



Republic of the Philippines
 Supreme Court
 Manila

SPECIAL THIRD DIVISION

OFFICE OF THE OMBUDSMAN,
Petitioner,

G.R. No. 236383

Present:

LEONEN, J., *Chairperson,*
 HERNANDO,*
 JAVIER,
 INTING, and
 LOPEZ, J., *JJ.*

- versus -

MARILYN H. CELIZ AND
 LUVISMINDA H. NARCISO,
Respondents.

Promulgated:

June 14, 2021

X ----- MISDCR-ff ----- X

RESOLUTION

INTING, J.:

For the Court's resolution is a Motion for Reconsideration¹ filed by Luvisminda H. Narciso (Luvisminda) and Marilyn H. Celiz (Marilyn) (collectively, respondents) seeking to set aside the Court Decision² dated June 26, 2019. The assailed Decision found respondents guilty of Grave Misconduct and accordingly dismissed them from the government service with all the accessory penalties of cancellation of eligibility, forfeiture of leave credits, and retirement benefits, and disqualification for reemployment in the government service.³

The facts are as follows:

* On official leave.

¹ *Rollo*, pp. 249-266.

² *Id.* at 234-248; penned by Associate Justice Andres B. Reyes, Jr. (now a retired member of the Court) with Associate Justices Diosdado M. Peralta (now a retired Chief Justice of the Court), Marvic M.V. F. Leonen, Ramon Paul L. Hernando, and Henri Jean Paul B. Inting, concurring.

³ *Id.* at 247.

On November 20, 2007, Director Rolando M. Asis (Director Asis) of the Department of Public Works and Highways (DPWH) Region VI submitted to DPWH Secretary Hermogenes E. Ebdane, Jr. (Secretary Ebdane) the approved program of works and estimates for the proposed asphalt overlay project in Iloilo City. The estimated cost of the project is ₱54,500,000.00 allotted for repair of about 2.4 kilometers of the Iloilo-Jaro Diversion Road.

On November 23, 2007, former Iloilo City Mayor Jerry P. Treñas requested Director Asis to immediately implement the project in time for the upcoming Dinagyang Festival. Thus, Director Asis made a request to Secretary Ebdane for clearance to implement the project through negotiated procurement. He justified that the project was urgent because it was the primary route for the Dinagyang Festival and there was a need to further promote tourism in the region. On November 29, 2007, Secretary Ebdane approved the request.⁴

At that time, Luvisminda was the Vice-Chairman of the DPWH Region VI Bids and Awards Committee (BAC), while Marilyn was one of the Provisional Members.⁵

On January 2, 2008, the BAC unanimously approved an unnumbered Resolution recommending the direct negotiation of the contract for the asphalt overlay project to International Builders' Corporation (IBC). Director Asis approved the Resolution. The BAC Chairman Berna C. Coca (BAC Chairman) sent an invitation to the President of IBC Helen Edith Lee Tan (IBC President) requesting them to submit a quotation for the project. Subsequently, IBC's bid offer was opened and negotiated at the DPWH Regional Office.⁶ On January 8, 2008, the BAC unanimously approved another unnumbered Resolution endorsing the award of the project to IBC with an approved budget for the Contract (ABC) in the amount of ₱54,308,803.44.⁷

Thereafter, Director Asis informed IBC of the BAC recommendation with the caveat that the Notice to Proceed cannot be

⁴ *Id.* at 235.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

issued until the funds to cover the contract cost are released. In light of the unavailability of funds, Director Asis asked the IBC President if they are willing to take the risk of proceeding with the project pending the release of an appropriation. In response, the IBC President agreed and committed to immediately proceed with the implementation of the asphalt overlay project.⁸

On March 5, 2008, the Assistant Ombudsman for Visayas, Virginia Palanca-Santiago (Assistant Ombudsman) sent a letter to Zyril D. Arroyo, Regional Cluster Director of the Commission on Audit (COA) Region VI requesting the conduct of a special audit examination on the asphalt overlay project.⁹

In the Letter¹⁰ dated March 17, 2008, the BAC, including Luvisminda and Marilyn, explained to the Assistant Ombudsman that the asphalt overlay project was implemented through negotiated procurement because of its urgency and the immediate need to repair a national road in time for the Dinagyang Festival celebration from January 24 to 26, 2008. The BAC likewise reasoned that IBC's offer complied with the requirements of the project. Considering its previous performances, the asphalt overlay project was awarded to IBC.¹¹

On May 13, 2008, Aurora S. Tingzon, Accountant IV of the DPWH Region VI, certified that there were no available funds, no Sub-Allotment Release Order (SARO), and no Sub-Allotment Advice (SAA) issued for the asphalt overlay project.¹²

On December 24, 2008, DPWH Undersecretary Bashir D. Rasuman approved the SARO for the project, authorizing the expenditure of ₱53,595,000.00. Thereafter, an unnumbered BAC Resolution was issued on January 26, 2009, recommending the award of the contract to the IBC in the amount of ₱52,110,000.00. The BAC also resolved to pay the remaining balance to the IBC upon availability of funds.¹³

⁸ *Id.* at 236.

⁹ *Id.*

¹⁰ *Id.* at 103-104.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 237.

On January 28, 2009, the Notice of Award¹⁴ was issued to the IBC President. Soon after, the DPWH Region VI and the IBC executed a contract for the asphalt overlay project.¹⁵

Subsequently, the Office of the Ombudsman (Ombudsman) Region VI Field Investigation Office (FIO) filed their Complaint-Affidavit¹⁶ dated March 20, 2014 charging respondents and several officials and employees of the DPWH Region VI of violating Republic Act No. (RA) 9184¹⁷ and RA 3019¹⁸ and holding them liable for Grave Misconduct.¹⁹

In their joint counter-affidavit, respondents and several DPWH Region VI officials justified the conduct of negotiated procurement by reiterating the urgency of the project.²⁰

Ruling of the Ombudsman

On October 6, 2015, the Ombudsman issued a Joint Resolution finding probable cause to charge respondents with violation of Section 3(e)²¹ of RA 3019. It held that respondents are guilty of Grave Misconduct and meted out the penalty of dismissal from the service.²²

¹⁴ *Id.* at 136.

¹⁵ *Id.*

¹⁶ *Id.* at 87-95.

¹⁷ Government Procurement Reform Act, approved on January 10, 2003.

¹⁸ Anti-Graft and Corrupt Practices Act, approved on August 17, 1960.

¹⁹ *Rollo*, p. 94.

²⁰ *Id.* at 238.

²¹ Section 3(e) of Republic Act No. 3019 provides:

Section 3. x x x

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.

²² *Rollo*, p. 238.

Aggrieved, respondents moved for reconsideration. However, the Ombudsman denied it in its Order dated March 21, 2016.²³

On respondents' administrative liability, they filed a petition for review under Rule 43 of the Rules of Court before the Court of Appeals (CA). They argued that as mere subordinates, they had no power to question the decision of their superiors to negotiate the procurement of the asphalt overlay project. They also argued that their participation was limited to signing the BAC resolutions, and as such, there was no corrupt motive on their part.²⁴

Ruling of the CA

In the Decision²⁵ dated September 15, 2017, the CA found respondents' appeal partly meritorious, viz.:

WHEREFORE, the Petition For Review under Rule 43 filed by petitioners Marilyn H. Celiz and Luvisminda H. Narciso is PARTIALLY GRANTED. The Office of the Ombudsman's 6 October 2015 Joint Resolution in OMB-V-C-14-0182 and OMB-V-A-14-0174 is MODIFIED. We find petitioners Marilyn H. Celiz and Luvisminda H. Narciso guilty of SIMPLE MISCONDUCT and are hereby meted the penalty of SUSPENSION for ONE (1) MONTH and ONE (1) DAY.

Petitioners who have not retired shall be REINSTATED after serving their suspension. They shall be entitled to payment of backwages and all benefits from the time that they served the foregoing suspension up to the time of their actual reinstatement.

SO ORDERED.²⁶

The CA held that respondents should be held liable for Simple Misconduct only because there was no evidence of corrupt motives on their part.

²³ *Id.* at 239.

²⁴ *Id.*

²⁵ *Id.* at 55-74; penned by Associate Justice Germano Francisco D. Legaspi with Associate Justices Pamela Ann Abella Maxino and Gabriel T. Robeniol, concurring.

²⁶ *Id.* at 73.

On December 11, 2017, the CA issued a Resolution²⁷ denying petitioner's motion for partial reconsideration for failure to assert new matters that would warrant the reversal of the decision.

Undaunted, petitioner filed a Petition for Review on *Certiorari*²⁸ before the Court.

The Court Decision dated June 26, 2019

In the Decision²⁹ dated June 26, 2019, the Court reversed the CA Decision and found respondents liable for Grave Misconduct, to wit:

WHEREFORE, premises considered, the present petition is GRANTED. The Decision dated September 15, 2017 and the Resolution dated December 11, 2017 of the Court of Appeals in CA-G.R. CEB-SP. No. 10438 are hereby REVERSED and SET ASIDE. A new judgment is entered finding respondents Marilyn H. Celiz and Luvisminda H. Narciso GUILTY of GRAVE MISCONDUCT. As such, they are DISMISSED from the government service with all the accessory penalties of cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for re-employment in the government service.

SO ORDERED.³⁰

The Court held that respondents' defense of being mere subordinates is without merit. As BAC members, their functions are not merely ceremonial. They are tasked to safeguard the mandate of RA 9184 in order to ensure that the government and the public get the best possible goods, services, and infrastructure.³¹

Hence, respondents filed a motion for reconsideration³² raising, among others, the following: (1) respondents did not willfully disregard established procurement rules and they did not give unwarranted benefits and advantages to IBC; (2) assuming that they are guilty of grave misconduct, the penalty of dismissal from service with all the accessory penalties meted out upon them is too harsh in view of their length of

²⁷ *Id.* at 76-77.

²⁸ *Id.* at 20-37.

²⁹ *Id.* at 234-248.

³⁰ *Id.* at 247.

³¹ *Id.*

³² *Id.* at 249-266

service in the government and that this is their first offense; and (3) the ruling in the instant case should not depart from the ruling of the Court in *Ombudsman v. Asis*³³ (*Asis*), which has the same factual milieu with this case where respondents Rolando M. Asis, Berna C. Coca, Danilo M. Peroy and Fernando S. Tuares (respondents Asis, *et al.*) were the Regional Director and BAC members involved in the asphalt overlay project.

Respondents alleged that in *Asis*, respondents Asis, *et al.* were meted out the penalty of suspension for one (1) year only without pay despite the finding of guilt of grave misconduct because the mitigating circumstances of length of service and first offense were appreciated in their favor. Thus, respondents asserted that considering that respondents Asis, *et al.* were the ones principally involved, herein respondents should not be meted out with a penalty graver than that imposed upon respondents therein.

In its Comment,³⁴ the Ombudsman countered that length of service and being first time offenders for grave administrative offenses cannot mitigate the penalty under prevailing law and jurisprudence.

Issue

Whether the Court Decision dated June 26, 2019 should be reconsidered.

Our Ruling

The Motion for Reconsideration is partly meritorious.

In the Decision dated June 26, 2019, the Court found respondents guilty of Grave Misconduct and held that they be dismissed from the government service with all the accessory penalties of cancellation of eligibility, forfeiture of leave credits, retirement benefits, and disqualification for reemployment in the government service.³⁵ The

³³ G.R. No. 237503 (Notice), June 20, 2018.

³⁴ *Rollo*, pp. 291-303.

³⁵ *Id.* at 247.

Court did not consider the mitigating circumstances present in the case which would justify the imposition of a lesser penalty.³⁶

In *Asis*, respondents *Asis, et al.*, who were also confronted with the same administrative case and factual antecedents, were not meted out the severe penalty of dismissal from service because the Court considered their length of service and as first time offenders. Instead, the Court imposed the penalty of one (1) year suspension without pay for the offense of Grave Misconduct.

Records would show that respondents have dedicated the best years of their lives in the government service – Luvisminda for 43 years and Marilyn for 34 years. Respondents' service records are both untarnished and both are first time offenders.³⁷

Logic dictates that the penalty to be imposed upon herein respondents should not be graver than that imposed upon the respondents in the *Asis* case wherein the factual milieu is exactly the same as in here.

Certainly, it would be the height of injustice if the severe penalty of dismissal is imposed upon Luvisminda and Marilyn while only suspension of one year without pay and fine is imposed on then Regional Director *Asis* and several BAC members despite the irrefutable fact that both cases involve the same asphalt overlay project in Iloilo City and the same issues.

Thus, upon reconsideration of the Court Decision dated June 26, 2019 and in accordance with our ruling in *Asis*, the Court imposes upon herein respondents the lesser penalty of one (1) year suspension without pay in lieu of dismissal.


WHEREFORE, the Motion for Reconsideration is partially **GRANTED**. The penalty of dismissal from the service imposed upon respondent Luvisminda H. Narciso and respondent Marilyn H. Celiz is hereby **REDUCED** to suspension of one (1) year without pay, with a

³⁶ See *Committee on Security and Safety, CA v. Dianco, et al.*, 777 Phil. 16 (2016).

³⁷ *Rollo*, p. 261.

STERN WARNING that repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

(On official leave)

RAMON PAUL L. HERNANDO
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice


ATTESTATION

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


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice