



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DON ANTONIO MARIE V. G.R. No. 241152
ABOGADO,

Petitioner, Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,

- versus -

REYES, A., JR.,
HERNANDO,
INTING, and
DELOS SANTOS JJ.

OFFICE OF THE OMBUDSMAN
and TASK FORCE ABONO –
FIELD INVESTIGATION OFFICE,
Respondents.

Promulgated:

09 MAR 2020

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DECISION

INTING, J.:

This is a Petition for *Certiorari* under Rule 65¹ of the Rules of Court assailing the Order² dated May 25, 2018 of the Office of the Ombudsman (Ombudsman) in OMB-C-A-13-0031 which, among others, denied Don Antonio Marie V. Abogado's (petitioner) Consolidated Motion³ filed on December 11, 2017.

The Consolidated Motion assailed the Decision⁴ dated July 14, 2017 of the Ombudsman which found petitioner guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service and imposing upon him the penalty of dismissal from service with cancellation of civil service eligibility, forfeiture of retirement

¹ *Rollo*, pp. 3-15.

² *Id.* at 154-157.

³ *Id.* at 141-152.

⁴ *Id.* at 118-140.

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benefits, perpetual disqualification from holding public office, and bar from taking civil service examinations.⁵

Antecedents

As culled from the Decision of the Ombudsman dated July 14, 2017:

This case stemmed from a Complaint⁶ filed on February 8, 2013 by the Field Investigation Office (FIO) charging the following officials of the Province of Isabela with Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service: Danilo B. Tumamao (Tumamao), Pete Gerald L. Javier (Javier), William D. Nicolas (Nicolas), Dionisio E. Bala, Jr. (Bala), Alfredo B. Mendoza (Mendoza), Medardo B. Aggari (Aggari), Leticia Q. Mabbayad (Mabbayad), (collectively, respondents to the Complaint) and herein petitioner.

The charges arose from the alleged irregularities or anomalies committed in the implementation of the *Ginintuang Masaganang Ani* (GMA) Program of the Department of Agriculture (DA) under the Agriculture and Fisheries Modernization Act of 1997.⁷

Pursuant to the GMA Program, the Department of Budget and Management (DBM) issued a Special Allotment Release Order (SARO) No. E-04-00164 for ₱728,000,000.00 with Notice of Cash Allocation No. 222447-I for ₱291,200,000.00, in the DA's favor. The DA thereafter transferred the amount of ₱728,000,000.00 to its Regional Field Units (DA-RFUs) through the issuance of Advice of Sub-allotment (ASA) with the corresponding Notice of Transfer Allocation (NTA) for the implementation of the program. The amount released as Farm Input/Farm Implement Fund (FI/FI) was allocated to purchase farm inputs/farm implements for the identified proponents comprising of congressional districts or local government units (LGU).⁸

⁵ *Id.* at 137-138.

⁶ *Id.* at 16-29.

⁷ *Id.* at 119.

⁸ *Id.* at 120.

However, from the total amount of ₱728,000,000.00, the amount of ₱5,000,000.00 was deducted by the DBM for realignment to the farm-to-market road project for the 3rd District of Bukidnon, upon the request of Juan Miguel Zubiri, who was then its representative. The amount was transferred to the Department of Public Works and Highways (DPWH). Only the amount of ₱723,000,000.00 was released for the GMA Program where the ₱23,000,000.00 was received by the Province of Isabela (LGU-Isabela).⁹

The Municipal Mayors of Alicia, Aurora, Echague, Gamu, Maconacon, Malig, Quirino, San Mateo and Tumauni, all of LGU-Isabela, through separate letters all dated February 12, 2004, requested then DA Undersecretary Jocelyn I. Bolante (Usec. Bolante) to let the Provincial Government, through the assistance of the Office of the Provincial Agriculturist, implement the GMA Program.¹⁰

