



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **December 7, 2022** which reads as follows:*

“G.R. No. 255912 (DELIO H. DE LEON, MARISSA P. CORTEZ, NOEL M. EROA, AND MARINA L. PALILLO, Petitioners vs. FIELD INVESTIGATION BUREAU – OFFICE OF THE OMBUDSMAN FOR LUZON, REPRESENTED BY ATTY. KARYM B. LAIDAN, ET. AL., Respondent). – The Court **NOTES** the Office of the Solicitor General’s comment dated August 25, 2022 on the petition for review on *certiorari* in compliance with the Resolution dated June 27, 2022.

This petition for review on *certiorari*¹ assails the Decision² dated June 5, 2020 of the Court of Appeals in CA-G.R. SP No. 160057 finding petitioners Delio H. De Leon, Marissa P. Cortez, Noel M. Eroa, and Marina L. Palillo (petitioners) guilty of conduct prejudicial to the best interest of the service aggravated by simple misconduct and the Resolution³ dated February 22, 2021 denying their Motion for Reconsideration.⁴

Antecedents

Petitioners occupied the following positions in the municipal government of Mulanay, province of Quezon:

1. Delio H. De Leon - Bids and Awards Committee (BAC) Chairman and Municipal Engineer
2. Marissa P. Cortez – BAC Vice-Chairperson and Municipal Planning and Development Coordinator
3. Noel M. Eroa – BAC Member and Municipal Budget Officer

¹ *Rollo*, p. 16-44.

² Penned by Associate Justice Edwin D. Sorsogon and concurred in by Associate Justices Gabriel T. Robeniol and Bonifacio S. Pascua. *Id.* at 45-58.

³ Penned by Associate Justice Edwin D. Sorsogon and concurred in by Associate Justices Gabriel T. Robeniol and Bonifacio S. Pascua, *id.* at 59-61.

⁴ *Id.*

4. Marina L. Palillo – BAC Member and Revenue Collection Clerk II⁵

On February 5, 2013, Mayor Joselito A. Ojeda (Mayor Ojeda) of the Municipality of Mulanay, Quezon, requested the BAC to purchase a generator set for the use of the Municipal Disaster Risk Reduction and Management Office (MDRRMO) in the amount of ₱500,000.00. On February 11, 2013, the BAC posted an invitation to bid for the delivery and installation of the generator set. However, prior to the posting of the invitation to bid, Alta Maxpower Corporation (AMC), an entity engaged in supplying generators, was already able to signify its interest and obtain the necessary bid documents.⁶

Upon opening of the bids on February 20, 2013, the BAC discovered that AMC's bid lacked technical documents, namely: (1) manpower requirements; (2) delivery schedule; and (3) after-sales warranty. This notwithstanding, the BAC declared AMC to have passed the technical component of its bid and proceeded to open the financial component, declaring it as the only bidder which passed the eligibility criteria. The BAC allowed AMC to belatedly submit its lacking technical documents.⁷

After reception of the required documents and without conducting a post-qualification proceeding, the BAC issued Resolution No. 011, Series of 2013 dated March 1, 2013, recommending to Mayor Ojeda as the Head of the Procuring Entity (HOPE) to award the contract to AMC. Upon approval, Mayor Ojeda instructed Municipal Treasurer Anita B. Romasanta to prepare and deliver the check to AMC as payment for the generator set prior to its delivery in violation of Republic Act No. 9184, otherwise known as "The Government Procurement Reform Act."⁸

In view of the irregularities in the procurement process, the Office of the Deputy Ombudsman (OMB), filed a Complaint-Affidavit against petitioners and Mayor Ojeda for: (i) violation of Section 3(e) of Republic Act No. 3019; (ii) Grave Misconduct; and (iii) Conduct Prejudicial to the best interest of the service for their acts as chairman and members of the BAC regarding the purchase of the generator set.⁹

Petitioners countered that AMC is not a preferred supplier of the generator set but was the only interested bidder during the opening of the bids. Although they admit that AMC lacked certain technical documents, they

⁵ *Id.* at 46.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 46-47.

⁹ *Id.* at 47.

nonetheless claimed that the company was able to rectify these deficiencies within the same day of the opening of the bids.¹⁰

The Ruling of the Office of the Deputy Ombudsman for Luzon

On June 18, 2018, the OMB for Luzon rendered its Decision, *viz.*:

WHEREFORE, finding substantial evidence, respondents DELIO H. DE LEON, MARISSA P. CORTEZ, NOEL M. EROA and MARINA L. PALILLO are found liable for CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE aggravated by SIMPLE MISCONDUCT and are meted the penalty of SUSPENSION for a period of ONE (1) YEAR from service.

In the event that the penalty of Suspension can no longer be enforced due to respondents' separation from service, the penalty shall be converted into a FINE in an amount equivalent to respondents' respective salaries for six (6) months payable to the Office of the Ombudsman, and may be deductible from respondents' retirement benefits, accrued leave credits to any receivable from their office.

The administrative charges against respondent JOSELITO A. OJEDA are DISMISSED.

SO ORDERED. ¹¹

The OMB found substantial evidence to hold petitioners administratively liable for simple misconduct and conduct prejudicial to the best interest of the service. It ruled that as members of the BAC, petitioners had intentionally violated the provisions of Republic Act No. 9184 when they procured a generator set from AMC, a disqualified bidder. During the conduct of public bidding, petitioners allowed the opening of the financial component of the AMC's bid despite its manifest failure to include in its technical envelope the documents required. Consequently, petitioners violated Section 30.1, Article IX of the Implementing Rules and Regulations (IRR) of Republic Act No. 9184 which explicitly provides that "bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as 'failed.'"¹²

Meanwhile, applying the condonation doctrine, the OMB dismissed the administrative charges against Mayor Ojeda. It noted that his misconduct occurred between the months of February to April 2013. His re-election in May 2013 effectively extinguished his administrative liability.¹³

¹⁰ *Id.*

¹¹ *Id.* at 47-58.

¹² *Id.* at 48.

¹³ *Id.* at 49.

Petitioners sought a reconsideration of the OMB's pronouncements on their administrative liability but the same was denied for lack of merit. They then filed a Petition for Review under Rule 43 of the Rules of Court with the Court of Appeals.¹⁴

The Ruling of the Court of Appeals

By Decision¹⁵ dated June 5, 2020, the Court of Appeals affirmed the ruling of the office of the Deputy Ombudsman for Luzon. It ruled that the public bidding conducted by petitioners was a mere formality and that AMC had already been the "pre-selected" winner even prior to the publication of the Invitation to Apply for Eligibility and to Bid (IAETB). In fact, before the invitation to bid was posted, AMC was already able to purchase the bid documents. This is in violation of the provisions of Republic Act No. 9184 which requires that procurement shall be done through competitive public bidding.¹⁶

In highly exceptional cases,¹⁷ Article XVI of Republic Act No. 9184 sanctions a resort to alternative methods of procurement, such as limited source bidding, direct contracting and negotiated procurement. Unfortunately, none of these circumstances have been shown to exist by petitioners.¹⁸

The Present Petition

Petitioners now pray anew for the reversal of the Court of Appeals' Decision dated June 5, 2020 and Resolution dated February 22, 2021. They assign the following errors: **First**, the Court of Appeals erred in applying the 2003 Implementing Rules and Regulations of Republic Act No. 9184 (2003 IRR of Republic Act No. 9184) instead of the 2009 IRR of Republic Act No. 9184 which no longer mandated AMC's submission of technical documents. **Second**, the Court of Appeals erroneously found that petitioners "pre-selected" AMC as winning bidder. **Finally**, assuming *arguendo* that petitioners are guilty of the offenses charged, the Court of Appeals erred in failing to consider applicable mitigating circumstances.¹⁹

¹⁴ *Id.*

¹⁵ *Id.* at 45.

¹⁶ *Id.* at 51-59.

¹⁷ The *Manual of Procedures for the Procurement of Goods and Services of the Government Procurement Policy Board* (GPPB Manual) explains that R.A. No. 9184 allows the use of alternative methods of procurement in some exceptional instances, provided: (a) there is prior approval of the HOPE on the use of alternative methods of procurement, as recommended by the BAC; and (b) the conditions required by law for the use of alternative methods are present; and, as additional requisites, (c) the Procuring Entity must ensure that the method chosen promotes economy and efficiency, and (d) that the most advantageous price for the government is obtained.

¹⁸ *Rollo*, pp. 51-59.

¹⁹ *Id.* at 31-41.

In its Comment²⁰ dated August 25, 2022, respondent, through the Office of the Solicitor General (OSG), contends that petitioners' arguments are factual in nature and could no longer be passed upon by the Court. In any case, the Decision and Resolution of the Court of Appeals are not contrary to law. The "pass/fail" criteria of Section 30 of Republic Act No. 9184 is non-discretionary. Although AMC submitted the missing technical requirements afterwards, petitioners still violated the law when they proceeded to open AMC's financial envelope because the bid should have already been deemed as "failed," tarnishing the integrity of public office.

As to petitioners' argument that the missing documents are no longer required under the 2009 IRR of Republic Act No. 9183, the OSG avers that such is erroneous because they themselves, as members of the BAC, required the prospective bidders to submit them. Also, Section 17 of Republic Act No. 9183 still requires that the delivery schedule and warranty must be part of every bid. The BAC cannot simply opt not to consider them.²¹

Issue

Are petitioners liable for simple misconduct and conduct prejudicial to the best interest of the service?

Our Ruling

At the outset, we note that the issues involve questions of fact and a recalibration of evidence, and as a rule, the Court is not a trier of facts. It is not the Court's function to analyze evidence all over again because of the legal precept that factual findings of the Court of Appeals are conclusive and binding on this Court.

In any event, the petition must fail.

***Petitioners failed to comply
with the Bidding Process under
Republic Act No. 9184***

Public bidding as a method of government procurement is governed by the principles of transparency, competitiveness, simplicity and accountability. These principles permeate the provisions of Republic Act No. 9184 from the procurement process to the implementation of awarded contracts.²² Strict

²⁰ Comment, Office of the Solicitor General, August 25, 2022.

²¹ Id.

²² *COA v. Link Worth International, Inc.*, 600 Phil. 547, 564 (2009).

observance of the rules and regulations of the bidding process is the only safeguard to a fair, honest and competitive bidding process.²³

Under Republic Act No. 9184, the BAC shall, among others, conduct the evaluation of bids, recommend the award of the contract to the HOPE, and ensure that the procuring entity abides by the standards set forth by the procurement law. After the advertisement of the IAETB, the BAC is supposed to determine the eligibility of the prospective bidders based on their compliance with the eligibility requirements set forth in the IAETB and their submission of necessary documents. Section 25 thereto provides that “[a] **bid shall have two (2) components, namely, technical and financial components which should be in separate sealed envelopes and which shall be submitted simultaneously.**”

Section 30 of Republic Act No. 9184, which is echoed in its IRR, requires that the BAC shall examine first the technical components of the bids using a “pass/fail” criteria to determine whether all required documents are present. Only bids found to contain all the requirements under the technical component shall be considered for the opening and evaluation of their financial component.

In determining the contents of the technical components of AMC’s bid, the Court of Appeals applied Section 25.3, Rule VIII of the **2003 IRR** of Republic Act No. 9184, which provides:

25.3. The first envelope (Technical Proposal) shall contain the following technical information/documents, at the least:

A. For the procurement of goods:

x x x x

(3) Production/delivery schedule;

(4) Manpower requirements;

(5) After-sales/service/parts, if applicable;

(6) Technical specifications.

x x x

Petitioners reneged on their obligation to uphold the provisions of Republic Act No. 9184 when they accepted the technical component of AMC’s bid despite the absence of the following required documents, to wit: (1) manpower requirements; (2) delivery schedule; and (3) after-sales warranty. They should have rated AMC’s bid as “failed” instead of “passed” as required by Section 30 of Republic Act No. 9184. Or at the very least, they should have held in abeyance the opening of the financial component until AMC had submitted the missing technical documents.

Petitioners argue that since they committed the acts complained of on February 20, 2013, what should have been applicable was Section 25.2, Rule

²³ *Office of the Ombudsman-Mindanao v. Martel*, 806 Phil. 649, 660 (2017).

VIII, of the **2009 IRR** of Republic Act No. 9184 which no longer mandates but merely “suggests” the submission of the three technical specifications, viz.:

25.2. The first envelope shall contain the following technical information/documents, at the least:

A. For the procurement of goods:

x x x x

iii) Technical specifications, which **may** include production/delivery schedule, manpower requirements, and/or after-sales service/parts, **if applicable**. x x x

(Emphases supplied)

We do not agree.

Although petitioners correctly invoked that the applicable rule during the commission of their offense was the 2009 IRR of Republic Act No. 9184, it is erroneous to interpret the words “may” and “if applicable” to mean that such requirements are no longer mandatory. This only means that the (1) production/delivery schedule; (2) manpower requirements; and/or (3) after-sales service/part are now classified under “technical specifications.” It does not mean, however, that technical specifications may be dispensed with entirely if the three aforementioned documents are not available. If such were unavailable, the technical specifications requirement must still be complied with through other forms of documents. Such construction of Section 25.2 can be gleaned from the fact that Republic Act No. 9184 itself requires the presentation of technical specifications, viz.:

Section 17. Form and Contents of Bidding Documents - The Bidding Documents shall be prepared by the procuring entity following the standard forms and manuals prescribed by the GPPB. The Bidding Documents **shall** include the following:

x x x x

(e) Plans/Drawings and **Technical Specifications**; *(Emphases supplied.)*

x x x x.

This is also mirrored under Section 17.1(g), Rule VI of the 2009 IRR of Republic Act No. 9184. Had the legislators of the 2009 IRR intended that the aforementioned technical specifications were no longer mandatory, they should have altogether omitted such under Section 25.2. Thus, not having submitted any technical specifications, petitioners’ bid should have been declared as “failed” right then and there.

This notwithstanding, petitioners themselves admitted in the proceedings before the OMB and the Court of Appeals that AMC was lacking the required technical specifications, but that they allowed AMC to submit belatedly such requirements, albeit, after they already declared it to have “passed” the test of technical eligibility. Carmela G. Nañagas (Nañagas), a member of the BAC Secretariat who was present during the opening of the public bidding, even notified petitioners that AMC failed to submit certain technical documents but they assured her that the company would submit these lacking crucial technical documents later. This irregularity was recorded by Nañagas in the Minutes of Opening of Bids.²⁴

Having admitted to their errors, petitioners therefore cannot all of a sudden change their theory in their petition for review before this Court, alleging that the three (3) missing technical documents were not required under the 2009 IRR of Republic Act No. 9184 to begin with.

As to petitioner’s contention that the Court of Appeals erred in declaring that AMC was pre-selected, such deserves scant consideration. We reiterate that this Court is not a trier of facts. We cannot consider petitioner’s allegations without weighing in on the facts alleged by petitioner. At any rate, even if we were to believe that petitioner did not pre-select AMC, it still would not affect petitioners’ liabilities because as previously mentioned, petitioners failed to comply with the procedures laid out under Republic Act No. 9184 when they declared AMC as having “passed” the test of technical eligibility despite its deficient technical documents.

Petitioners are guilty of simple misconduct.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The offense is simple misconduct if the transgression does not involve elements of corruption, clear intent to violate the law, or flagrant disregard of established rules.²⁵

As members of the BAC, petitioners have the solemn duty to ensure that the rules and regulations for conducting public biddings for government projects are truly and conscientiously observed. The “pass/fail” criteria are non-discretionary. Yet, they transgressed the provisions of Republic Act No. 9184 by declaring that AMC passed the technical eligibility when in fact its technical envelope did not contain three (3) essential documents. By proceeding with the opening of the financial component and subsequently recommending the award of the contract to AMC notwithstanding its deficiency, petitioners disregarded the procurement law.

²⁴ *Rollo*, p. 54.

²⁵ *Domingo v. Civil Service Commission*, G.R. No.236050, June 17, 2020.

For their failure to follow the procedures laid down by Republic Act No. 9184, but did not manifest any corruption, clear intent to violate the law, and flagrant disregard of established rules, the Court of Appeals correctly ruled that petitioners are liable for simple misconduct.

We do not agree, however, that petitioners are also liable for Conduct Prejudicial to the Best Interest of the Service. A government employee may be charged with such offense as long as the questioned act or conduct taints the image and integrity of his or her office.²⁶ However, in the recent case of *Rodil v. Posadas*,²⁷ the Court clarified that the offense of conduct prejudicial to the best interest of the service is incompatible with simple misconduct. Where the misconduct was not in connection with the performance of duty, the proper designation of the offense should be conduct prejudicial to the best interest of the service. On the contrary, if the misconduct was in connection with the performance of duty, the proper designation of the offense should be Simple or Grave Misconduct, as the case may be.

Since the acts of petitioners were committed in connection with their duties as members of the BAC, and because they are already liable for simple misconduct, they cannot also be liable for conduct prejudicial to the best interest of the service.

Penalty

Simple misconduct is a less grave offense penalized by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense, under Section 52 (B) (2), Rule IV of the Revised Rules on Administrative Cases in the Civil Service.

Petitioners claim that they are entitled to the appreciation of mitigating circumstances because the generators supplied by the AMC are still functioning up to this day and have been used countless times, especially during the blackouts caused by numerous calamities that struck the Municipality of Mulanay, Quezon. They also claim that this is the first time that they have committed administrative infractions. But the Court, not being a trier of facts, has no way of verifying such self-serving claims. Neither the OMB nor the Court of Appeals found petitioners to be first-time offenders or appreciated any mitigating circumstance.

In *OMB v. Miedes, Sr.*,²⁸ respondent, who purchased and acquired cellular phones for the Municipal Government of Carmen, Davao Del Norte without public bidding, was held liable for Simple Misconduct and meted the

²⁶ *Catipon, Jr. v. Japson*, 761 Phil. 205, 221 (2015).

²⁷ A.M. No. CA-20-36-P, August 3, 2021.

²⁸ 504 Phil. 464, 475 (2008).

penalty of suspension from office for three (3) months, there being no mitigating or aggravating circumstance.

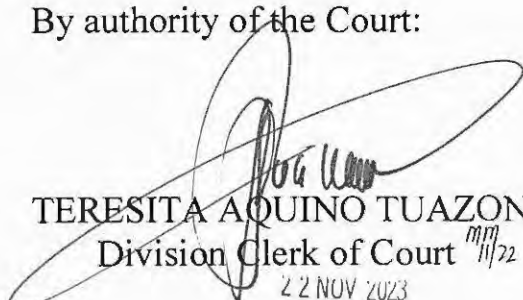
So must it be.

FOR THESE REASONS, the Petition for *Certiorari* is **DENIED**. The Decision dated June 5, 2020 and Resolution dated February 22, 2021 of the Court of Appeals in CA-G.R. SP No. 160057 is **AFFIRMED** with **MODIFICATION**. The Court finds Petitioners Delio H. De Leon, Marissa P. Cortez, Noel M. Eroa, and Marina L. Palillo **LIABLE** for SIMPLE MISCONDUCT for which they shall be **SUSPENDED** from office for two (2) months.

In the event that the penalty of suspension can no longer be enforced due to petitioners' separation from service, the penalty shall be converted into a **FINE** in an amount equivalent to petitioner's respective salaries for three (3) months, and may be deductible from respondents' retirement benefits, accrued leave credits to any receivable from their office.

SO ORDERED."

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court ^{mm}11/22
22 NOV 2023

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*with copy of CA Decision dated June 5, 2020
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