



Republic of the Philippines
Supreme Court
Manila

EN BANC

PHILIPPINE NATIONAL POLICE-
CRIMINAL INVESTIGATION
AND DETECTION GROUP (PNP-
CIDG),

Petitioner,

G.R. Nos. 219771 & 219773

Present:

LEONARDO-DE CASTRO, C.J.,
CARPIO,*
PERALTA,
BERSAMIN,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,**
CAGUIOA,
TIJAM,
A. REYES, JR.,
GESMUNDO,** and
J. REYES, JR., JJ.

- versus -

P/SUPT.* ERMILANDO O.
VILLAFUERTE,
Respondent.

Promulgated:

September 18, 2018

x-----x

DECISION

CAGUIOA, J.:

The Case

Before the Court is an appeal by *certiorari* under Rule 45 of the Rules of Court (Petition) questioning the Decision¹ dated January 28, 2015 and Resolution² dated August 3, 2015 of the Court of Appeals (CA) in CA-G.R. SP. Nos. 127757 and 127801. The CA Decision reversed and set aside the Joint Resolution³ dated May 30, 2012 (OMB Resolution) of the Office of the

* Also spelled as PSupt. in some parts of the *rollo*.

* On official leave.

** No part.

¹ *Rollo*, pp. 59-68. Rendered by the Tenth Division and penned by Associate Justice Elihu A. Ybañez, with Associate Justices Isaias P. Dicedican and Carmelita S. Manahan concurring.

² *Id.* at 69-73. Rendered by the Special Former Tenth Division and penned by Associate Justice Elihu A. Ybañez, with Associate Justices Edwin D. Sorongon and Socorro B. Inting concurring.

³ *Id.* at 74-215.

Ombudsman (OMB), which found herein respondent P/Supt. Ermilando O. Villafuerte (respondent Villafuerte) administratively liable with several others for Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service.

This case arose from the infamous “chopper scam” that involved the procurement of second-hand light police operational helicopters (LPOHs) for use of the Philippine National Police (PNP). During the procurement process, respondent Villafuerte was the Legal Officer of the National Headquarters Bids and Awards Committee (NHQ-BAC), Secretariat Division (BAC Secretariat).

The Facts

The events precipitating the instant controversy were summarized in the CA Decision, as follows:

Sometime in 2009, the Philippine National Police programed (*sic*) to purchase three (3) fully equipped helicopters with an approved budget of Php105,000,000.00. After two (2) scheduled public bidding (*sic*) failed, another bidding was conducted with two proponents participated (*sic*) namely: MAPTRA and BEELINE. The third bidding was again declared a failure since the proponents failed to meet the requirements. Later on, the requirement was modified from three (3) fully equipped helicopters to One (1) fully equipped and two (2) standard helicopters.

On 15 June 2009, the negotiation committee convened and again, MAPTRA and BEELINE participated. BEELINE submitted price quotation of Php104,987,000.00 for the requirement but manifested that the helicopters do not have xenon light, down link transmission and aircondition with only 2-3 sitting (*sic*) capacity as the inclusion of said accessories cost Php12,000,000.00. On the other hand, MAPTRA quoted Php104,985,000.00 for the requirement but all helicopters are 4-sitter (*sic*).

The Bids and Awards Committee of the PNP resolved to award the contract to MAPTRA. The head of BAC Secretariat PSSUPT Detran instructed petitioner Villafuerte to prepare the necessary documents pertaining to the award of the contract to the winning bidder MAPTRA. Hence, petitioner Villafuerte prepared the Supply Contract and the Notice to Proceed was signed by then PNP Chief Jesus Versoza.

After securing a performance bond from the AFP General Insurance Corporation in favor of the PNP, two light operational helicopters were delivered on 24 September 2009 at the PNP Air Unit Hangar, Domestic Airport in Pasay City. After inspection, the PNP released 50% of the contract price to MAPTRA.

On 10 February 2010, a fully equipped Robinson R44 Helicopter was delivered to PNP. A certification of inspection was issued on 22 February 2010. Thus, the PNP released to MAPTRA the remaining 50% balance.

Later on, an investigation was conducted regarding the procurement of the said helicopters and the investigating body allegedly



found that the helicopters that were subject of the procurement were not brand new contrary to the requirement of the PNP procurement. x x x⁴

As a result of the investigation, a Complaint dated November 25, 2011⁵ (Complaint) was filed by the OMB-Field Investigation Office, charging several public and private respondents,⁶ including respondent Villafuerte, with various criminal and administrative offenses, which included *inter alia*: (i) violation of paragraphs (e) and (g), Section 3,⁷ Republic Act No. (RA) 3019,⁸ in relation to RA 9184,⁹ and (ii) Dishonesty, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service under paragraphs 1, 2 and 20, Section 52(A), Uniform Rules on Administrative Cases in the Civil Service¹⁰.

In his Counter-Affidavit dated January 12, 2012, respondent Villafuerte claimed that his only participation in the procurement process was the drafting of several documents under the instruction of P/SSupt. Lurimer B. Detran, Head of the BAC Secretariat, to wit:

- (i) Negotiation Committee Resolution No. 2009-04, entitled "Recommending the Award of Contract and Purchase Order to Manila Aerospace Products Trading

⁴ Id. at 60-62.

⁵ Supplemented by a Verified Manifestation and Motion dated March 23, 2012. Id. at 76.

⁶ Ronaldo V. Puno, Former Secretary, Department of Interior and Local Government (DILG); Oscar F. Valenzuela, Former Assistant Secretary, DILG; Conrado L. Sumanga, Jr., NAPOLCOM Director, Installations & Logistic Services; Miguel G. Coronel, NAPOLCOM Commissioner; Avelino L. Razon, Jr., Former PNP Chief and NAPOLCOM Commissioner; Celia Sanidad-Leones, NAPOLCOM Commissioner; Jesus Ame Verzosa, Former Director General, PNP; P/Dir. Luizo Cristobal Ticman, P/Dir. Ronald Dulay Roderos, P/Dir. Leocadio Salva Cruz Santiago, Jr., Members, PNP Negotiation Committee (NC) and PNP NHQ-BAC; P/Dir. Romeo Capacillo Hilomen, Member, PNP NC; P/Ddg. Jefferson Pattai Soriano, P/CSupt. Herold G. Ubalde, Members, PNP NHQ-BAC; P/Supt. Ermilando Villafuerte, P/Supt. Roman E. Loreto, Legal Officers, PNP NHQ-BAC; P/CSupt. Luis Luarda Saligumba, P/SSupt. Job Nolan D. Antonio, P/Dir. George Quinto Piano, P/SSupt. Edgar B. Paatan, P/Supt. Mansue Nery Lukban, P/CInsp. Maria Josefina Vidal Recometa, P/SSupt. Claudio DS Gaspar, Jr., P/SSupt. Larry Balmaceda, SPO3 Jorge B. Gabiana, SPO3 Ma. Linda A. Padojinog, PO3 Dionisio Jimenez, PO3 Avensuel G. Dy, NUP Ruben S. Gongona, NUP Erwin O. Chavarria, NUP Emilia A. Aliling, NUP Erwin Paul Maranan, Members, Inspecting Team and the Inspection and Acceptance Committee, PNP; P/SSupt. Joel Crisostomo DL Garcia, Recommending Authority on WTCD Report No. T2009-04, PNP, P/SSupt. Lurimer B. Detran, Secretariat Head, PNP NHQ-BAC; Atty. Jose Miguel "Mike" Arroyo, Hilario "Larry" B. De Vera, in their private capacities; and Rep. Ignacio "Iggy" Arroyo. Id. at 74-76.

⁷ SEC. 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

⁸ ANTI-GRAFT AND CORRUPT PRACTICES ACT, August 17, 1960.

⁹ AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES, otherwise known as the "GOVERNMENT PROCUREMENT REFORM ACT," January 10, 2003.

¹⁰ Civil Service Commission (CSC) Resolution No. 991936, August 31, 1999.

- (MAPTRA¹¹) for the delivery of One (1) Fully Equipped and Two (2) Standard Light Police Operational Helicopter All Brand New Worth One Hundred Four Million Nine Hundred Eight-five Thousand Pesos (P 104,985,000.00) Inclusive of All Taxes, Import Duties and Charges;”
- (ii) BAC Resolution No. 2009-36, entitled “Affirming the Recommendation of the Negotiation Committee to Award the Supply Contract and Purchase Order to Manila Aerospace Products Trading (MAPTRA) for the Delivery of One (1) Fully-Equipped and Two (2) Standard Light Police Operational Helicopter All Brand New Worth One Hundred Four Million Nine Hundred Eighty-five Thousand Pesos (P104,985,000.00) Inclusive of All Taxes, Import Duties and Charges;”
 - (iii) Supply Contract between the PNP and MAPTRA; and
 - (iv) Notice to Proceed addressed to Mr. Larry B. De Vera.¹²

Aside from the foregoing, respondent Villafuerte further alleged that he was also instructed by P/Dir. George Quinto Piano, a member of the PNP Inspection and Acceptance Committee, to draft a demand letter to MAPTRA for the replacement of the LPOHs and a complaint-affidavit for *Estafa* against the officials of MAPTRA.¹³

Ruling of the OMB

In the OMB Resolution, the OMB concluded that the procurement process was marred with irregularities and found substantial evidence to hold respondent Villafuerte guilty of Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service.¹⁴ The OMB likewise ordered the filing of a corresponding Information for violation of Section 3(e) of RA 3019 with the Sandiganbayan against respondent Villafuerte for the same acts.¹⁵

The OMB found that the requirement in a negotiated procurement under the Implementing Rules and Regulations Part A (IRR-A) of RA 9184,¹⁶ *i.e.*, that the procuring entity directly negotiate only with a “technically, legally and financially capable supplier, contractor or consultant,”¹⁷ was not observed as MAPTRA was not so qualified. In particular, considering that potential bidders

¹¹ Also referred to as MAPTRA Sole Proprietorship and MAPTRA Corporation in some parts of the *rollo*.

¹² *Rollo*, p. 93.

¹³ *Id.* at 94.

¹⁴ *Id.* at 208-209.

¹⁵ *Id.* at 211-212.

¹⁶ IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS THE GOVERNMENT PROCUREMENT REFORM ACT (AS AMENDED), (Amended IRR-RA 9184).

¹⁷ See *rollo*, p. 145.



are required to submit certain documentary requirements to be evaluated by the BAC under the IRR-A, the OMB concluded that respondent Villafuerte and his other co-respondents, given their respective positions, conspired to award the LPOH contract to an unqualified bidder.¹⁸

The OMB Resolution held thus:

WHEREFORE, it is hereby resolved as follows:

x x x x

OMB-C-A-11-0758-L (ADMINISTRATIVE CASE)

1) Respondents P/Dir. Leocadio Salva Cruz Santiago, Jr., **P/Supt. Ermilando Villafuerte**, P/Supt. Roman E. Loreto, P/CSupt. Herold G. Ubalde, P/CSupt. Luis Laurca Saligumba, P/SSupt. Job Nolan D. Antonio, P/Dir. George Quinto Piano, P/SSupt. Edgar B. Paatan, P/SSupt. Mansue Nery Lukban, P/CInsp. Maria Josefina Vidal Recometa, P/SSupt. Claudio DS Gaspar Jr., SPO3 Ma. Linda A. Padojinog, PO3 Avensuel G. Dy and NUP Ruben S. Gongona are hereby found **GUILTY of *Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service***, and are thus meted the penalty of **DISMISSAL FROM THE SERVICE**, including the accessory penalties of **forfeiture of retirement benefits and perpetual disqualification to hold public office**, pursuant to the *Uniform Rules on Administrative Cases in the Civil Service* (CSC Resolution No. 991936, as amended).¹⁹ (Additional emphasis supplied)

Respondent Villafuerte thereafter questioned the OMB Resolution via a Petition for Review²⁰ under Rule 43 with the Court of Appeals (CA), which was docketed as CA-G.R. SP No. 127801. The case was consolidated with an appeal filed by P/Supt. Roman E. Loreto, which similarly assailed the OMB Resolution.²¹

In his appeal, respondent Villafuerte argued that his duties and functions as a member of the BAC Secretariat are merely administrative and ministerial in nature and that he was merely following the instructions of his superiors.²² Respondent Villafuerte claimed that it is the Technical Working Group of the NHQ-BAC that has the duty and responsibility to verify whether a proponent is indeed technically, legally, and financially capable to enter into a contract with the PNP.²³ Lastly, respondent Villafuerte argued that there was no positive and conclusive evidence to support the OMB's finding of conspiracy against him and his co-respondents.²⁴

¹⁸ See id. at 162-163.

¹⁹ Id. at 211-215.

²⁰ Id. at 216-259.

²¹ See id. at 59.

²² Id. at 244.

²³ Id. at 245.

²⁴ Id. at 254-256.



Ruling of the CA

In the Decision²⁵ dated January 28, 2015, the CA **reversed** the OMB Resolution and exonerated respondent Villafuerte from the administrative charges:

WHEREFORE, the petition is hereby **GRANTED**. The assailed *Joint Order* dated 30 May 2012 and *Order* dated 05 November 2012 issued by the Office of the Ombudsman are **REVERSED** and **SET ASIDE** with respect to petitioner PSUPT. Roman E. Loreto and PSUPT. Ermilando O. Villafuerte. Accordingly, PSUPT. Roman E. Loreto and PSUPT. Ermilando O. Villafuerte are **EXONERATED** from the administrative charges against them for lack of substantial evidence.

SO ORDERED.²⁶

Herein petitioner, through the Office of the Solicitor General, then filed a motion for reconsideration, which was subsequently denied by the CA in the Resolution²⁷ dated August 3, 2015 for lack of merit. In the same Resolution, the CA granted a Motion for Partial Reconsideration filed by respondent Villafuerte, ordering his reinstatement and entitlement to backwages and other benefits pursuant to the Revised Rules on Administrative Cases in the Civil Service,²⁸ to wit:

WHEREFORE, the Motion for Reconsideration filed by respondents is hereby **DENIED** for lack of merit, whereas the Motion for Partial Reconsideration filed by petitioners is hereby **GRANTED**. Petitioners are ordered reinstated to their former positions without loss of seniority rights. Moreover, the Philippine National Police is hereby ordered to pay herein petitioners their backwages and all benefits which would have accrued in their favor as if they have not been illegally dismissed. The said amounts shall be computed from 30 May 2012 until their actual reinstatement.

SO ORDERED.²⁹

Hence, this Petition.

On February 2, 2016, respondent Villafuerte filed a Comment³⁰ dated January 29, 2016. Petitioner thereafter filed its Reply³¹ dated February 23, 2017.

Issue

Whether the CA committed reversible error in reversing the OMB Resolution finding respondent Villafuerte liable for Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service.

²⁵ Id. at 59-68.

²⁶ Id. at 66-67.

²⁷ Id. at 69-73.

²⁸ Sec. 53(d), Resolution No. 1101502, promulgated on November 8, 2011.

²⁹ *Rollo*, pp. 72-73.

³⁰ Id. at 293-323.

³¹ Id. at 370-379.



The Court's Ruling

The Petition is denied.

As culled from the Petition, the principal issue for resolution is whether there is substantial evidence to find respondent Villafuerte administratively liable.³² The Court finds in the negative.

Questions of fact cannot be raised in appeals by certiorari under Rule 45; Exceptions

As a rule, questions of fact are proscribed in Rule 45 petitions.³³ A question of fact exists when doubt or difference arises as to the truth or falsehood of facts or when the resolution of the issue raised requires a calibration of the whole evidence.³⁴ As a trier of laws, the Court is not duty-bound to analyze and weigh again the evidence already considered in the proceedings below.³⁵ As an exception, however, the Court may resort to a factual inquiry in case there are conflicting findings between or among the tribunals' ruling on certain questions of fact.³⁶

In this case, the Court thus finds occasion to apply the exception considering the different factual conclusions of the OMB and the CA regarding respondent Villafuerte's administrative liability.

There is no substantial evidence to hold respondent Villafuerte liable for Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service

In administrative cases, substantial evidence is required to sustain a finding of culpability, that is, such amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion.³⁷

In the main, petitioner alleges that as a member of the BAC Secretariat, respondent Villafuerte was charged with the duty of (i) taking custody of procurement documents and other records, and (ii) assisting in managing the procurement processes and as such, he was expected to know whether the legal specifications for the procurement of the LPOHs under pertinent laws were satisfied.³⁸ Petitioner claims that since respondent Villafuerte had custody over

³² See *id.* at 39.

³³ See *General Mariano Alvarez Services Cooperative, Inc. v. National Housing Authority*, 753 Phil. 353, 359 (2015).

³⁴ *Central Bank of the Philippines v. Castro*, 514 Phil. 425, 434 (2005).

³⁵ *Miro v. Vda. de Erederos*, 721 Phil. 772, 785 (2013).

³⁶ *Office of the Ombudsman v. Dechavez*, 721 Phil. 124, 129-130 (2013).

³⁷ *Field Investigation Office v. Piano*, G.R. No. 215042, November 20, 2017, p. 8.

³⁸ *Rollo*, pp. 41-42.



the procurement documents, he therefore had the opportunity to examine the documents submitted by MAPTRA and should have known that the latter failed to meet the requirements under the law.³⁹ Petitioner further claims that respondent Villafuerte should have been cautious enough to inquire behind MAPTRA's eligibility instead of "simply closing his eyes to the apparent and obvious irregularities surrounding the procurement process."⁴⁰

Proceeding from the foregoing, petitioner thus faults respondent Villafuerte for drafting several documents that led to the award of the contract to MAPTRA, which allegedly amounted to Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service.⁴¹ Specifically, petitioner posits that respondent Villafuerte made it appear that MAPTRA possessed all the qualifications of a qualified bidder — when in fact it did not — thus resulting to damage to the Government.⁴²

Essentially, petitioner would like to impress upon the Court that respondent Villafuerte, through his individual actions, was part of a larger conspiracy in the procurement of the LPOHs and as such, is liable for Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service.

Petitioner fails to persuade.

In the first place, conspiracy as a means of incurring liability is strictly confined to criminal cases; even assuming that the records indicate the existence of a felonious scheme, the administrative liability of a person allegedly involved in such scheme cannot be established through conspiracy, considering that one's administrative liability is separate and distinct from penal liability. Thus, in administrative cases, the only inquiry in determining liability is simply whether the respondent, through his individual actions, committed the charges against him that render him administratively liable.

In any case, it bears stressing that while the OMB's factual findings in their entirety tend to demonstrate a sequence of irregularities in the procurement of the LPOHs, **this does not *ipso facto* translate into a conspiracy between each and every person involved in the procurement process.** For conspiracy to be appreciated, it must be clearly shown that there was a conscious design to commit an offense; **conspiracy is not the product of negligence but of intentionality on the part of cohorts.**⁴³ **Conspiracy is never presumed.**⁴⁴

To establish respondent Villafuerte's participation in the alleged conspiracy, the OMB Resolution concluded as follows:

³⁹ Id. at 43.

⁴⁰ Id. at 45.

⁴¹ Id. at 43-45.

⁴² Id. at 44.

⁴³ *Magsuci v. Sandiganbayan*, 310 Phil. 14, 20 (1995).

⁴⁴ *Froilan v. Sandiganbayan*, 388 Phil. 32, 42 (2000).

With respect to respondents Villafuerte and Loreto, they were legal officers designated as members of the BAC Secretariat. As such, they had the opportunity to examine the documents submitted by MAPTRA. They knew, therefore, that the latter failed to meet the technical and financial requirements required by IRR-A. However, they still proceeded to prepare the necessary papers to recommend the award of the contract to the unqualified supplier. Moreover, at the time respondent Villafuerte prepared the Supply Contract, he saw the incorporation papers of MAPTRA Corporation which indicated that it was issued Certificate of Incorporation on June 10, 2009. He was present during the June 15, 2009 negotiations when MAPTRA Sole Proprietorship submitted its proposal. Hence, when he drafted the Supply Contract he already knew that MAPTRA misrepresented itself as a sole proprietorship during the negotiations on June 15, 2009. This is not merely tolerating an irregularity but clearly participating in the commission thereof.⁴⁵

Aside from the sweeping statements of the OMB, there is a dearth of evidence on record to arrive at a conclusion that respondent Villafuerte was complicit in a conspiracy to defraud the Government. As consistently stressed by respondent Villafuerte, the following documents were drafted **upon the instruction of his superior officer**, P/SSupt. Lurimer B. Detran: (i) Negotiation Committee Resolution No. 2009-04, (ii) BAC Resolution No. 2009-36, (iii) Supply Contract between the PNP and MAPTRA; and (iv) Notice to Proceed addressed to Mr. Larry B. De Vera of MAPTRA.⁴⁶ **None of the aforesaid documents suggest that respondent Villafuerte had a material role in the awarding of the contract to MAPTRA.**

In fact, **the nature of the functions of the BAC Secretariat under the Amended IRR-A of RA 9184 confirms that respondent Villafuerte does not possess recommendatory authority of any kind:**

Section 14. BAC Secretariat

14.1. The head of the procuring entity shall create a Secretariat which will serve as the main support unit of the BAC. x x x The Secretariat shall have the following functions and responsibilities:

1. Provide administrative support to the BAC;
2. Organize and make all necessary arrangements for the BAC meetings;
3. Attend BAC meetings as Secretary;
4. Prepare Minutes of the BAC meetings;
5. Take custody of procurement documents and be responsible for the sale and distribution of bidding documents to interested bidders;
6. Assist in managing the procurement processes;

⁴⁵ *Rollo*, pp. 162-163.

⁴⁶ *Id.* at 305-307.



7. Monitor procurement activities and milestones for proper reporting to relevant agencies when required;
8. Consolidate PPMPs from various units of the procuring entity to make them available for review as indicated in Section 7 of this IRR-A;
9. Make arrangements for the pre-procurement and pre-bid conferences and bid openings; and
10. Be the central channel of communications for the BAC with end users, PMOs, other units of the line agency, other government agencies, providers of goods, civil works and consulting services, and the general public.

Here, petitioner is imputing liability to respondent Villafuerte on the simple fact that the award of the contract to MAPTRA was made through the documents that he drafted. **This is egregious error.** Using the same logic, respondent Villafuerte's participation in the alleged conspiracy thus becomes equivocal, to say the least, considering that he was also the one who drafted the demand letter to MAPTRA for the replacement of the LPOHs and a complaint-affidavit for Estafa against the officials of MAPTRA upon the instructions of P/Dir. George Quinto Piano.⁴⁷ In other words, petitioner cannot judge respondent Villafuerte's actions based on the end result of the documents drafted.

Based on the foregoing, **petitioner miserably failed to establish a nexus between the ministerial act of drafting the said documents and a scheme to defraud the Government.** Petitioner cannot satisfy the threshold of substantial evidence using only conjectures and suppositions; the mere fact that an irregular procurement process was uncovered does not mean that all persons involved, regardless of rank or functions, were acting together in conspiracy. Moreover, as already discussed above, neither does proof of criminal conspiracy automatically impute administrative liability on all those concerned.

On this score, the Court finds merit in and accordingly adopts the following disquisition in the CA Decision:

In the present case, no records will show that petitioners took part in the alleged conspiracy. **They were not signatories of any document pertaining to the procurement of the three (3) helicopters. The petitioners were neither part of the team who inspected the procured helicopters nor were they signatories in the disbursement vouchers for the payment of the said helicopters. Hence, there is no direct evidence that will link them to the alleged conspiracy.**

Petitioner Loreto was not present in the 15 June 2009 negotiation which eventually led to the awarding of the Supply Contract to MAPTRA. Perforce, there is no clear or substantial evidence proffered against him to become administratively liable. **Anent petitioner Villafuerte though he**

⁴⁷ Rollo, p. 94.



was present in the 15 June 2009 negotiation, however, there are no records to show that he has the power to recommend or decide on the negotiation that was conducted. He was merely instructed to prepare the Supply Contract, nothing more.

X X X X

It cannot be disputed that only the members of the Bids and Awards Committee are the only persons authorized and empowered to decide on matters pertaining to the bidding and procurement. **The BAC Secretariat is clearly given the mandate to only safe keep the documents and facilitate the procurement process. They only rely on the decision of the members of the BAC itself and to prepare whatever document they are instructed to do so. Hence, it cannot be determined as to what extent of culpability that petitioners committed in the alleged conspiracy.**

X X X X

Here, there was no substantial evidence presented against the petitioners. Petitioner Loreto was not present in the 15 June 2009 negotiation that led to the awarding of the Supply Contract to MAPTRA and both petitioners were merely members of the BAC Secretariat who were only support group (*sic*), as custodian of documents and to facilitate the procurement process. **Their alleged silence cannot be equated to acquiesce (*sic*) or participation in the alleged anomaly or irregularity. Petitioners cannot, therefore, be held civilly or administratively liable for such acts unless there is a clear showing of bad faith, malice or gross negligence.**⁴⁸ (Emphasis and underscoring supplied)

Parenthetically, petitioner makes much of the fact that respondent Villafuerte was under the Office of Legal Affairs of the PNP before being detailed to the BAC Secretariat.⁴⁹ From this fact, petitioner concludes that respondent Villafuerte's legal background "should have cautioned him that it was improper to award the contract to MAPTRA" and therefore he could no longer escape culpability from his act of drafting the necessary documents recommending the award to MAPTRA.⁵⁰ This reasoning is specious.

Even as petitioner does not contest the CA's finding that respondent Villafuerte's duties as Member of the BAC Secretariat are ministerial in nature, it insists on holding respondent Villafuerte liable. **What petitioner is thus doing is effectively imposing additional duties upon respondent Villafuerte by the mere fact that he previously worked under the Office of Legal Affairs; that respondent Villafuerte's purported failure to go above and beyond his regular functions under the BAC Secretariat makes him equally responsible for the damage resulting to the government. This is untenable and simply unfair.** While eagerness in public service is indeed ideal, there is simply no basis in fact to find respondent Villafuerte liable for not examining each and every document and on the basis of which make an independent assessment of the

⁴⁸ Id. at 64-66.

⁴⁹ Id. at 42-43.

⁵⁰ Id. at 42.

qualifications of bidders — when, as a member only of the BAC Secretariat, he is merely charged with the custody thereof. **To be certain, an opportunity to examine documents does not, by any means, impose a mandatory duty to examine the same.**

Neither can dishonesty or conduct prejudicial to the service be attributed to respondent Villafuerte by the mere fact that he drafted Negotiation Committee Resolution No. 2009-04 recommending the award of the contract to MAPTRA as a sole proprietorship, notwithstanding the fact that it was apparently issued a Certificate of Incorporation on June 10, 2009, or five (5) days prior to the June 15, 2009 negotiations leading to the issuance of Negotiation Committee Resolution No. 2009-04. Petitioner specifically posits that respondent Villafuerte, who was present in the June 15, 2009 negotiations, effectively consented to the irregularities attending the procurement process due to his knowledge that MAPTRA represented itself as a sole proprietorship despite being incorporated a few days earlier.

The Court disagrees; without more, such bare circumstance does not qualify as substantial evidence that respondent Villafuerte was guilty of any impropriety and therefore administratively liable. No deliberate intention to mislead the Government in pursuance of a larger conspiracy can be derived from the mere fact that there was a purported error in designating MAPTRA either as a sole proprietorship or a corporation. In the first place, as summarized in the OMB Resolution itself, the Negotiation Committee, which is in charge of evaluating the eligibility of MAPTRA, had already made a finding thereon:

30. In the evaluation of the eligibility of MAPTRA Sole Proprietorship, the Minutes of the Negotiation states, inter alia, that the eligibility and technical documents submitted by said entity are all in order and conforming with the requirements of the Committee, thus:

[T]he Negotiation Committee called on the second proponent which is MAPTRA. The Chairman instructed MAPTRA's representative to hand over their Eligibility, Technical and Financial documents to the Secretariat and TWG. **After a thorough checking by the BAC Legal and TWG on the Eligibility and Technical documents, it was found to be all in order and conforming with the requirements by the Committee,** hence the opening of its financial proposal. x x x⁵¹ (Emphasis supplied)

Thus, as a mere Member of the BAC Secretariat, respondent Villafuerte had no compelling reason to evaluate MAPTRA's eligibility all over again while drafting the pertinent documents, especially as such is not even a part of his duties. Further in this regard, the Court finds respondent Villafuerte's explanation to have sufficiently clarified the matter:

⁵¹ Id. at 125.



7.18. It should herein be emphasized, that among the papers and documents PSSUPT Detran gave to herein Respondent are the incorporation papers of MAPTRA **which was not presented during the negotiation conference conducted on 15 June 2009.** Apparently, MAPTRA was in the process of incorporation during the period of negotiation. It is relevant to state, however, that it appears from the documents that MAPTRA maintained the same business facilities, address, and continued to engage in the same line and kind of business as the sole proprietorship.

7.19. **Since it was more than two (2) weeks from 15 June 2009, the date of the negotiation conference, that the Respondent was informed that after deliberating the matter the NHQ-BAC awarded the supply contract to MAPTRA and the pertinent documents were given to him, the Respondent presumed that the NHQ-BAC through the Technical Working Group (TWG) already conducted verification of the documents submitted by MAPTRA.** The Minutes of the 15 June 2009 negotiation conference shows that members of the BAC TWG were present, namely: *Police Chief Inspector Cherry M. Fajardo, Police Chief Inspector Maria Josefina Recometa, SPO3 Ma. Linda A. Padojinog, and NUP Ruben S. Gongona.*

7.20. Further, considering that the NHQ-BAC must have already taken all the MAPTRA documents into consideration, including the legal, financial and technical aspects thereof, when they deliberated on the award made to MAPTRA, as well as the fact that the Respondent is not aware of any prohibition thereon, he proceeded in drafting the required documents as he was commanded to do. Thus, when Respondent drafted the Supply Contract, he indicated therein that MAPTRA is a corporation as can be gleaned from the documents subsequently given to him by his superior officer.⁵² (Emphasis supplied)

Further on this matter, Justice Leonen, in his dissenting opinion, opines that respondent Villafuerte should be held liable considering that he is a member of the bar.⁵³ He argues that respondent Villafuerte's claim of performing ministerial duties is untenable as having administrative or ministerial functions does not strip a lawyer of his ethical duties as embodied in the Code of Professional Responsibility (CPR).⁵⁴ Specifically, Justice Leonen argues that in the drafting of the subject documents, respondent Villafuerte was engaged in the practice of law as it entailed application of his legal knowledge, training, and experience.⁵⁵ Thus, Justice Leonen opines that respondent Villafuerte's duties could not have been ministerial as his legal training should have prompted him as to the impropriety of the contract and that his purported failure to advise his superiors of irregularities rendered him liable.⁵⁶

The Court cannot accept the foregoing ratiocination of Justice Leonen. While it may be true that a lawyer cannot, at his convenience, shed himself of his ethical duties as a member of the legal profession, holding him

⁵² Id. at 299-300.

⁵³ J. Leonen, Dissenting Opinion, p. 2.

⁵⁴ Id.

⁵⁵ Id. at 3.

⁵⁶ Id.

accountable for alleged violations of the CPR must be done in strict observance of established procedure. Here, while there is an apparent intersection between respondent Villafuerte's duties as Member of the BAC Secretariat and his duties as a member of the bar, the Court cannot hold him liable for violations of the latter as he was never properly charged for the same nor was he given the opportunity to respond to any such charges. The two offices that respondent Villafuerte occupy have separate and distinct duties and functions and are governed by entirely different rules. Thus, to insist on penalizing him for acts done in violation of one office despite being charged for violation of the other — no matter how patent the infraction — would infringe upon the most basic requirement of due process.

More importantly, there is nothing explicit in the statutory duties of the BAC Secretariat that would require respondent Villafuerte to further examine the findings of the Negotiation Committee, which is the body charged with evaluating the qualifications of MAPTRA. That respondent Villafuerte had incidentally applied his legal knowledge and training does not discount the fact that he drafted the contested documents purely under the instructions of his superiors — not as a result of any exercise of discretion on his part. Such circumstance undeniably points to the conclusion that his duties are only ministerial in nature.

Again, it is untenably and simply unfair to effectively impose additional duties upon respondent Villafuerte by the mere fact that he is a lawyer so that his purported failure to go above and beyond his regular functions under the BAC Secretariat makes him part of a conspiracy to defraud the government. To reiterate, there is simply no basis to find respondent Villafuerte liable for not examining each and every document and on the basis of which make an independent assessment of the qualifications of bidders — when, as a member only of the BAC Secretariat, he is merely charged with the custody thereof.

All told, the Court is not prepared to punish respondent Villafuerte for merely discharging the ministerial functions of his office as Member of the BAC Secretariat, especially when such acts were made pursuant to the instructions of his superiors. Without more, and there being absolutely no substantial evidence existing from the records to hold respondent Villafuerte liable for either Serious Dishonesty or Conduct Prejudicial to the Best Interest of the Service, the judgment here can be no other than total exoneration.

A final note.

The Office of the Ombudsman is, by special designation of the Constitution, the "protector of the people."⁵⁷ As such, the Constitution has bequeathed upon it a unique arsenal of powers to investigate any and all acts or omissions of public officers that appear to be illegal, unjust, improper, or

⁵⁷ 1987 CONSTITUTION, Art. XI, Sec. 12.



inefficient.⁵⁸ As well, it is empowered to impose penalties in the exercise of its administrative disciplinary authority.⁵⁹ In this regard, while the nature of its functions is largely prosecutorial, the Office of the Ombudsman is not, by any means, exempted from upholding the fundamental rights of all citizens as safeguarded by the Constitution. This was stressed by the Court in *Morales, Jr. v. Carpio-Morales*⁶⁰:

x x x [T]he Ombudsman's duty is not only to prosecute but, more importantly, to **ensure that justice is served**. This means determining, at the earliest possible time, whether the process should continue or should be terminated. The duty includes using all the resources necessary to prosecute an offending public officer where it is warranted, as well as to refrain from placing any undue burden on the parties in the case, or government resources where the same is not.⁶¹

Following the pronouncements in *Morales, Jr.*, the Ombudsman is thus reminded to exercise the utmost circumspection in its own pursuit of justice. It must be stressed that it is not prosecuting ordinary citizens, but public servants who play instrumental roles in our system of government, regardless of rank. In this regard, to stubbornly pursue baseless cases against public officers not only places an unnecessary burden upon their person, but also ultimately hampers the effective dispensation of government functions due to the unique positions that they occupy. The responsibility of the Ombudsman is made even greater given that a decision imposing the penalty of dismissal is immediately executory and is not stayed by a pending appeal:

Section 7. Finality and execution of decision. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.⁶² (Emphasis supplied)

⁵⁸ *Id.*, Art. XI, Sec. 13(1).

⁵⁹ *Office of the Ombudsman v. Apolonio*, 683 Phil. 553, 563 (2012).

⁶⁰ 791 Phil. 539 (2016).

⁶¹ *Id.* at 555.

⁶² RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, Rule III, Sec. 7, as amended by Administrative Order No. 17 dated September 15, 2003.

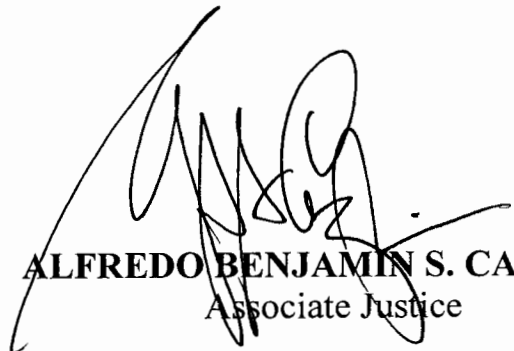
In the same vein, it should be emphasized, following the cited provision, that the CA has a concomitant responsibility to ensure that, in case of exoneration, such a decision must perforce be immediately executory, notwithstanding an appeal that may be lodged by the Ombudsman with the Court. The Court finds such rule necessary to fulfill the interests of justice and fairness, given that not only the livelihoods of our public servants are at stake, but likewise the efficient operations of government as a whole.

All told, inasmuch as the Office of the Ombudsman enjoys independence, it cannot and should not lose sight of our laws, which it is bound to uphold and obey.⁶³ The Ombudsman is as much the protector of the innocent as it is the sentinel of the integrity of the public service; the zeal of prosecution must, at all times, be tempered with evidence. In this case, the cavalier attitude of the Ombudsman in distilling the facts and meting out the most severe penalty of dismissal cannot go unnoticed; the dismissal of an officer based on nothing but conjecture and a talismanic invocation of conspiracy is, aside from being manifestly unjust, a gross disservice to its mandate. To be sure, the cleansing of our ranks cannot be done at the expense of a fair and just proceeding.

WHEREFORE, premises considered, the instant Petition is **DENIED**. The Decision dated January 28, 2015 and Resolution dated August 3, 2015 of the Court of Appeals in CA-G.R. SP. Nos. 127757 and 127801 are hereby **AFFIRMED**.

Accordingly, this Decision shall be immediately executory insofar as the reinstatement of P/Supt. Ermilando O. Villafuerte to his former position is concerned, which shall be without loss of seniority rights and with payment of backwages and all benefits which would have accrued as if he had not been illegally dismissed, following Section 58 of the 2017 Rules on Administrative Cases in the Civil Service⁶⁴.

SO ORDERED.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁶³ *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 664 Phil. 16, 30 (2011).

⁶⁴ CSC Resolution No. 1701077, promulgated on July 3, 2017.

WE CONCUR:

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Chief Justice

(On official leave)
ANTONIO T. CARPIO
Senior Associate Justice

Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice

*I dissent. See separate
opinion.*

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

Marvic M.V.F. Leonen
MARVIC M.V.F. LEONEN
Associate Justice

(No Part)
FRANCIS H. JARDELEZA
Associate Justice

Noel Gomez Tijam
NOEL GOMEZ TIJAM
Associate Justice

Andres B. Reyes, Jr.
ANDRES B. REYES, JR.
Associate Justice

(No Part)
ALEXANDER G. GESMUNDO
Associate Justice

Jose C. Reyes, Jr.
JOSE C. REYES, JR.
Associate Justice

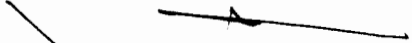
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CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Chief Justice

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court



EN BANC

G.R. No. 219771 & 219773 – PHILIPPINE NATIONAL POLICE – CRIMINAL INVESTIGATION AND DETECTION GROUP (PNP-CIDG), *petitioner*, v. P/SUPT. ERMILANDO O. VILLAFUERTE, *respondent*.

Promulgated:

September 18, 2018

X-----X

DISSENTING OPINION

LEONEN, J.:

I refuse to believe that the accused in this case was a mere unthinking bureaucrat who had no duty except to draft documents. I believe that as a lawyer, he had the competence to know when there was a defect in the procedure. As a public officer, he was duty bound to exercise utmost responsibility to ensure that powerful individuals did not abuse their positions.

I dissent that he should be acquitted.

Respondent P/Supt. Ermilando O. Villafuerte, in his Comment, admits drafting only the following:

a) Negotiation Committee Resolution No. 2009-04 entitled “Recommending the Award of Contract and Purchase Order to Manila Aerospace Products Training (MAPTRA) for the Delivery of One (1) Fully Equipped and Two (2) Standards Light Police Operational Helicopter All Brand New Worth One Hundred Four Million Nine Hundred Eight-Five Thousand Pesos (P104,985,000.00) Inclusive of All Taxes, Imports, Duties, and Charges”;

b) NHQ-BAC Resolution No. 2009-36 entitled “Affirming the Recommendation of the Negotiation Committee to Award the Supply Contract and Purchase Order to Manila Aerospace Products Training (MAPTRA) for the Delivery of One (1) Fully-equipped and Two (2) Standard Light Police Operational Helicopter All Brand New Worth One Hundred Four Million Nine Hundred Eight-Five Thousand Pesos (P104,985,000.00)”;

c) Supply Contract Between the PNP and MAPTRA. The Supply Contract was eventually executed by and between PDIR Luizo C. Ticman, who signed for the PNP, and the representative of MAPTRA, Mr. Larry B. De Vera. The said contract was likewise approved and signed by Police Director General Jesus Verzosa, Chief, PNP.

d) Notice to Proceed addressed to Mr. Larry B. de Vera, President of MAPTRA.¹

The *ponencia* sweepingly declared that “[n]one of the aforesaid documents suggest that respondent Villafuerte had a material role in the awarding of the contract to [Manila Aerospace Products Trading (MAPTRA)].”² Scrutiny of the documents is indispensable. As the documents do not appear in the records of this case, this Court turns to the findings of fact of the Ombudsman in its Joint Resolution³ in OMB-C-C-11-0758-L and OMB-C-A-11-0758-L to examine their contents.

As to Negotiation Committee Resolution No. 2009-04, the Ombudsman found:

[T]he Negotiation Committee, in its Resolution 2009-04, recommended the award of contract and purchase order to MAPTRA Sole Proprietorship, for the delivery of one (1) fully equipped and two (2) standard LPOHs, all brand new, worth P104,985,000.00. It stated, among others, that the proposal of MAPTRA was acceptable because the helicopters they would deliver were consistent with the NAPLOCOM approved specifications; the total price quoted was within the [Approved Budget for the Contract]; and MAPTRA was a legally, technically, and financially capable supplier of helicopters since it has been engaged in the business for so many years with available and existing service facilities.⁴

The last statement alone was found to be false. According to the Ombudsman, the irregularities were conspicuous in the very documents submitted to the Bids and Awards Committee:

32. However, the documents pertaining to the completed transactions of MAPTRA Sole Proprietorship indicate that it had so far supplied only one unit of helicopter while the rest of its transactions involved the sale of spare parts and maintenance, thus:

Corporation/Company	Nature of Contract	Amount
DPWH	Sale of spare parts	Php3,068,963.66
Allied Banking Corporation	Sale of spare parts/maintenance	Php9,314,983.42
Philippine Navy	Sale of helicopter (one [1] unit Rotary Wing Trainer Aircraft in 2007)	PHP15,295,000.00
ABS-CBN	Maintenance	USD348,099.60
Tanduy Distilleries, Inc.	Sale of spare parts	Php2,742,604

¹ *Rollo*, p. 299.

² *Ponencia*, p. 9.

³ *Rollo*, pp. 74–215.

⁴ *Id.* at 125.

33. Further, MAPTRA Sole Proprietorship's single largest contract and the only similar contract with that of the PNP was only for P15,295,000.00.

34. Likewise, the Independent Auditor's Report with Balance Sheets submitted by MAPTRA reveals that its "Current Assets" in 2007 and 2008 were P14,180,600.00 and P11,594,832.00, respectively, and that its "Current Liabilities" in said years were P13,803,844.00 and P12,043,260.00, respectively.

35. MAPTRA Sole Proprietorship or MAPTRA-Corporation had not submitted a commitment from a licensed bank to extend to it a credit line if awarded the contract. Neither did it submit a cash deposit certificate in an amount which is at least equal to ten percent (10%) of the P105,000,000.00 ABC, or P10,500,000.00.⁵

By this alone, it is inconceivable that respondent, who prepared the Negotiation Committee Resolution No. 2009-04 and under whose custody the supplier's financial documents were, had no hand in the anomaly.

The NHQ-BAC Resolution No. 2009-36 "affirmed the recommendation of the Negotiation Committee to recommend to the [Philippine National Police] Chief the award of the supply contract to MAPTRA Sole Proprietorship."⁶ The Supply Contract is where the parties obligated themselves to deliver to the Philippine National Police one *brand new* fully-equipped and two standard brand new Light Police Operational Helicopters for MAPTRA, and to pay MAPTRA the amount of ₱104,985,000.00 for the Philippine National Police.⁷

The Ombudsman found that the misrepresentations on the financial and technical capabilities of MAPTRA were exhibited in the documents they submitted to the Bids and Awards Committee.⁸ To exculpate himself from the administrative charge, respondent argues that his duties as a legal officer of the Bids and Awards Committee Secretariat render him as performing ministerial duties. He insists that the Bids and Awards Committee Secretariat's functions are purely administrative in nature.

The duties of a lawyer, as embodied in the Code of Professional Responsibility, are not ministerial. I cannot agree with the *ponencia's* view that respondent's act of drafting the procurement documents was administrative and ministerial.

⁵ Id. at 126–127.

⁶ Id. at 127.

⁷ Id.

⁸ Id. at 126–129.

Respondent's invocation of the Bids and Awards Committee Secretariat's administrative functions is a poor excuse and a mockery of the profession he brandishes. As a member of the legal profession, respondent performs duties impressed with public interest. Having administrative and ministerial functions does not strip a lawyer of his ethical duties embodied in the Code of Professional Responsibility.

The first canon in the Code of Professional Responsibility instructs lawyers to "uphold the Constitution, obey the laws of the land and promote respect for law and for legal processes."⁹ A lawyer must conduct himself with honesty and integrity in all his dealings.¹⁰ Further, he must maintain "a high standard of legal proficiency, morality, honesty, integrity and fair dealing, and must perform their four-fold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms embodied in the Code of Professional Responsibility."¹¹ The legal profession demands exacting standards from its members.

Respondent alleged that he was under the Office of the Legal Affairs of the Philippine National Police before he was assigned as the Legal Officer of the Bids and Awards Committee Secretariat as an additional duty.¹² According to him, taking custody of procurement documents and assisting in the management of the procurement process were among the Bids and Awards Committee Secretariat's official functions.¹³

In *Roxas v. Republic Estate Corporation*,¹⁴ this Court defined a ministerial duty:

A purely ministerial act or duty is one which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and *without regard to the exercise of [one's] own judgment* upon the propriety or impropriety of the act done.¹⁵ (Emphasis supplied)

A duty is ministerial when it does not require the exercise of discretion or judgment. Respondent is a high-ranking police officer and a lawyer. At its barest minimum, he is no stranger to the law. In preparing the Bids and Awards Committee resolutions and the supply contract in furtherance of the procurement, respondent made representations concerning MAPTRA's qualifications for which he must have reviewed the financial documents. This

⁹ CODE OF PROFESSIONAL RESPONSIBILITY, Canon 1.

¹⁰ *Villanueva v. Atty. Ishiwata*, 486 Phil. 1, 6 (2004) [Per J. Sandoval-Gutierrez, Third Division].

¹¹ *Luna v. Galarrita*, 763 Phil. 175 (2015) [Per J. Leonen, En Banc] citing *Jinon v. Jiz*, 705 Phil. 321 (2013) [Per J. Perlas-Bernabe, En Banc], *Molina v. Magat*, 687 Phil. 1 (2012) [Per J. Mendoza, Third Division].

¹² *Rollo*, p. 296.

¹³ *Id.* at 306–307.

¹⁴ G.R. Nos. 208205 & 208212, June 1, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/208205.pdf>> [Per J. Leonen, Second Division].

¹⁵ *Id.* at 20 citing *Teodosio v. Somosa, et al.*, 612 Phil. 858, 872–873 (2009) [Per Curiam, En Banc].

constituted practice of law and exercise of his judgment, entailing application of his legal knowledge, training, and experience.¹⁶ His duty was not ministerial as his legal training prompted him of the impropriety of the task at hand.

Respondent contends that he relied in good faith in the documents which his superior presented to him and was “not aware of any prohibition thereon.”¹⁷ In preparing the Supply Contract, he claims that he indicated that “MAPTRA is a corporation, as can be gleaned from the documents.”¹⁸

Respondent is inconsistent. He cannot claim good faith in relying on the documents, unaware of an irregularity on its face, when he had foreknowledge of MAPTRA’s ineligibility. In respondent’s Comment before this Court, he claimed:

It should herein be emphasized, that among the papers and documents PSSUPT Detran gave to herein Respondent are the incorporation papers of MAPTRA which was not presented during the negotiation conference conducted on 15 June 2009. Apparently, MAPTRA was in the process of incorporation during the period of negotiation. It is relevant to state, however, that it appears from the documents that MAPTRA maintained the same business facilities, address, and continued to engage in the same line and kind of business as the sole proprietorship.¹⁹

Respondent’s narration of facts in his Comment appears to be quoted from his Petition for Review before the Court of Appeals. Curiously, he omitted a damning statement:

It should herein be emphasized that, among the papers and documents PSSUPT Detran gave to herein Respondent are the incorporation papers of MAPTRA which was not presented during the negotiation conference conducted on 15 June 2009. ***In fact, [respondent] recalls that on 15 June 2009, MAPTRA claimed that it is a sole proprietorship owned by Mr. Larry B. De Vera.*** Apparently, MAPTRA was in the process of incorporation during the period of negotiation, ***of which fact, [respondent] is not certain if the NHQ-BAC was apprised at the time.*** It is relevant to state, however, that it appears from the documents that MAPTRA maintained the same business facilities, address, and continued to engage in the same line and kind of business as the sole proprietorship.²⁰ (Emphasis supplied.)

MAPTRA’s Certification of Incorporation presented to respondent indicated that it was issued on June 10, 2009.²¹ This is contrary to what he

¹⁶ *Cayetano v. Monsod*, 278 Phil 235 (1991) [Per J. Paras, En Banc].

¹⁷ *Rollo*, p. 300.

¹⁸ *Id.*

¹⁹ *Id.* at 299–300.

²⁰ *Id.* at 229.

²¹ *Id.* at 124.

personally heard from a MAPTRA representative. Not only was respondent in attendance in the negotiation conference on June 15, 2009, but more importantly, respondent *knew* of MAPTRA's ineligibility and the apparent falsehood in the statement in the document he prepared. At minimum, there was an irregularity staring right at him. It seems that respondent *willfully* disregarded the facts before him and looked the other way. His foreknowledge of MAPTRA's ineligibility as a supplier warranted an inquiry into the transaction for which he was preparing the documents. He must have, at the very least, informed his superior of the patent irregularity.

As a defense, respondent harps on the Bids and Awards Committee Secretariat's administrative functions as defined by law. However, respondent's specific function does not appear on record. Nonetheless, it would be the height of ignorance to claim that he was not obligated as the Bids and Awards Committee Secretariat's *legal officer* to inform his superior of the *manifest legal infirmities* in the contract. Clearly, respondent was remiss in his basic duty, which, to my mind, does not have to be specifically delineated for him.

In effect, what respondent claims and the majority is prepared to accept is that he drafted the procurement documents without verifying the representations and statements declared there despite personal knowledge of their falsehood. As it was his superior's instruction, he prepared the documents unmindful of the supplier's financial documents under his custody and for his perusal. In conclusion, the majority is acquitting respondent high-ranking police officer-lawyer because his official function was to merely keep the supplier's documents safe and to unthinkingly prepare the procurement documents as instructed. I cannot condone this.

Respondent cannot claim failure to exercise judgment under the circumstances or worse, ignorance of the law he had sworn to obey. He failed to conduct himself as a lawyer according to the best of his knowledge and discretion, contrary to the solemn oath he had sworn to be admitted into the legal profession.

Moreover, respondent is a high-ranking public official.²² "Public office is a public trust."²³ It involves a delegation of sovereign functions to an individual for the benefit of the public.²⁴ No less than the Constitution demands a public officer's "utmost responsibility, integrity, loyalty, and

²² Rep. Act No. 6713, sec. 3 provides:

"Public Officials" includes elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount.

²³ CONST., art. XI, sec. 1.

²⁴ *Government v. Springer*, 50 Phil 259 (1927) [J. Malcolm, Second Division].

efficiency”²⁵ in the performance of one’s duties. This, respondent failed to do.

Respondent cannot hide behind his superior’s alleged instruction to disavow liability. As a public official, he performed the sovereign function of being the legal officer of the Philippine National Police Bids and Awards Committee Secretariat. He served the interest of the public, and not his superior’s. Inept legal work of a public official exposes the public to unnecessary risks and as in this case, blatant corruption.

Lawyers cannot disabuse themselves of their inescapable duties as embodied in the Code of Professional Responsibility. They must perform their duties, at all times and in whatever capacity, in accordance with the dictates of the legal profession. To exculpate respondent from the administrative charge against him in the guise of having administrative and ministerial functions is to lessen the confidence reposed by the public in the fidelity, honesty, and integrity of the legal profession.

In *LRTA v. Salvaña*,²⁶ this Court discussed the administrative charge of serious dishonesty:

Dishonesty has been defined “as the ‘disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity’” Since the utmost integrity is expected of public servants, its absence is not only frowned upon but punished severely.

Section 52, Rule IV of the URACCS provides:

Section 52. *Classification of Offenses.* — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

1. Dishonesty — 1st Offense — Dismissal

....

In *Remolona v. Civil Service Commission*, this court explained the rationale for the severity of the penalty:

It cannot be denied that dishonesty is considered a grave offense punishable by dismissal for the first offense under Section 23, Rule XIV of the Rules Implementing Book V of Executive Order No. 292. And the rule is

²⁵ CONST., art. XI, sec. 1.

²⁶ 736 Phil. 123 (2014) [Per J. Leonen, En Banc].

that dishonesty, in order to warrant dismissal, need not be committed in the course of the performance of duty by the person charged. **The rationale for the rule is that if a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations.**²⁷ (Emphasis in the original, citations omitted)

The Rules on the Administrative Offense of Dishonesty defines dishonesty as “the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive or betray and an intent to violate the truth.”²⁸ Dishonesty is serious when it “causes serious damage and grave prejudice to the government.”²⁹ Undoubtedly, the millions of public funds involved in this illegal dealing brought grave prejudice to the government.

A conduct prejudicial to the best interest of the service is “any misconduct ‘which need not be related or connected to the public officers’ official functions but tends to tarnish the image and integrity of his/her public office.’”³⁰ There is no need to belabor this point.

The “old boys club” is often used as metaphor for the existence of powerful but corrupt leadership in an agency. It describes an atmosphere where all public officers look the other way rather than evolve the courage to stand up and call attention to anomalies in their office. The “old boys club” syndrome survives on the reality that the impoverished masses who stand to benefit from the weeding out of corruption are not proximate. The “old boys club” thrives on both fear from the powerful and the institutionalization of powerlessness on the part of the other public offices in that office.

I disagree that a police superintendent could not have mustered the courage to do his constitutional and statutory duty to serve the people with

²⁷ Id. at 151–152.

²⁸ CSC Res. No. 06-0538, sec. 1.

²⁹ CSC Res. No. 06-0538, sec. 3.


³⁰ *Abos v. Borromeo IV*, 765 Phil. 10 (2015) [Per. J. Leonen, Second Division] citing *Largo v. Court of Appeals*, 563 Phil. 293 (2007) [Per J. Ynares-Santiago, En Banc].

“utmost responsibility, integrity, loyalty, and efficiency.” Respondent saw that there was something amiss. He saw the anomaly, yet he chose to do nothing. In effect, he conspired.

To allow respondent to go free without liability is contrary to the value of his office and his rank. It is to allow the “old boys club” to continue.

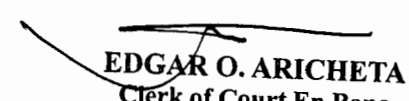
Thus, I dissent.

A



MARVIC M.V.F. LEONEN
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court