC which handled

⁵¹ See, e.g., *Nayong Pilipino Foundation, Inc. v. Chairperson Pulido Tan, et al.*, 818 Phil. 406, 423-424 (2017) and *Sison, et al. v. Tablang, et al.*, 606 Phil. 740, 748 (2009), where the Court affirmed the disallowance of honorarium payments to BAC members on the ground that that the provision on honoraria for BAC members in the GPRA IRR must first be operationalized through guidelines issued by the Department of Budget and Management.

the grader procurement; and, as such, the GPRA requires him to “ensur[e] that [the Municipality] abides by the standards set forth by this Act and the IRR.”

This general function of the BAC is further specified in the IRR, which outlines the duties and responsibilities of the BAC with respect to each mode of procurement, and every step thereof. For example, in procurement through public bidding, Section 20.1 Rule VII of the 2009 GPRA IRR mandates the BAC to lead the pre-procurement conference, which consists of the following tasks:

- a) Confirm the description and scope of the contract, the ABC, and contract duration.
- b) Ensure that the procurement is in accordance with the project and annual procurement plans;
- c) Determine the readiness of the procurement at hand, including, among other aspects, the following:
 - i) availability of appropriations and programmed budget for contract;
 - ii) completeness of the Bidding Documents and their adherence to relevant general procurement guidelines;
 - iii) completion of the detailed engineering according to the prescribed standards in the case of infrastructure projects; and
 - iv) confirmation of the availability of ROW and the ownership of affected properties.
- d) Review, modify and agree on the criteria for eligibility screening, evaluation, and post-qualification;
- e) Review and adopt the procurement schedule, including deadlines and timeframes, for the different activities; and
- f) Reiterate and emphasize the importance of confidentiality, in accordance with Section 19 of this IRR, and the applicable sanctions and penalties, as well as agree on measures to ensure compliance with the foregoing.

Under Section 23.2, Rule VIII and Rule IX Sections 30.1 & 30.2, Rule IX BACs are then tasked with determining the eligibility of bidders and examining their bids:

30.1. The BAC shall open the first bid envelopes of prospective bidders in public to determine each bidder's compliance with the documents

4

required to be submitted for eligibility and for the technical requirements, as prescribed in this IRR. For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present, using a nondiscretionary “pass/fail” criterion, as stated in the Instructions to Bidders. If a bidder submits the required document, it shall be rated “passed” for that particular requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as “failed”. Otherwise, the BAC shall rate the said first bid envelope as “passed”. (a)

30.2. Immediately after determining compliance with the requirements in the first envelope, the BAC shall forthwith open the second bid envelope of each remaining eligible bidder whose first bid envelope was rated “passed.” The second envelope of each complying bidder shall be opened within the same day, except as provided under Section 33 of this IRR. In case one or more of the requirements in the second envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the ABC, the BAC shall rate the bid concerned as “failed”. Only bids that are determined to contain all the bid requirements for both components shall be rated “passed” and shall immediately be considered for evaluation and comparison.

x x x x

After its duties under Rules VI, VII, and VIII, have been discharged, the BAC proceeds with the evaluation of the bids and determination of the Lowest Calculated Responsive Bid or the Highest Rated Responsive Bid, as the case may be, and finally, post-qualification, where the BAC must conduct the following:

34.3. The post-qualification shall verify, validate, and ascertain all statements made and documents submitted by the bidder with the Lowest Calculated Bid/Highest Rated Bid, using non-discretionary criteria, as stated in the Bidding Documents. These criteria shall consider, but shall not be limited to, the following:

a) *Legal Requirements.* To verify, validate, and ascertain licenses, certificates, permits, and agreements submitted by the bidder, and the fact that it is not included in any “blacklist” as provided in Section 25.2 of this IRR. For this purpose, the GPPB shall maintain a consolidated file of all “blacklisted” suppliers, contractors, and consultants.

b) *Technical Requirements.* To determine compliance of the goods, infrastructure projects, or consulting services offered with

the requirements specified in the Bidding Documents, including, where applicable:

- i) Verification and validation of the bidder's stated competence and experience, and the competence and experience of the bidder's key personnel to be assigned to the project, for the procurement of infrastructure projects and consulting services;
 - ii) Verification of availability and commitment, and/or inspection and testing for the required capacities and operating conditions, of equipment units to be owned/leased/under purchase by the bidder for use in the contract under bidding, as well as checking the performance of the bidder in its ongoing government and private contracts (if any of these on-going contracts shows a reported negative slippage of at least fifteen percent (15%), or substandard quality of work as per contract plans and specifications, or unsatisfactory performance of the contractor's obligations as per contract terms and conditions, at the time of inspection, and if the BAC verifies any of these deficiencies to be due to the contractor's fault or negligence, the agency shall disqualify the contractor from the award), for the procurement of infrastructure projects;
 - iii) Verification and/or inspection and testing of the goods/product, aftersales and/or maintenance capabilities, in applicable cases, for the procurement of goods; and
 - iv) Ascertainment of the sufficiency of the bid security as to type, amount, form and wording, and validity period.
- c) *Financial Requirements.* To verify, validate and ascertain the bid price proposal of the bidder and, whenever applicable, the required CLC in the amount specified and over the period stipulated in the Bidding Documents, or the bidder's NFCC to ensure that the bidder can sustain the operating cash flow of the transaction.

34.4. If the BAC determines that the bidder with the Lowest Calculated Bid/Highest Rated Bid passes all the criteria for post-qualification, it shall declare the said bid as the Lowest Calculated

Responsive Bid/Highest Rated Responsive Bid, and recommend to the Head of the Procuring Entity the award of contract to the said bidder at its submitted bid price or its calculated bid price, whichever is lower or, in the case of quality-based evaluation procedure, submitted bid price or its negotiated price, whichever is lower. (a)

34.5. If, however, the BAC determines that the bidder with the Lowest Calculated Bid/Highest Rated Bid fails the criteria for post-qualification, it shall immediately notify the said bidder in writing of its post-disqualification and the grounds for it. (a)

34.6. Immediately after the BAC has notified the first bidder of its post-disqualification, and notwithstanding any pending request for reconsideration thereof, the BAC shall initiate and complete the same post-qualification process on the bidder with the second Lowest Calculated Bid/Highest Rated Bid. If the second bidder passes the post-qualification, and provided that the request for reconsideration of the first bidder has been denied, the second bidder shall be post-qualified as the bidder with the Lowest Calculated Responsive Bid/Highest Rated Responsive Bid.(a)

34.7. If the second bidder, however, fails the post-qualification, the procedure for postqualification shall be repeated for the bidder with the next Lowest Calculated Bid/Highest Rated Bid, and so on until the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, as the case may be, is determined for award, subject to Section 37 of this IRR.⁵²

Only after post-qualification does the BAC award the procurement contract to the winning bidder. In view of the powers and functions of the BAC under the GPRA and its IRR as herein outlined, Cabrales's view that the function of the BAC is simply to recommend a winning bidder, and that a member who does not concur in said recommendation should therefore be excused from liability if said bid is found irregular, is erroneously reductionist. In *Jomadio v. Arboleda*,⁵³ We held:

The Court has been consistent in holding that the functions of BAC members are not merely ceremonial. Theirs is the obligation to ensure the proper conduct of public bidding, because it is the policy and medium adhered to in Government procurement and construction contracts under existing laws and regulations. It is the accepted method for arriving at a fair and reasonable price and ensures that overpricing, favoritism and other anomalous practices are eliminated or minimized.⁵⁴ (citations omitted)

⁵² 2009 GPRA IRR, Rule X, Section 34.3-34.7.

⁵³ G.R. No. 230322, February 19, 2020.