Pursuant to the Memorandum dated March 17, 2004 issued by Usec. Bolante, the DA-RFU II Regional Executive Director, Gumersindo D. Lasam entered into an undated Memorandum of Agreement (MOA) with LGU-Isabela, represented by Governor Faustino S. Dy, Jr. (Governor Dy), that provided for the transfer of the ₱23,000,000.00 sub-allotment funds to LGU-Isabela in two tranches.¹¹

On March 18, 2004, DA Assistant Secretary Belinda A. Gonzales approved the Advice Sub-Allotment No. 101-2004-129 dated March 18, 2004 for DA-RFU II, Tuguegarao, Cagayan.¹²

Through Land Bank of the Philippines (LBP) Check No. 960196 dated March 23, 2004, the DA-RFU II transferred to LGU-Isabela the amount of ₱14,950,000.00 or the 65% of the total allocation which was covered by Disbursement Voucher (DV) No. 2004-3-3766 dated March 23, 2004. As proof of receipt of the first tranche, the LGU-Isabela issued an Official Receipt (OR) No. 1805951¹³ dated March 26, 2004.¹⁴

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 121.

¹² *Id.*

¹³ *Id.* at 47.

¹⁴ *Id.*



Subsequently, the second tranche was released by the DA-RFU II to LGU-Isabela through LBP Check No. 962910 dated May 7, 2004 amounting to ₱8,050,000.00 and supported by DV No. 2005-05-370.¹⁵

The Statement of Receipts and Disbursements as of September 30, 2004 issued by the Office of the Provincial Accountant of Isabela showed that the ₱23,000,000.00 fund allotted to LGU-Isabela was divided into seven transactions.¹⁶

The subject complaint pertained to the purchase of four units of Massey Ferguson Model 445 and four units of ACT Trailing Harrow Model 20x24 from Equity Machineries, Inc. (Equity Machineries).¹⁷

In the complaint, the FIO alleged that through the undated Purchase Request (PR) No. 121-04-03-008, Tumamao requested the purchase of (a) six units of 4WD Farm Tractor, 90HP-Massey Ferguson (farm tractors) at ₱1,800,000.00 per unit or a total of ₱11,340,000.00; and (b) six units of ACT 20x24.2 gang Trailing Harrow (trailing harrows) at ₱188,000.00 per unit or a total of ₱1,128,000.00. The grand total of the requested farm equipment amounted to ₱12,468,000.00. Nicolas certified the availability of funds. Governor Dy approved the undated PR and the corresponding Purchase Order (PO) No. 04-03-008¹⁸ addressed to Equity Machineries.¹⁹

The undated Equity Machineries Delivery Receipt (DR) No. 43283,²⁰ the Certificate of Acceptance²¹ dated April 28, 2004 of Governor Dy, and the undated Certificate of Inspection²² signed by Aggari, Mendoza, Tumamao, Nicolas and Nestor O. Salvador, Provincial Planning and Development Officer showed that only four units of farm tractors and four units of trailing harrows were delivered to and inspected by LGU-Isabela.²³

¹⁵ *Id.*

¹⁶ *Id.* at 121-122.

¹⁷ *Id.* at 122.

¹⁸ *Id.* at 55.

¹⁹ *Id.* at 123.

²⁰ *Id.* at 56.

²¹ *Id.* at 57.

²² *Id.* at 58.

²³ *Id.*

Governor Dy certified and approved the May 7, 2004 DV No. 302-04-03-00187 which allowed the payment of ₱8,009,745.45, net of tax, for the equipment. While Javier and Nicolas, acting as provincial accountant and provincial treasurer, respectively, signed the DV. Governor Dy and Nicolas issued the May 7, 2004 LBP Check No. 0000233300²⁴ in the amount of ₱8,009,745.45, net of tax. As proof of receipt, Equity Machineries issued the undated Sales Invoice (SI) No. 66455²⁵ and OR No. 182268.²⁶

Based on the Certification²⁷ dated March 30, 2004 issued by the Pre-Qualification, Bids and Awards Committee (PBAC), as approved by Governor Dy, the award for the procurement of land preparation equipment, which consisted of the six units of farm tractors and six units of trailing harrows was given to Equity Machineries based on the lowest bid during the public bidding conducted on March 18, 2004. The PBAC was composed of Bala as chairman, and Mendoza, Tumamao, Aggari, Mabbayad and petitioner as members.²⁸

The FIO pointed out the irregularities attending the transaction between LGU-Isabela and Equity Machineries, citing the October 28, 2004 Commission on Audit (COA)-Audit Observation Memorandum (AOM) No. 2004-030²⁹ and the January 18, 2007 Sworn Statement³⁰ of Beatris A. Pataueg (Pataueg), COA State Auditor IV, to wit: (a) the four units of farm tractors and four units of trailing harrows were purchased through direct contracting with Equity Machineries instead of *via* public bidding; (b) the alleged public bidding was conducted on March 18, 2004 or prior to the execution of the MOA on March 19, 2004 between DA-RFU II and LGU-Isabela, and the receipt by the latter of the ₱14,950,000.00 initial fund on March 23, 2004; (c) no bidding documents duly authenticated by the PBAC was submitted; (d) the purchased farm tractors and trailing harrows were not among the farm inputs, farm implements and facilities enumerated in the Letter dated November 14, 2005 of Frisco M. Malabanan, National Coordinator, GMA Rice Program, DA; and (e) the memorandum receipts issued to four *barangay* captains of Cauayan, Isabela did not specify the purpose or reason for the distribution of the farm tractors and trailing harrows.³¹

²⁴ *Id.* at 60.

²⁵ *Id.* at 62.

²⁶ *Id.* at 63.

²⁷ *Id.* at 54.

²⁸ *Id.* at 124.

²⁹ *Id.* at 64-65.

³⁰ *Id.* at 66-70.

³¹ *Id.* at 124-125.

Thus, the charge against the respondents to the Complaint, including petitioner, for Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best interest of the Service.

For his defense, petitioner clarified that the bidding conducted on March 18, 2004 was for the Grains Highway Project of LGU-Isabela using the loan from the DBP. The corresponding publication for the bidding was published in February 6 and 13, 2004 issues of the *Philippine Daily Inquirer* (PDI).³²

Petitioner asserted that no public bidding was conducted on March 18, 2004 for the implementation of the FI/FI Program with ASA No. 101-2004-129 as the fund was only transferred by the DA to LGU-Isabela on March 22, 2004; and that it was impossible for the PBAC to conduct a public bidding earlier than the receipt or availability of funds. In fact, as shown in LGU-Isabela's OR No. 1805951 dated March 26, 2004, the GMA fund was only transferred to LGU-Isabela on March 26, 2004.³³

To bolster his claim, petitioner noted the following: (1) the differences in the engine and serial numbers for the delivered farm tractors and trailing harrows for the GMA Program and that for the Grains Highway Project; (2) the PO numbers, invoices and ORs of Equity Machineries for the two projects are different; (3) the words *General Fund-Loan/DBP* were stamped in all documents for the Grains Highway Projects, while for the GMA Program, the words *Trust Fund-NALGU* were stamped.³⁴

Petitioner averred that he did not conspire with his co-respondents; that LGU-Isabela cleared him of any accountability when he left after Governor Dy lost in the 2004 elections; that he used the clearance issued by the office when he re-entered government service in 2005; and that the act complained of was more than eight years ago.³⁵

³² *Id.* at 128.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 129.

Ruling of the Ombudsman

On July 14, 2017, the Ombudsman rendered the assailed Decision³⁶ finding all the respondents to the Complaint, including herein petitioner, guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service. The Ombudsman found that respondents to the Complaint, in the discharge of their official administrative functions, exhibited evident bad faith, manifest partiality, and gross inexcusable negligence when they gave Equity Machineries unwarranted benefit, advantage, and preference because of their failure to conduct public bidding in the procurement of the farm tractors and trailing harrow. Consequently, the purchase of four units of MF445 Massey Ferguson 4WD Farm Tractor and four units of ACT 20x24 Trailing Harrow was not only irregular, but was a clear violation of the provisions of Section 10, Article IV of RA 9184, causing undue injury to the government.³⁷ Thus, the Ombudsman ruled:

For failing to observe the due care and vigilance expected of them in the discharge of their respective duties, and for intentionally distorting the truth in the procurement documents which shows their lack of interests and disposition to cheat, respondents Tumamao, Javier, Nicolas, Bala, Mendoza, Aggari, Mabbayad, and [petitioner] committed a flagrant breach thereof, to the serious damage of the government and the public in general.³⁸ (Emphasis and italics omitted.)

In this regard, the Ombudsman imposed upon the respondents to the Complaint, including petitioner, the penalty of dismissal from the service with cancellation of civil service eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.³⁹

On December 11, 2017, petitioner filed a Consolidated Motion⁴⁰ dated October 30, 2017 invoking a speedy disposition of his case and praying for the dismissal by the Court of similar cases due to inordinate delay; that, as a PBAC member, his function was only necessary when PBAC was called upon to convene. He alleged that PBAC faithfully and officiously dispensed its duty and nothing anomalous or irregular was

³⁶ *Id.* at 118-140.

³⁷ *Id.* at 136.

³⁸ *Id.*

³⁹ *Id.* 138.

⁴⁰ *Id.* at 141-152.

uncovered, and that should there be irregularities in the project, he had no idea or knowledge or participation thereof. Hence, he prayed, among others, that the Decision dated July 14, 2017 be reconsidered and modified or set aside particularly reversing the adverse findings against him and to absolve him from any administrative or criminal liability.⁴¹

On May 25, 2018, the Ombudsman issued the assailed Order⁴² denying, among others, the motion filed by petitioner and stating that the latter failed to submit a newly-discovered evidence which would materially alter the findings of the Ombudsman; and that petitioner failed to establish that grave errors of facts or laws or serious irregularities had been committed that are prejudicial to their interest.

Issue

Did the Ombudsman err in finding petitioner guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service in connection with the alleged irregularities/anomalies committed in the implementation of the GMA Program in the LGU-Isabela?

Petitioner maintains that, being the provincial legal officer of Isabela, he cannot be held liable.⁴³ His function was only necessary when the PBAC was called to convene upon request of the personnel in charge of the procurement.⁴⁴ Thus, as to the alleged irregularities in the GMA Program, he denies having any idea, knowledge, or participation therein. Consequently, petitioner alleges that to implicate or charge the members of the PBAC, including himself, with any administrative and criminal offense will be the height of injustice.⁴⁵

Also, petitioner stresses that there is no *prima facie* case against him for dishonesty, gross misconduct, and conduct prejudicial to the best interest of the service.⁴⁶ He argues that the element of dishonesty is missing and not shown by the Ombudsman;⁴⁷ that he did not make false

⁴¹ *Id.* at 150.

⁴² *Id.* at 154-157

⁴³ *Id.* at 8.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 9.

⁴⁷ *Id.*

statements or deceitful report relative to the GMA Program;⁴⁸ and that because of his admission that there was no bidding conducted on the GMA Program, he claims that it even strengthened the evidence of the Ombudsman.⁴⁹

Further, petitioner avers that he had adduced more than substantial evidence and legal arguments to prove his innocence to the charges filed against him saying that it is clear that there were two purchases that were undertaken by the LGU-Isabela in the year 2004—first, that which pertains to the Isabela Grains Highway Project, which was a subject of the public bidding held on March 18, 2004 and to which petitioner participated as a PBAC member;⁵⁰ second, that which pertains to the purchase undertaken for the GMA Program to which petitioner denied having a participation as there was no public bidding conducted thereon.⁵¹

Our Ruling

As To The Procedural Aspect:

The Ombudsman's Decision and Order in administrative disciplinary cases shall be appealed to the Court of Appeals via Rule 43 of the Rules of Court.

In the 1998 case of *Fabian v. Hon. Desierto*⁵² (*Fabian*), the Court declared that Section 27 of Republic Act No. (RA) 6770, which provides that all “orders, directives, or decisions [in administrative cases] of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court,” was unconstitutional for it increased the appellate jurisdiction of the Court without its advice and concurrence.⁵³

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 10.

⁵¹ *Id.*

⁵² 356 Phil. 787 (1998).

⁵³ *Id.* at 795.

Thus, the Court ruled in *Fabian* case that “*appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43.*”⁵⁴

In the case before the Court, petitioner filed a Petition for *Certiorari* under Rule 65 of the Rules of Court which seeks to reverse and set aside the Decision dated July 14, 2017 and Order dated May 25, 2018 of the Ombudsman after finding him guilty of administrative offenses of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, and imposing upon him the penalty of dismissal from the service and its accessory penalties.

Undeniably, the assailed Decision and Order of the Ombudsman constitute an administrative disciplinary action that is not “final and unappealable.”

Following *Fabian*, this case should have been appealed to the Court of Appeals *via* a petition for review under Rule 43 of the Rules of Court.

Thus, pursuant to Administrative Matter No. 99-2-02-SC,⁵⁵ any appeal by way of petition for review from a decision or final resolution or order of the Ombudsman in administrative cases, or special civil action relative to such decision, resolution or order *filed with the Court after 15 March 1999 shall no longer be referred to the Court of Appeals, but must be forthwith DENIED or DISMISSED respectively.*

As To The Substantive Aspect:

However, even on the substantive aspect, the Court finds petitioner’s assertions to be without merit. Emphatically, the petition must likewise fail.

⁵⁴ *Id.* at 808.

⁵⁵ In Re : Denial of Appeal from Any Decision or Final Resolution or Order of the Ombudsman in Administrative Cases and Dismissal of Special Civil Action Relative to Such Decision, Resolution or Order (Denial of Appeal from Any Decision or Final Resolution or Order of the Ombudsman in Administrative Cases and Dismissal of Special Civil Action Relative to Such Decision, Resolution or Order (February 9, 1999).

There was noncompliance with Volume 2 Manual of Procedures for the Procurement of Goods and Services and with Implementing Rules and Regulations Part A (IRR-A) of RA 9184.

Section 2 of the Volume 2 Manual of Procedures for the Procurement of Goods and Services (The Manual) talks, among others, about preparing for the procurement of goods and provides the factors to be considered in planning for the procurement of goods. It likewise includes what are the technical specifications to be considered in procuring goods as well as the procuring entity's requirements in terms of the functional, performance, environmental interface and design standard requirements to be met by the goods to be manufactured or supplied, or the services to be rendered. Also, under the same section, it discusses what is the approved budget for the contract or the ABC.

In addition, Section 21 of the Implementing Rules and Regulations Part A (IRR-A) of RA 9184 provides for the advertising and contents of the invitation to bid.

Records of the case, however, show that the respondents and the DA-RFU II did not present any project proposal to identify the standards of the goods to be procured considering the function and performance, and its technical specifications.⁵⁶ Likewise, there is no showing that they conducted a market survey of available products, industry developments, and product standards to enable the procuring entity to identify the mode of procurement to be employed and the budget needed for the project.

With the irregularities mentioned, the Court affirms the findings of the Ombudsman that the choice of the Massey Ferguson farm tractors and ACT trailing harrow was made without basis.⁵⁷

There was no public bidding conducted pursuant to Sections 3(b) and 10 of RA 9184 and there was a violation of Section 18 of RA 9184.

⁵⁶ *Rollo*, p. 131.

⁵⁷ *Id.*



Sections 3(b) and 10 of RA 9184 read:

Section 3. *Governing Principles on Government Procurement.*

— All procurement of the national government, its departments, bureaus, offices and agencies, including state universities and colleges, government -owned and/or-controlled corporations, government financial institutions and local government units, shall, in all cases, be governed by these principles:

X X X X

- (b) Competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding.

X X X X

Section 10. *Competitive Bidding.* — All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

Using the provisions as guidelines, it is beyond question that the LGU-Isabela failed to conduct a public bidding. As aptly observed by the Ombudsman, the mere posting of the Invitation to Pre-Qualify and to Bid in PDI and the Certification of the PBAC of the conduct of bidding on March 18, 2004 were highly suspect as when the documents necessary to start the procurement process were only issued or signed after March 18, 2004.⁵⁸

Per records, the following circumstances show that it becomes highly doubtful that a public bidding for procurement was indeed earlier conducted on March 18, 2004, to wit: (1) the undated MOA entered into between DA-RFU II and Governor Dy was notarized on March 19, 2004; (2) the DV pertaining to the release of the 65% of the ₱23,000,000.00 or ₱14,950,000.00 to LGU-Isabela and the corresponding check were both dated March 23, 2004; and (3) a perusal of the OR No. 1805951 dated March 26, 2004 showed that LGU-Isabela actually received the ₱14,950,000.00 on March 26, 2004.⁵⁹

Worth stressing is the fact the petitioner admitted that no public bidding occurred for the procurement;⁶⁰ that the public bidding

⁵⁸ *Id.* at 131-132.

⁵⁹ *Id.* at 132.

⁶⁰ *Id.*

conducted by the LGU-Isabela on March 18, 2004 was for the Grains/Highway and Agricultural Modernization Project (Grains Highway Project) pursuant to *Sangguniang Panlalawigan* Resolution No. 0356 approved on November 18, 2003.⁶¹ To recall, the Grains Highway Project was funded under the General Fund-Loans⁶² in the amount of ₱335,000,000.00 entered between the LGU-Isabela and the DBP as evidenced by the following documents supporting the purchase: (1) PBAC Certification that the bidding for the Grains Highway Project was conducted on March 18, 2004; (2) Recommendation dated March 24, 2004 of PBAC to Award the contract to Equity Machineries; (3) PO 04-00-004 dated March 24, 2004; (4) Undated Delivery Receipt No. 43281; (5) Sales Invoice No. 66453 dated April 3, 2004 of Equity Machineries; and (6) DV No. 121- 04-06-00246 dated June 1, 2004.⁶³

Also, there are other documents confirming petitioner's statement that the engine and serial numbers of the farm tractors and trailing harrows purchased for the Grains Highway Project under the General Fund-Loans and that for the GMA Program differ.⁶⁴

In sum, the bidding that took place on March 18, 2004 was not conducted for the procurement under the GMA program, but clearly for the Grains Highway Project.⁶⁵

Petitioner asserts that because of his admission that there was no public bidding conducted on the GMA Program, the evidence of the Ombudsman was strengthened; thus, he should not be held liable. Still, the Court affirms the Ombudsman when it ruled that it could not excuse petitioner of any liability just because of his admissions on the ground that he, being the provincial legal officer, failed to exert efforts to question the irregular process of procuring the farm tractors and trailing harrows.⁶⁶ In the words of the Ombudsman, petitioner's inaction contributed to the consummation of the purchase contract with Equity Machineries.⁶⁷

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 133.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

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Section 18 of RA 9184 provides:

Section 18. *Reference to Brand Names.* — Specifications for the procurement of goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed.

In this case, the specific brands, which are MF445 Massey Ferguson 4WD Farm Tractor and ACT model 20x24 Trailing Harrow⁶⁸ prevented possible bids from other suppliers; thus depriving the public from having a qualitative benefit and service from a competitive bidding if only there was a strict compliance with the procedures laid down in IRR-A of RA 9184 or the Government Procurement Reform Act.

Petitioner's act of issuing a certification despite the clear absence of a public bidding, as one of the material requirements, is in complete disregard of the policy of good governance mandated under Section 2 of RA 9184. Thus, it made him liable just like the other respondents in the case.

The Ombudsman found several irregularities in the procurement documents.

Most of the supporting documents for the procurement of the farm tractors and trailing harrows were undated and unnumbered, including Equity Machineries' undated sales invoice and delivery receipts which are in clear violation of the auditing and accounting rules and regulations.⁶⁹

It is true that petitioner, being the provincial legal officer, together with the other respondents, as members of the PBAC, were not prevented from looking into the legality, regularity, and necessity of the procurement activities of the LGU-Isabela. As the Ombudsman ruled, had the respondents acted under the ordinary diligence expected of them,

⁶⁸ *Id.* at 134.

⁶⁹ *Id.*



they would have raised timely objections and might have ordered the suspension of the transactions instead of issuing certifications and relying on them.⁷⁰

The fact that petitioner knew of the missing public bidding for the 2nd purchase of the farm tractors and trailing harrows should have cautioned and prevented him from issuing a certification.

In conclusion, the acts of the respondents, including herein petitioner, when taken together contributed to the unwarranted benefit, advantage, and preference in favor of Equity Machineries. Specifically, when they failed to conduct a public bidding in the procurement of the farm tractors and trailing harrow. As aptly observed by the Ombudsman in its assailed Decision; thus:

x x x respondents, in the discharge of their official administrative functions, exhibited evident bad faith, manifest partiality, and gross inexcusable negligence, when they gave Equity Machineries unwarranted benefit, advantage and preference, through their failure to conduct public bidding in the procurement of the farm tractors and trailing harrow. As a result, the purchase of 4 units of MF445 Massey Ferguson 4WD Tractor and 4 units of ACT 20x24 Trailing Harrow was not only irregular but also a clear violation of the provisions of RA 9184, foremost of which is Section 10, Article IV; to the undue injury of the government. Thus, the contract entered into is void as it is against the law and public policy:

Government contracts shall be void, as against the law and public policy, where a statutory requirement of open competitive bidding has been ignored. As a corollary, agreements directly tending to prevent bidding for covered government contracts may violate public policy.⁷¹ (Emphasis and italics omitted.)

All told, the Court finds that indeed petitioner, together with all other respondents in the case, failed to observe due diligence expected of them in the discharge of their functions, and for intentionally distorting the truth in the procurement documents that shows their lack of interest and disposition to cheat⁷² to the serious damage of the government and the public in general.⁷³

⁷⁰ *Id.* at 135.

⁷¹ *Id.* at 136.

⁷² *Id.*

⁷³ *Id.*

As to the penalty, the case calls for the application of two pertinent provisions under the Revised Rules on Administrative Cases in Civil Service⁷⁴ (RRACCS) - Sections 49 and 50, which read in this wise:

Section 49. *Manner of Imposition.* – When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

- a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.
- b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.
- c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.
- d. Where aggravating and mitigating circumstances are present, paragraph [a] shall be applied where there are more mitigating circumstances present; paragraph [b] shall be applied when the circumstances equally offset each other; **and paragraph [c] shall be applied when there are more aggravating circumstances.** (Emphasis supplied.)

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

Petitioner was found guilty of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service. Hence, applying the above provisions under RRACCS, petitioner was correctly imposed the penalty of dismissal from service with cancellation of civil service eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.⁷⁵

WHEREFORE, the petition is **DISMISSED**. The Order dated May 25, 2018 of the Office of the Ombudsman in OMB-C-A13-0031 is **AFFIRMED**.


⁷⁴ Promulgated on November 8, 2011.

⁷⁵ *Id.* at 138.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice

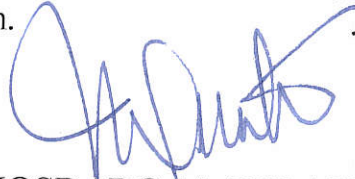
ATTESTATION

I attest 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's Division.


ESTELA M. PERLAS-BERNABE
Senior 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 Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice

