



Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

**NOTICE**

Sirs/Mesdames

*Please take notice that the Court, Third Division, issued a Resolution dated **March 8, 2023**, which reads as follows:*

**“G.R. No. 232252 (Gasmelba H. Felicitas, Marcos M. Bahinting, Melita C. Delos Santos, Nikki B. Omboy, and Jerry Gene E. Delos Santos v. Timoteo C. Yunting).** – This Petition for review on *certiorari*<sup>1</sup> filed by the petitioners Gasmelba H. Felicitas, Marcos M. Bahinting, Melita C. Delos Santos, Nikki B. Omboy, and Jerry Gene E. Delos Santos (petitioners) under Rule 45 of the 1997 Rules of Civil Procedure seeks to annul and set aside the Decision<sup>2</sup> dated December 9, 2016 of the Court of Appeals (CA) Cagayan de Oro Station in CA-G.R. SP No. 07322-MIN and its Resolution<sup>3</sup> dated May 18, 2017, denying the Motion for Reconsideration thereof.

Herein Timoteo C. Yunting (respondent), then Sanggunian Bayan (SB) Member of Molave, Zamboanga del Sur, filed an Affidavit-complaint before the Office of the Deputy Ombudsman for Mindanao (OMB-Min) charging “Municipal Mayor Flavio J. Saniel, Jr. (Mayor Saniel, Jr.) and other personalities,” for irregularities in the procurement of medicines in 2009. The complaint cited as basis the report of Dr. Prisco Pabatao, Municipal Health Officer of Molave, during the 123<sup>rd</sup> SB regular session that the medicines procured were expired and unsupported by the necessary documents.<sup>4</sup>

OMB-Min referred the matter to the Commission on Audit (COA) for the conduct of an audit investigation. In its Audit Report, the COA later confirmed that ₱587,068.40 worth of medicines procured for the municipalities Molave, Tukuran, Tambulig, Midsalip, and Pagadian City were already expired when delivered to the Rural Health Office while another ₱1,292,254.80 worth of medicines were not delivered at all. Moreover, it was also found that the medicines procured were overpriced resulting in an overpayment of ₱997,193.60, and that Vitamin A capsules amounting to

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<sup>1</sup> *Rollo*, pp. 41-53.

<sup>2</sup> *Id.* at 10-24. Penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Edgardo T. Lloren and Ruben Reynaldo G. Roxas, concurring.

<sup>3</sup> *Id.* at 35-38.

<sup>4</sup> *Id.* at 12.

₱645,620.00 were procured although they were given for free by the Department of Health (DOH).<sup>5</sup>

On the basis of the Audit Report, the OMB-Min formally charged the petitioners, Eleuterio Galleto (Galleto), Martin Blanco (Blanco), and Lina Lou Gitalan (Gitalan), in their capacities as Bids and Awards Committee (BAC) members, together with then Mayor Saniel, Jr. for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.<sup>6</sup>

On August 12, 2015, the OMB-Min rendered its Decision finding the petitioners except Mayor Saniel, Jr., guilty of the charges against them. The complaint against Mayor Saniel, Jr. was dismissed on the ground of lack of administrative jurisdiction.<sup>7</sup> The dispositive portion of the decision reads as follows:

WHEREFORE, this Office finds that except for [Mayor Saniel, Jr.], [petitioners, Galleto, Blanco, and Gitalan] are guilty of GRAVE MISCONDUCT and CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE and are meted out the penalty of dismissal from service, including the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for re-employment in the government service.

The complaint against [Mayor Saniel, Jr.], is DISMISSED for lack of administrative jurisdiction over him.

In the event that the penalty can no longer be enforced due to separation from service, it shall be converted into a FINE in the amount equivalent to the last salary for one (1) year, payable to the Office of the Ombudsman, and may be deducted from [petitioners, Galleto, Blanco, and Gitalan's] retirement benefits, accrued leave credits or any receivable from the government.

The refusal or failure to comply with this Decision of any officer, without just cause, shall be a ground for disciplinary action against said officer.

Hon. Ireneo Q. Glepa, Municipal Mayor of Molave, Zamboanga del Sur, is directed to implement the penalty of dismissal against Marcos M. Bahinting, Melita C. Delos Santos, Gasmelba H. Felicitas, Nikki B. Omboy, Jerry Gene E. Delos Santos, Martin D. Blanco, Jr., Lina Lou G. Gitalan, and Eleuterio Galleto, within ten (10) days from receipt hereof, and to submit to this Office, within the same period, a Compliance Report indicating the Docket Number of this case. Let a copy of this Decision be furnished the Civil Service Commission and the Commission on Elections.

SO ORDERED.<sup>8</sup>

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<sup>5</sup> Id.

<sup>6</sup> Id. at 12-13.

<sup>7</sup> Id.

<sup>8</sup> Id. at 11-12.

Only the petitioners appealed to the CA. On December 9, 2016, the CA rendered its Decision,<sup>9</sup> viz.:

WHEREFORE, the petition for review is hereby DENIED. The Decision dated 12 August 2015 and Order dated 10 December 2015 of the Office of the Ombudsman in Case No. OMB-M-A-14-0095 are hereby AFFIRMED.

SO ORDERED.<sup>10</sup>

The CA held that the petitioners made it appear that a public bidding was conducted when in fact there was none which makes them guilty of grave misconduct.<sup>11</sup>

The petitioners' motion for reconsideration having been denied by the CA in its Resolution<sup>12</sup> dated May 18, 2017, hence, this appeal before the Court.

The petitioners raise the following grounds in support of their petition for review on *certiorari*:

(a)

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THE FINDINGS OF THE OFFICE OF THE OMBUDSMAN, FINDING THE PETITIONERS GUILTY OF GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE. THE COURT OF APPEALS MISAPPRECIATED THE ROLE OF THE BAC AS PROVIDED IN R.A. 9184 VIS-À-VIS THE ROLE OF THE HEAD OF THE PROCURING ENTITY.

(b)

THE COURT OF APPEALS ERRED IN LIMITING ITS CONSIDERATION ON THE FINDINGS OF THE OFFICE OF THE OMBUDSMAN WITHOUT CONSIDERING ALSO THE FINDINGS OF THE COA CONTAINED IN THE AUDIT REPORT VIS-À-VIS THE ACTUAL PARTICIPATION OF THE PETITIONERS IN THE TRANSACTION IN QUESTION.<sup>13</sup>

Similar to their petition before the CA, the petitioners argue that, they as members of the BAC should not be held liable as they merely conduct the bidding process; that, it is Mayor Saniel, Jr. as the head of the procuring entity and the approving authority that is ultimately responsible for the procurement of the subject medicines.<sup>14</sup>

The petitioners filed a supplement to the said petition, raising in addition that:

<sup>9</sup> Id. at 10-24.

<sup>10</sup> Id. at 24.

<sup>11</sup> Id. at 19-23.

<sup>12</sup> Id. at 35-38.

<sup>13</sup> Id. at 48.

<sup>14</sup> Id. at 49-53.

THE OMBUDSMAN AND LATER ON THE COURT OF APPEALS GRAVELY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION ON THEIR FAILURE TO CONSIDER THAT THE CONSTITUTIONAL RIGHTS OF PETITIONERS TO SPEEDY DISPOSITION OF THEIR CASES AND DUE PROCESS WERE VIOLATED.<sup>15</sup>

The petitioners, citing the case of *Coscolluela v. Sandiganbayan, et al.*,<sup>16</sup> claim that their right to speedy disposition of their cases were violated when it took the OMB-Min six (6) years to issue its Decision on the complaint.<sup>17</sup>

The respondent filed his Comment<sup>18</sup> on March 28, 2019, adopting and reiterating his comment to the Petitioners' Memorandum before the CA. The respondent averred that the inclusion of the petitioners in this case was based on the COA's notice of disallowance and that their participation is limited "to the conduct of the bidding up to the issuance of Resolution recommending award to the winning bidder."<sup>19</sup>

In response, the petitioners filed their Manifestation and Compliance, in which they reiterated and affirmed their innocence of the offenses charged.<sup>20</sup>

### The Court's Ruling

The petition is *without merit*.

Owing to their expertise over matters falling under their jurisdiction, it is settled that factual findings of the Office of the Ombudsman are conclusive when supported by substantial evidence.<sup>21</sup>

In this case, as found by the CA, the Court finds that the factual findings of the OMB-Min are supported by substantial evidence. Hence, we find no reason to disturb the same.

Before proceeding with the discussion of the merits of the case, it is important to state that the nature of the instant appeal prevents a review of the facts. A petition review under Rule 45 is limited only to questions of law. The case of *Montemayor v. Bundalian*<sup>22</sup> sets forth the guidelines for the judicial review of decisions rendered by administrative agencies in the exercise of their judicial powers. Succinctly: a) the complainant must prove by substantial evidence the allegations of his or her complaint; b) the findings of facts of administrative agencies are respected as long as they are supported by

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<sup>15</sup> Id. at 116.

<sup>16</sup> 714 Phil. 55 (2013).

<sup>17</sup> *Rollo*, pp. 116-125.

<sup>18</sup> Id. at 151-156.

<sup>19</sup> Id. at 153-154.

<sup>20</sup> Id. at 165-166.

<sup>21</sup> *Miro v. Vda. de Erederos, et al.*, 721 Phil. 772, 784 (2013).

<sup>22</sup> 453 Phil. 158 (2013).

substantial evidence; and c) administrative decisions in matters within the executive jurisdiction can only be set aside on proof of grave abuse of discretion, fraud, or error of law. When re-evaluation of the evidence is warranted, the reviewing court may not receive additional evidence; it is limited only to those submitted to the agency concerned.<sup>23</sup>

The question poised in the instant petition is whether the CA was correct in affirming the OMB-Min's decision finding the petitioners guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. While it involves a question of law, it nevertheless entails the determination of whether substantial evidence exists to sustain the said charges; this involves a question of fact that is beyond the province of the instant petition for review.<sup>24</sup>

The petitioners failed to allege much more prove that circumstances exist in this case warranting the application of the exception. They also failed to rebut or present countervailing evidence to disprove the factual findings of the OMB-Min. Thus, we quote with approval the CA's disquisition:

A careful scrutiny of the record reveals that a transgression of some established and definite rule of action in the matter of procurement of the subject medicines was committed, with the wrongful intention of making it appear that there was a valid public bidding conducted when there was none, which constitutes the administrative offense of Misconduct. As found by the Ombudsman, no competitive public bidding was in fact conducted by the BAC.

Competitive or Public Bidding is a method of procurement that is open to any interested and qualified party. All procurement should be done through Public Bidding except as provided in Rule XVI of the Implementing Rules and Regulations of R.A. No. 9184 (IRR-A). Competitive Bidding consists of the following processes: advertisement, pre-bid conference, receipt of eligibility documents and bids, eligibility check, opening and examination of bids, evaluation of bids, post-qualification, and award of contract.

To prove their claim that a public bidding was conducted in the instant case, petitioners submitted in evidence only the following documents, viz: a) two sets of Invitations to Apply for Eligibility and to Bid, b) Certifications of posting dated 16 March 2009 and 18 May 2009 issued by the BAC Secretariat, c) Minutes of the Bidding Process dated 17 March 2009 and 19 May 2009, d) Attendance Sheets purportedly taken on the above-mentioned dates, e) Resolutions Recommending to Award dated 17 March 2009 and 19 May 2009, and f) several Official Receipts for payments of Bid Tender Documents issued by the Municipal Treasurer.

It is clear from the foregoing that the **bidding documents allegedly issued pursuant to the procurement were wanting and incomplete**. Also, it bears noting that **two sets of Invitation to Bid exist in the record which appear fabricated**. The first set is an Invitation to Bid for the

<sup>23</sup> Id. at 167.

<sup>24</sup> See *Miro v. Vda. de Erederos, et al.*, supra note 21 at 787-788.

purchase of medicines only while the second set is an Invitation to Bid for several projects including the purchase of medicines. It was not even shown which of these two sets of Invitation to Bid was actually posted, if indeed, there was posting made.

Moreover, there is **no showing that a pre-bid conference was conducted** by petitioners. Neither is there any showing that petitioners, as BAC members, were in receipt of **eligibility documents, bids, and bid securities from prospective bidders**. Had these documents been in existence, there is no reason for petitioners not to offer them in evidence in support of their claim. In view of the absence of these documents, it can be fairly concluded that **no eligibility check, and opening and evaluation of bids** were conducted by petitioners. Notably, not even an **Abstract of Bids**, which must be issued by petitioners after the opening of bids, exists in the record lending credence to the Ombudsman's finding that no actual bidding took place in the procurement of the subject medicines. The entire procurement process was, to borrow the *ponencia* of the Ombudsman, a sham bidding to justify the expenditures.

From the foregoing, it can also be fairly concluded that **no post-qualification**, an important process in the procurement of goods, was also conducted by petitioners, more so that the award of the contract to ANV Enterprises was made on the same day that the post qualification was purportedly conducted.

From the foregoing, it is clear that the factual findings of the Ombudsman are substantiated by evidence, and thus, it correctly concluded that petitioners committed grave misconduct in the procurement of the subject medicines without conducting the mandatory process of competitive public bidding. It had been held that "strict observance of the rules, regulations, and guidelines of the bidding process is the only safeguard to a fair, honest, and competitive public bidding."

x x x x

Moreover, three principles must be met in every public bidding, *i.e.*, the valid offer to the public; an opportunity for competition; and a basis for the exact comparison of bids. Here, no valid offer to the public, opportunity for competition, and basis for the exact comparison of bids were shown to have been made. While petitioners posit that all three principles were satisfied in the instant case, they failed to present any iota of evidence proving such claim. Petitioners therefore failed to rebut the findings of the Ombudsman herein quoted with approval, thus:

The procurement was not conducted in accordance with the provisions of R.A. No. 9184. It can be discerned from the bidding documents that the procurement was not done through competitive bidding. The Invitations to Bid do not contain the approved budget for the contract, the date, time, and place of the deadline for the submission and receipt of the eligibility requirements, and there was no showing that the same were posted. The participating bidders did not submit a sworn affidavit attesting that they are not related to the head of the procuring entity, BAC members, Technical Working Group (TWG) and the BAC

Secretariat or the end-user unity by consanguinity or affinity up to the third civil degree.

Although respondent BAC members belatedly submitted copies of the Invitations to Apply for Eligibility and to Bid which recites the details required and Certifications of Posting issued by their BAC Secretariats, the same appear to be dubious. Also, they failed to produce the Affidavits of Disclosure (No Relationship) submitted by the bidders.

The eligibilities of the participating bidders who came from Metro Manila were not determined. In fact, no bid bonds were submitted as there were no official receipts issued for the same.

Further, what is even more significant is the apparent haste in which the supposed bidding was conducted. The Invitations to Bid reveal that the biddings were scheduled on March 17, 2009 and May 19, 2009. However, the medicines were paid for, delivered, and inspected immediately the day after the biddings, or on March 18, 2009 and May 20, 2009, oblivious of the fact that the bidders are from Parañaque City, Quezon City, and Pasay City. The entire procurement process took only a period of six to seven days.

It also appears that medicines worth Php1,292,254.80 were undelivered. As revealed in the Audit Report that *“there was no delivery of medicines procured last March 18, 2009 to other LGUs considering that upon inspection, the manufacturing dates of the medicines delivered were on February 2010, March 2010, May 2010 and June 2010.”* From that, it appears that the medicines were not yet manufactured at the time they were purchased. The conclusion is also supported by the comments made by Aleman and Arellano during the 125<sup>th</sup> SB regular session that *“the serial numbers of the inspected medicines tally with the serial numbers of the medicines supposed to be delivered to the Municipal Health Office in 2008.”* This also implies that the medicines reported to support the procurement pertains to the medicines procured in another transaction.

**Considering that no actual public bidding took place in the procurement of the subject medicines, petitioners cannot escape liability arising from the delivery of overpriced, expired, and otherwise free medicines, pursuant to the procurement, by interposing the defense that they had no participation in the same after its award to ANV Enterprises and after the bidding process was terminated. As above discussed, the public bidding allegedly conducted was a sham and merely simulated to show that an actual public took place when, in reality, there was none. The defense of good faith therefore cannot be appreciated in favor of petitioners.<sup>25</sup> (Emphasis supplied; citations omitted)**

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<sup>25</sup> *Rollo*, pp. 19-23.

In support of the instant petition for review, the petitioners allege that the responsibility for any irregularity in the procurement of the medicines should be with the head of the procuring entity, the Municipal Mayor, as the members merely recommend and it is the latter who approves and awards the contract.<sup>26</sup> The petitioners argument fails as it proceeds under the premise that the illegality in the subject procurement is only on the award. Contrarily, and as can be easily gleaned from the aforequoted pronouncement by the CA, that the petitioners as members of the BAC were clearly remiss in their duties as preliminarily, *no actual bidding took place*. The petitioners' failure to comply with the requirement of public bidding on the subject procurement is a clear violation of the law that constitutes misconduct.

Misconduct is a transgression of some established and definite rule of action. It is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence. On the other hand, conduct prejudicial to the best interest of the service pertains to any conduct of a public officer that tarnishes the image and integrity of his or her public office.<sup>27</sup>

The petitioners committed Grave Misconduct when they failed to comply with the basic requirement of public bidding in procurement. It is basic that public bidding is the primary process to procure goods and services for the government.<sup>28</sup>

A competitive public bidding aims to protect public interest by giving it the best possible advantages through open competition. It is precisely the mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts. Strict observance of the rules, regulations, and guidelines of the bidding process is the only safeguard to a fair, honest, and competitive public bidding.<sup>29</sup>

The petitioners, as members of the BAC, have the duty to ensure that rules and regulations in the conduct of bidding were faithfully observed. The transgressions committed as mentioned earlier on in the quoted CA decision, "amounts to a willful intent to subvert the clear policy of the law for transparency and accountability in government contracts."<sup>30</sup> Consequently, the petitioners' actions constitute grave misconduct. Their acts having facilitated the procurement of medicines that were either expired, not delivered, or unnecessary; also clearly constitute conduct prejudicial to the

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<sup>26</sup> Id. at 49-50.

<sup>27</sup> *Fajardo v. Corral*, 813 Phil. 149, 158 (2017).

<sup>28</sup> REPUBLIC ACT NO. 9184, Article IV, Section 10.

<sup>29</sup> *Andaya v. Field Investigation Office of the Office of the Ombudsman*, G.R. No. 237837, June 10, 2019.

<sup>30</sup> Id., citing *De Guzman v. Office of the Ombudsman, et al.*, 821 Phil. 681, 699-700 (2017), and *Office of the Ombudsman-Mindanao v. Martel, et al.*, 806 Phil. 649, 662 (2017).



best interest of the service.<sup>31</sup> In accordance with Sections 49 and 50,<sup>32</sup> of the Revised Rules on Administrative Cases in the Civil Service, the petitioners should be meted with dismissal, the penalty for Grave Misconduct which is classified as a grave offense.

In a final attempt to overturn the decision of the CA, the petitioners claim that there has been a violation of their right to due process when it took the OMB-Min “more or less five (5) years to issue the Joint Order dated September 9, 2014, and more or less six (6) years to render its Decision dated August 12, 2015.”<sup>33</sup>

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States*, for the government to sustain its right to try the accused despite a delay, it must show two things: **(a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.**<sup>34</sup>

Simply, mere passage of time does not mean that the right to a speedy disposition of cases has been violated. Attendant circumstances, particularly the reason or justification for such delay and the effect upon the parties in the case must be considered.

A review of the antecedent proceedings, lead the Court to conclude that there has been no violation of the petitioners’ right to speedy disposition of cases. The petitioners failed to discharge the burden to show that the proceedings were prolonged longer than what is reasonably necessary, and that they exerted efforts to protect their constitutional rights.<sup>35</sup> Rather, the invocation of their right to speedy trial seemed to be a mere afterthought which could not prevail over the State’s duty to prosecute cases.<sup>36</sup>

<sup>31</sup> *Office of the Ombudsman-Visayas, et al. v. Castro*, 759 Phil. 68, 78 (2015), citing *Government Service Insurance System, et al. v. Mayordomo*, 665 Phil. 131, 150 (2011).

<sup>32</sup> Section 49. Manner of Imposition. - When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

x x x x

c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

x x x x

Section 50. Penalty for the Most Serious Offense. - If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

<sup>33</sup> *Rollo*, p. 116.

<sup>34</sup> *Coscolluela v. Sandiganbayan*, supra note 16 at 66, citing *Corpuz v. Sandiganbayan*, 484 Phil. 899, 917-919 (2004). In *Coscolluela*, the Court ruled that the principles governing the right to speedy trial also apply in the right to speedy disposition of cases.

<sup>35</sup> *Republic v. Sandiganbayan*, G.R. No. 231144, February 19, 2020.

<sup>36</sup> *Id.*

**WHEREFORE**, the instant petition for review on *certiorari* is hereby **DENIED**. The Decision dated December 9, 2016 of the Court of Appeals Cagayan de Oro Station in CA-G.R. SP No. 07322-MIN and its Resolution dated May 18, 2017 are **AFFIRMED** *in toto*.

**SO ORDERED.”** (Dimaampao, J., on leave.)

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAEAL DOMINGO C. BATTUNG III**  
Division Clerk of Court *JB 5/11/23*

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