⁵⁴ Id.

As the primary implementer of the GPRA, the BAC does not merely generate recommendations; it is the frontline unit primarily responsible for overseeing the entire procurement process, and ensuring that said process is conducted with integrity, transparency, and efficiency, in line with the principles of the GPRA, in every office of the government. Thus, a BAC member may be held liable for an irregular bidding even if he or she did not concur in the final recommendation of the BAC. In *Lagoc v. Malaga, et al.*,⁵⁵ We expressly held that a BAC member cannot feign ignorance of the BAC's noncompliance with the requirements of the procurement laws and regulations because the chairperson and members of the BAC

are responsible for the conduct of pre-qualification, or eligibility screening, bidding, evaluation of bids, post-qualification, and recommending award of contract. As such, it is their duty to ensure that the rules and regulations for the conduct of bidding for government projects are faithfully observed. They may thus be held liable for collective acts and omissions as when they affixed their signatures in official documents as BAC Chairman/Members, and recommended approval of the bids, in effect certifying to compliance with the aforesaid rules.⁵⁶

However, such nonconcurrence may be considered in the determination of the member's administrative liability and the appropriate penalty therefor.

Petitioners are guilty of simple misconduct.

Given the attendant factual circumstances, We find that petitioners committed **simple** misconduct in connection with the grader procurement.

To reiterate, it has been proven beyond cavil that the grader procurement was attended by the following irregularities: 1) specification of a brand name in the purchase request; 2) qualification of Ivan Carr as a responsive bidder despite failure to submit requisite eligibility and bid documents; 3) non-publication of the ITB in a newspaper of *nationwide* general circulation; 4) conduct of the procurement despite the Municipality's non-registration with the PhilGEPS; and 5) the other bidder, Eagle, was not registered with the SEC.

As an administrative disciplinary violation, noncompliance with a statute and its implementing rules is a form of **misconduct**. Under the law and civil service rules, misconduct is defined as a transgression of an established and definite rule of action, usually unlawful behavior or gross negligence.⁵⁷ "*Misconduct is defined as a transgression of some established and definite rule*

⁵⁵ 738 Phil. 623 (2014).

⁵⁶ Id. at 636.

⁵⁷ *Valdez v. Alviar*, A.M. No. P-20-4042, January 28, 2020.

of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling.”⁵⁸

As regards Gozalo, we find that the CA erroneously disregarded his evidence of nonparticipation in the grader procurement. Gozalo alleged that when he was designated as alternate chairperson, Mayor Villamero ordered him to regularly attend BAC meetings in anticipation of the regular chairperson’s absence.⁵⁹ In compliance with Mayor Villamero’s orders, Gozalo regularly attended the BAC meetings, together with the regular chairperson.⁶⁰ However, as it turned out, the regular chairperson was always present for the duration of the proceedings for the grader procurement; and Gozalo never got to discharge the functions of BAC chairperson.⁶¹ This is proven by the BAC reports and documents submitted by Gozalo, which were all signed by the regular BAC chairperson, and do not bear Gozalo’s signature.⁶² Under Section 11.2.4., Rule V of the July 2009 GPRA IRR, the procuring entity may designate alternate BAC members, who shall sit as such in the absence of a regular member, and whose liability vis-à-vis regular members is limited to acts and decisions in which they actually participated.⁶³ Since the regular chairperson was the one who actually presided over the grader procurement and signed all pertinent documents, it cannot be said that Gozalo actually participated therein. However, as the CA correctly points out, he should not have attended said meetings because the GPRA IRR expressly states that alternate members shall only

⁵⁸ *Navotas Industrial Corp. v. Guanzon*, G.R. No. 230931, November 15, 2021. Citations omitted.

⁵⁹ *Rollo*, p. 89.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 90-91.

⁶³ Rule V, Section 11.2.4 of the July 22, 2009 version of the GPRA IRR states: “11.2.4. The Head of the Procuring Entity may designate alternate members to the BAC, who shall have the same qualifications as their principals as set in the Act and this IRR. **The alternate members shall attend meetings of the BAC** and receive the corresponding honoraria, **whenever their principals are absent.** The alternate members shall have the same term as their principals. **The accountability of the principal and the alternate member shall be limited to their respective acts and decisions.**” This provision is retained in the 2016 GPRA IRR-A and is reiterated in the General Procurement Manual: “iv. The [Head of the Procuring Entity] may designate alternate BAC members, who shall have the same qualifications as that of the members originally designated. The alternate members shall have the same term as the original members. In attending meetings of the BAC, they shall receive proportionate honoraria, whenever the original members are absent.” Government Procurement Policy Board (GPPB), General Procurement Manual, vol. 1, p. 18. Accessed June 30, 2022 at www.gppb.gov.ph/downloadables/forms/GPM%20Volume%201.pdf, archive link at <https://web.archive.org/web/20220630022203/https://www.gppb.gov.ph/downloadables/forms/GPM%20Volume%201.pdf>. See also GPPB Non-Policy Opinion Nos. NPM 160-2012 (https://www.gppb.gov.ph/GPPBTSO_Non-Policy/901, accessed June 30, 2022, archive link at https://web.archive.org/web/20220630023221/https://www.gppb.gov.ph/GPPBTSO_Non-Policy/901) and 075-2017 (https://www.gppb.gov.ph/GPPBTSO_Non-Policy/1613, accessed June 30, 2022, archive link at https://web.archive.org/web/20220630022020/https://www.gppb.gov.ph/GPPBTSO_Non-Policy/1613).

4

attend meetings when the regular members are absent.⁶⁴ For failing to observe proper attendance rules, Gozalo is liable for simple misconduct.

As regards Cabrales, there is no dispute that he was a regular member of the BAC; and that he participated in the grader procurement in such capacity. He is therefore obliged, to ensure *that the Municipality abides by the standards set forth by the GPRA and its IRR*. Here, the BAC, Cabrales included, allowed the grader procurement to proceed despite the clear violation of Section 18 of the GPRA in the purchase request. The GPRA and its IRR expressly prohibit the specification of a particular brand in procurement specifications or purchase requests because it defeats the fundamental policy of procurement through competitive bidding.⁶⁵ Not only did the BAC conduct a bidding on the basis of a defective purchase request, they also declared Ivan Carr a responsive bidder and gave it post-qualification clearance despite its failure to submit certain eligibility and bid documents. Cabrales' manifestation of preference for the other bidder, Eagle, cannot be held in his favor because the NBI found that Eagle was not registered with the SEC. Under Rule VIII, Sec. 23.6., of the 2009 GPRA IRR, a SEC registration is a Class "A" legal document which serves as basis for the determination of a bidder's eligibility. Thus, his recommendation to award the contract to another ineligible bidder also violates the GPRA IRR.⁶⁶ In view of these violations in the grader procurement, we find Cabrales liable for simple misconduct.

As pointed out by Justice Alfredo Benjamin S. Caguioa during the deliberations of this case, violations of the procurement law or regulations, without proof of corruption, willful intent to violate the law, or to disregard established rules, amount only to simple misconduct.⁶⁷ Here, neither the OMB nor the CA was able to identify any actual and specific participation of Cabrales in the aforementioned procurement violations, other than his usual participation in the BAC proceedings. Likewise, the anti-graft body was also unable to prove any of the qualifying elements of grave misconduct on the part of Cabrales. There was no showing that Cabrales acted deliberately to violate the procurement law and regulations for his own or another person's benefit.⁶⁸

⁶⁴ Id.

⁶⁵ *Abogado v. Office of the Ombudsman*, G.R. No. 241152, March 9, 2020; *Office of the Ombudsman-Mindanao v. Martel, et al.*, 806 Phil. 649, 661 (2017).

⁶⁶ See 2009 GPRA IRR, Rule IX, Sections 30.1 and 30.2.

⁶⁷ *Herrera v. Mago*, G.R. No. 231120, January 15, 2020; *Office of the Court Administrator v. Espejo*, 792 Phil. 551, 557 (2016).


⁶⁸ Id.; see also *Office of the Ombudsman v. Celiz*, G.R. No. 236383, June 26, 2019; see also *Office of the Ombudsman v. De Guzman*, 819 Phil. 282 (2017); *Office of the Ombudsman v. Espina*, 807 Phil. 529, 541 (2017); and *Imperial, Jr. v. Government Service Insurance System*, 674 Phil. 286 (2011).

Furthermore, Cabrales' liability is mitigated by the following factual circumstances: 1) although the Purchase Request specified the Chenggong brand for the procured grader, it was likewise found that such specification of brand does not appear in the Invitation to Apply for Eligibility and to Bid, as well as the published copy thereof;⁶⁹ 2) the OMB found no proof that the procured grader was overpriced;⁷⁰ and 3) while the publication requirements were not strictly met, the bidding documents were nevertheless published, albeit only in a newspaper of local circulation.

Considering the factual circumstances, the length of their service in government, and their prior disciplinary records,⁷¹ we find it most appropriate to impose on petitioners the penalty of suspension for three (3) months without pay, or a fine equivalent to three (3) months' salary, in case the penalty of suspension could not be served anymore.⁷²

WHEREFORE, the present petition is **PARTIALLY GRANTED**. The August 30, 2019 Decision and the August 10, 2020 Resolution of the Court of Appeals in CA-G.R. SP No. 08750-MIN are hereby **REVERSED** and **SET ASIDE** insofar as these affirmed the dismissal of petitioners Rogelim A. Cabrales and Noe Cabrido Gozalo from the government service, together with its accessory penalties. Rogelim A. Cabrales and Noe Cabrido Gozalo are hereby found **GUILTY** of Simple Misconduct and **PENALIZED** with suspension for three (3) months without pay, or a fine equivalent to three (3) months' salary deductible from whatever benefits may be due them, whichever is applicable under the Rules on Administrative Cases in the Civil Service.

SO ORDERED.


SAMUEL H. GAERLAN
 Associate Justice

⁶⁹ *Rollo*, p. 61.

⁷⁰ *Id.* at 76.

⁷¹ *Rollo*, p. 82. Cabrales and Gozalo both served in the Tukuran LGU for almost forty (40) years, and the present violation is their first offense.


⁷² Simple misconduct as a first offense is punishable by suspension of one (1) month and one (1) day to six (6) months. Rule 10, Section 50.D. of the Rules on Administrative Cases in the Civil Service (CSC Resolution No. 1701077, 2017). Likewise, Section 52.I.d. thereof allows the payment of fine in place of suspension “[w]hen the respondent has already retired or otherwise separated from government service and the penalty of suspension could not be served anymore”, In such case, “the fine may be sourced from the accumulated leave credits or whatever benefits due the respondent.”


5

WE CONCUR:

(On official leave)

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

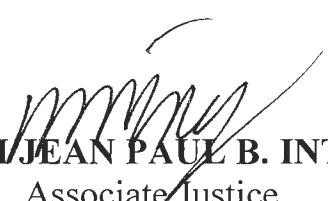

HENRI JEAN PAUL B. INTING
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

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

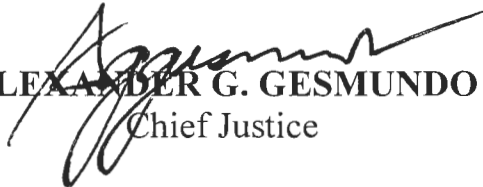

HENRI JEAN PAUL B. INTING
Associate Justice
Acting Chairperson

(Per Special Order No. 2918-Revised dated October 12, 2022)

↓

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice