Supreme Court E-Library

THIRD DIVISION

[G.R. Nos. 229026-31; April 27, 2022]

TASK FORCE ABONO-FIELD INVESTIGATION OFFICE, OFFICE OF THE OMBUDSMAN, *Petitioner*, *v.* **EUGENE P. DURUSAN, EDUARDO L. TORRES, CECILIA C. ALMAJOSE, ROMULO P. ARCILLA, JR., VICTORINA A. OLEA, VIRGILIO R. ESGUERRA, and DANILO R. RUMBAWA,** *Respondents*.

D E C I S I O N

LEONEN, *J.*:

Direct contracting is allowed as an exemption to the general rule of public bidding when the goods needed are sold by an exclusive dealer or distributor, or directly sold by the manufacturer. However, the Procuring Entity bears the burden of proving the propriety of direct contracting and must not have identified a lower priced suitable substitute to the goods procured through direct contracting.[1]

This is a Petition for Review filed by Task Force Abono-Field Investigation Office, Office of the Ombudsman (Task Force Abono) after the Court of Appeals[2] reversed the Ombudsman's finding of sufficient evidence in the administrative case against local government officials of the Province of Rizal.

The Province of Rizal was a beneficiary of the Department of Agriculture's Ginintuang Masang Ani program and it received

---

1 *Manual of Procedures for the Procurement of Goods and Services*, http://www.gppb.gov.ph/downloadables/forms/GPM%20-%20Vol.2.pdf (last accessed on May 24, 2017).

2 *Rollo*, pp. 126-175. The September 13, 2016 Decision in CA-G.R. SP Nos. 141877, 141878, 141883, 141884, 141910, and 141911 was penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. of the Fourth Division, Court of Appeals, Manila.

Supreme Court E-Library

₱5,000,000.00 for the implementation of different agricultural development programs. The Province of Rizal came up with two projects for its grant: (1) procurement of irrigation pumps; and (2) procurement of liquid fertilizers.[3]

On September 4, 2004, Provincial Agriculturist Danilo Rumbawa (Rumbawa) prepared Purchase Request No. 6415[4] for the purchase of 15 units of irrigation pumps. The purchase request was approved and signed by Provincial Governor Casimiro M. Ynares, Jr. (Governor Ynares).

On October 4, 2004, the Province of Rizal's Bids and Awards Committee posted an Invitation to Bid for the purchase of irrigation pumps with the total purchase price of ₱1,350,000.00.[5]

On November 5, 2004, after concluding with its Pre-Bid Conference,[6] the Bids and Awards Committee evaluated the bid documents and found that P.I. Farm Products—with its bid of ₱1,317,000.00—submitted the lowest bid for the purchase of irrigation pumps. The other bids submitted were from Feshan Philippines, Inc. (Feshan) for ₱1,319,250.00 and Star Anvil Trading for ₱1,335,000.00.[7]

That same day, the Bids and Awards Committee recommended that the contract be awarded to P.I. Farm Products. Governor Ynares approved the recommendation[8] and signed Purchase Order No. 7604[9] for the purchase of the irrigation pumps.

On November 30, 2004, 15 units of irrigation pumps were delivered to the Province of Rizal.[10] Cecilia C. Almajose (Almajose),

---

3 Id. at 128-129.

4 Id. at 230.

5 Id. at 190.

6 Id.

7 Id. at 190-191.

8 Id. at 227-228.

9 Id. at 230.

10 Id. at 231.

Supreme Court E-Library

the Officer in Charge-Provincial Accountant, found the delivered items to be "OK as to quantity and specifications."[11] Payment was made to P.I. Farm Products.[12]

On September 10, 2004, Rumbawa prepared Purchase Request No. 6416[13] for the purchase of 1,266 bottles of liquid organic fertilizer at ₱1,500.00 per bottle. The purchase request was approved by Governor Ynares.

The Technical Working Group, headed by Bids and Awards Committee Secretariat Romulo P. Arcilla (Arcilla), conducted a survey and found that only Bio Nature liquid organic fertilizer contained the specified ingredients in Rumbawa's Purchase Request.[14]

On October 12, 2004, through its Resolution No. 69,[15] the Bids and Awards Committee recommended buying Bio Nature from Feshan through direct contracting because it was the exclusive importer and distributor. The recommendation was approved by Governor Ynares.

The Bids and Awards Committee members who recommended Feshan were: (1) Arcilla; (2) Eugene P. Durusan (Durusan); (3) Victorina A. Olea (Olea); (4) Atty. Eduardo L. Torres (Torres); (5) Engineer Danilo O. Collantes (Collantes); (6) Carlos Z. Rodenas (Rodenas); (7) Danilo R. Rumbawa (Rumbawa); and (8) Virgilio R. Esguerra (Esguerra) (collectively, the Bids and Awards Committee).[16]

On October 12, 2004, Governor Ynares approved Purchase Order No. 41134[17] for the purchase of 1,266 bottles of Bio Nature.

---

[11] Id. at 232.

[12] Id. at 233-234.

[13] Id. at 236.

[14] Id. at 156.

[15] Id. at 237-238.

[16] Id.

[17] Id. at 236.

Supreme Court E-Library

On November 8, 2004, the bottles of Bio Nature were delivered to the Province of Rizal[18] and Almajose found them to be "OK as to quantity and specifications."[19] Payment in the amount of ₱1,829,945.45 net of ₱69,054.55 as withholding taxes was then made to Feshan.[20]

On February 15, 2005, Rumbawa prepared Purchase Request No. 0502118[21] for the purchase of 1,189 bottles of liquid fertilizer. The purchase request was signed by Governor Ynares.

On February 18, 2005, through its Resolution No. 11-A,[22] the Bids and Awards Committee, through Arcilla, once again recommended buying Bio Nature from Feshan through direct contracting.

That same day, Governor Ynares approved Purchase Order No. 41290[23] for the purchase of 1,189 bottles of liquid fertilizer.

On March 9, 2005, the second batch of liquid organic fertilizer was delivered to the Province of Rizal[24] and Almajose, once again, found the delivery to be "OK as to quantity and specifications."[25] Payment in the amount of ₱1,767,286.36 net of ₱16,213.64 as withholding taxes was then made to Feshan.[26]

On May 2, 2011, Task Force Abono filed a Complaint[27] for violation of Section 3, paragraphs (e) and (g) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act, and Article 217 of the Revised Penal Code against several of Province of Rizal's

---

18 Id. at 239.

19 Id. at 240.

20 Id. at 241-243.

21 Id. at 247.

22 Id. at 248.

23 Id. at 249.

24 Id. at 250.

25 Id. at 251.

26 Id. at 252-254.

27 Id. at 185-209.

Supreme Court E-Library

local government officials and Feshan and P.I. Farm Products' representatives. The Complaint also included administrative charges against the local government officials for violation of Civil Service Commission Resolution No. 991936 or the Uniform Rules on Administrative Cases in the Civil Service.[28]

Arcilla, Rumbawa, Durusan, Olea, Torres, Collantes, Rodenas and Esguerra were all charged in the Complaint in their capacity as members of the Bids and Awards Committee of the Province of Rizal.[29] Almajose, in turn, was charged in her capacity as Province of Rizal's Officer in Charge-Provincial Accountant.[30]

Task Force Abono claimed that the procurement of the irrigation pumps and liquid fertilizers did not comply with Republic Act No. 9184 or the Government Procurement Reform Act, particularly Section 21.[31]

Task Force Abono also claimed that the procurement process was tainted with irregularities because the Province of Rizal immediately resorted to direct contracting with Feshan, whose license to operate had expired as early as March 5, 2003. Furthermore, the purchase orders and inspection and acceptance reports for the transactions did not comply with Commission on Audit Circular 96-101 and Republic Act No. 9184.[32]

Task Force Abono then alleged that there was no public bidding in the purchase of the 2,455 bottles of liquid organic fertilizer. It claimed that the Province of Rizal failed to canvass prices of suitable substitutes for Bio Nature, before resorting to direct contracting with Feshan. Furthermore, contrary to the claims of the Province of Rizal that Feshan was the only supplier of liquid organic fertilizers, it found other suppliers of liquid organic

---

[28] Id. at 186-187.

[29] Id. at 186.

[30] Id. at 185.

[31] Id. at 130.

[32] Id. at 130.

Supreme Court E-Library

fertilizers which sold the products at cheaper rates than Feshan's rate of ₱1,500 per bottle of Bio Nature.[33]

It also found several irregularities in the procurement process for the purchase of the irrigation pumps. Primarily, it found that the October 4, 2004 Invitation to Bid did not contain pertinent information regarding the bid, yet despite the noticeable lack of information, three bidders were able to participate.[34]

Task Force Abono likewise pointed out how the Bids and Awards Committee managed to fit all the bidding activities in just one day. It posited that the speed in which the bidding process was conducted was indicative of an irregularity.[35]

Task Force Abono asserted that the procurement of the liquid fertilizer and irrigation pumps did not follow the established auditing rules and regulations, including Commission on Audit Circular No. 96-010.[36] Furthermore, Feshan's license to operate as importer and distributor of fertilizers expired on March 5, 2003. Hence, its 2004 and 2005 transactions with the Province of Rizal violated Section 8(a)[37] of Presidential Decree No. 1144 or Creating the Fertilizer and Pesticide Authority and Abolishing the Fertilizer Industry Authority.[38]

Task Force Abono then alleged that the fertilizer purchased from Feshan was overpriced by as much as ₱3,237,341.00[39] and

---

[33] Id. at 195-197.

[34] Id. at 198.

[35] Id.

[36] Id. at 199.

[37] Section 8. Prohibitions Governing Sale and Use of Fertilizers and Pesticides. It shall be unlawful for any handler of pesticides, fertilizer, and other agricultural chemicals or for any farmers, planter or end-user of the same as the case may be:

(a) To engage in any form of production, importation, distribution, storage and sale in commercial quantities without securing from the FPA a license therefor[.]

[38] *Rollo*, p. 200.

[39] Id. at 201.

Supreme Court E-Library

that Feshan and P.I. Farm Products conspired with each other to defraud the government.[40]

On June 13, 2014, the Ombudsman[41] found substantial evidence against the charged local government unit officials and ruled that their acts in the procurement of Bio Nature liquid organic fertilizer from Feshan led to serious damage to the government and the public in general.[42]

The Ombudsman ruled that the failure to conduct public bidding in the purchase of the liquid fertilizers when there were other suitable suppliers, led the government to lose as much as ₱3,237,341.00. The Ombudsman also ruled that the preceding and succeeding acts of P.I. Farm Products in procuring the liquid fertilizer pointed to a conspiracy among them and Feshan.[43]

On the other hand, the Ombudsman found no irregularities in the procurement of the irrigation pumps, since it went through the required bidding process and the lack of details in the bid documents was not so gross to constitute a violation of the Anti-Graft and Corrupt Practices Act.[44]

The dispositive portion of the Ombudsman's Decision reads:

> WHEREFORE, there being substantial evidence, respondents DANILO R. RUMBAWA, CECILIA C. ALMAJOSE, ROMULO P. ARCILLA, JR., EUGENE P. DURUSAN, VICTORINA A. OLEA, EDUARDO L. TORRES, DANILO O. COLLANTES, and VIRGILIO R. ESGUERRA are found GUILTY of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service in connection with the procurement of Bio Nature Liquid Fertilizer.

---

[40] Id. at 203-204.

[41] Id. at 264-286. The June 13, 2014 Decision in OMB-C-A-11-0212-E was penned by Graft Investigation & Prosecution Officer II Rachel T. Cariaga-Favila, Director Adoracion A. Aobada and Deputy Ombudsman for Luzon Gerard A. Mosquera and approved by Ombudsman Conchita Carpio Morales of the Office of the Ombudsman, Quezon City.

[42] Id. at 283.

[43] Id. at 281-282.

[44] Id. at 278-279.

Supreme Court E-Library

Accordingly, they are meted out the penalty of DISMISSAL FROM THE SERVICE which shall carry with it the cancellation of their eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office, pursuant to Section 52 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS). In case the penalty of DISMISSAL FROM THE SERVICE can no longer be implemented due to retirement, resignation or separation from the service for any reason, the alternative penalty of FINE EQUIVALENT TO ONE YEAR SALARY of each respondent shall be imposed, with the same accessory penalties thereof.

FURTHERMORE, the administrative charges against respondents CARLOS Z. RODENAS, MA. TERESA E. LASQUETY and ROMEO G. BELLEZA are DISMISSED for insufficiency of evidence.

SO ORDERED.[45]

The dismissed local government officials then filed their respective Petitions for Review[46] before the Court of Appeals.

On September 2, 2016, the Court of Appeals[47] reversed the Ombudsman's finding of substantial evidence.

The Court of Appeals found that direct contracting, as an alternative mode of procurement, was justified in this case since the Province of Rizal needed liquid organic fertilizer with a very specific composition. Rumbawa, in his capacity as the Provincial Agriculturist, indicated the specific composition of the liquid organic fertilizer needed. Moreover, after exercising due diligence, the Technical Working Group and Bids and Awards Committee Secretariat discovered that only Bio Nature liquid fertilizer met the Province of Rizal's specific fertilizer composition needs.[48]

The Court of Appeals gave weight to Rumbawa's recommendations as the Provincial Agriculturist since "[t]he right product to best address the agricultural needs of the farmers/

---

45 Id. at 283-284.

46 Id. at 287-315; 317-353; 355-378; 379-404; 405-433; and 435-465.

47 Id. at 126-175.

48 Id. at 155-156.

Supreme Court E-Library

beneficiaries in the Province of Rizal certainly lies with the studies and surveys conducted by the Provincial Agriculturist Office of Rizal."[49] It also noted that the procured bottles of liquid organic fertilizers were all delivered to the intended beneficiaries.[50]

The Court of Appeals likewise ruled that Feshan's expired license to operate cannot be taken against the Bids and Awards Committee since they relied on Feshan's Certificate of Product Registration which was valid at the time of the transactions.[51] It also ruled that no conspiracy was proven among the Bids and Awards Committee members.[52]

The Court of Appeals then pointed out the discrepancy in the Ombudsman's Decision where some members of the Bids and Awards Committee were exonerated of the charges against them because it was found that they performed ministerial acts in their capacity as Treasurer and Assistant Treasurer, respectively, even if they were also charged with failing to conduct public bidding in their capacity as members of the Bids and Awards Committee.[53]

The dispositive portion of the Court of Appeals Decision reads:

> WHEREFORE, premises considered, the assailed Decision of the Office of the Ombudsman dated June 13, 2014 is SET ASIDE for lack of substantial evidence to support the charges of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service. Accordingly, the judgment against Petitioners Eugene P. Durusan, Eduardo L. Torres, Cecilia C. Almajose, Romulo P. Arcilla, Jr., Victorina A. Olea, Virgilio R. Esguerra, and Danilo R. Rumbawa is REVERSED in the light of the insufficiency of evidence against them.
>
> SO ORDERED.[54]

---

[49] Id. at 159.

[50] Id. at 161.

[51] Id. at 162-163.

[52] Id. at 163-171.

[53] Id. at 167-170.

[54] Id. at 174.

Supreme Court E-Library

Task Force Abono moved for the reconsideration[55] of the Court of Appeals Decision, but its motion was denied.[56] The Court of Appeals reiterated its ruling that the Province of Rizal properly resorted to direct contracting with Feshan, and that the involved public officers all acted in good faith because they relied on the findings of the Technical Working Group of the Bids and Awards Committee Secretariat that there was no suitable substitute for Bio Nature.[57]

The Court of Appeals also declared that the specifications for the liquid organic fertilizer in the Purchase Request was not highly restrictive as to foreclose the possibility of competition.[58]

Finally, it emphasized that what was crucial was that the purchased bottles of Bio Nature were actually delivered and distributed to the intended beneficiaries, thus proving the regularity of the transaction.[59]

In its Petition for Review on Certiorari before this Court,[60] petitioner Task Force Abono, represented by the Office of the Solicitor General, continues to insist that there was no reason for the Province of Rizal to resort to procurement by direct contracting, and that there was evidence that the procured liquid fertilizers were overpriced.[61]

Petitioner claims that the specifications provided were unduly restrictive "to the point that the criteria for the needed fertilizers

---

55 Id. at 180.

56 Id. at 178-184. The December 28, 2016 Resolution in CA-G.R. SP No. 141877 was penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. of the Fourth Division, Court of Appeals, Manila.

57 Id. at 181.

58 Id. at 181-182.

59 Id. at 182.

60 Id. at 80-119.

61 Id. at 91.

Supreme Court E-Library

had been described with over-particularity to correspond to [Feshan's] fertilizers without 'naming' them."[62]

Petitioner further points out that respondent Rumbawa failed to substantiate why the farmers in the Province of Rizal needed liquid fertilizers with that specific composition.[63] It likewise assails the proffered defense of good faith, claiming that if there really was good faith, the members of the Bids and Awards Committee should have been warned about the restrictive specifications of the fertilizers recommended by respondent Rumbawa. It was so restrictive that only a specific brand would qualify.[64]

In their Consolidated Comment and Opposition,[65] respondents Durusan, Torres, Rumbawa, Olea, and Esguerra declare that the lack of public bidding does not automatically lead to a violation of the Government Procurement Reform Act.[66]

They point out that the purchase of Bio Nature complied with the requirements for direct contracting from Feshan.[67] They also point out that while Bio Nature may be similar to two other liquid organic fertilizers, Agro-well and Vegegrow, Bio Nature is the only brand among the three with an International Organization for Standardization certification and with its label written in Filipino, making it more farmer-friendly.[68]

They then stress that the negotiated purchase of the liquid fertilizer was for a fair price, taking into consideration that Feshan was the sole distributor of Bio Nature and the appropriateness of Bio Nature for the intended use.[69] They likewise emphasize

---

62 Id. at 92.

63 Id.

64 Id. at 104.

65 Id. at 469-483.

66 Id. at 470-472.

67 Id. at 471-472.

68 Id. at 472.

69 Id. at 472-473.

Supreme Court E-Library

that petitioner failed to prove that Agro-well and Vegegrow were suitable substitutes to Bio Nature.[70]

They then assert that the acts attributed to them as members of the Bids and Awards Committee do not support the administrative charges against them, as petitioner failed to prove that they blatantly disregarded the procurement law.[71]

In their Comment,[72] respondents Almajose and Arcilla opine that the Petition should be dismissed outright for raising factual issues and not questions of law, contrary to Rule 45 of the Rules of Civil Procedure.[73]

Respondent Almajose states that her participation as the then Officer in Charge-Provincial Accountant[74] was limited to signing vouchers and certifying the supporting documents to the transaction, and that both the Office of the Ombudsman and the Commission on Audit found her actions to be regular and compliant with established accounting practices.[75]

On the other hand, respondent Arcilla posits that his position as Head of the Bids and Awards Committee Secretariat merely involved administrative duties such as maintaining records and performing secretarial duties for the Bids and Awards Committee. He claims that he did not facilitate the release of funds for the purchase of Bio Nature.[76]

As for the research and survey of the market for liquid fertilizer that respondent Arcilla submitted, which purportedly helped make the direct purchase possible, he claims that his due diligence study showed that there was no other liquid organic fertilizer

---

70 Id. at 473.

71 Id. at 473-474.

72 Id. at 491-513.

73 Id. at 495-497.

74 Id. at 492.

75 Id. at 499.

76 Id. at 500.

Supreme Court E-Library

that contained the same ingredients and benefits as Feshan's Bio Nature.[77]

Respondents Almajose and Arcilla both underscore that it was "not within their duties and responsibilities to determine the eligibility of bidders, adhere to RA 9184 insofar as the choice of the mode of procurement is concerned, or decide on the appropriate price for the goods and services to be procured."[78] They likewise asseverate that the Office of the Ombudsman failed to establish a conspiracy between respondents in the administrative case.[79]

Nonetheless, respondents Almajose and Arcilla maintain that there was nothing irregular with the direct purchase of Bio Nature, since there was no other liquid organic fertilizer with the same ingredients as Bio Nature and Feshan was its exclusive supplier. They also insist that petitioner failed to discharge its burden of proving its claim that the purchase of Bio Nature was grossly overpriced.[80]

Respondents Almajose and Arcilla also opine that the Court of Appeals did not err in dismissing the administrative complaint against them, as the Office of the Ombudsman failed to prove the elements of the charges of dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service against them.[81]

In its Consolidated Reply,[82] petitioner insists on the propriety of its recourse to this Court via a Rule 45 petition, as it raised the Court of Appeals' application of administrative law vis-à-vis the factual circumstances of the case.[83]

---

77 Id. at 501 and 503.

78 Id. at 499.

79 Id. at 509-510.

80 Id. at 505-507.

81 Id. at 510-512.

82 Id. at 524-544.

83 Id. at 526.

Supreme Court E-Library

It then reiterates that the purchase of Bio Nature liquid fertilizer was highly irregular, considering that direct contracting was not warranted.[84] It points out that aside from respondent Arcilla's bare claim, no other documents were submitted to the Bids and Awards Committee to substantiate respondent Arcilla's claim that there were no other suitable substitutes for Bio Nature.[85]

Petitioner also highlighted the overpricing committed, since similar liquid organic fertilizers did not usually cost more than ₱200.00 per liter, but Bio Nature cost a "mind-boggling" ₱1,500.00 per liter.[86]

Finally, petitioner maintains that there is substantial evidence to hold respondents administratively liable for dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service.[87] It likewise avers that it managed to substantiate its allegation of conspiracy against respondents with the required substantial evidence.[88]

In their Joint Motion for Leave of Court to File and Admit Manifestation/Motion *Ex Abundanti Ad Cautelam*,[89] respondents informed this Court that the Ombudsman issued Office Circular No. 18 on September 24, 2018,[90] which revised the Office of the Ombudsman's policy over administrative and criminal cases which have been dismissed or acquitted, respectively, by trial courts or the Sandiganbayan.

Respondents point out that under Office Circular No. 18, "the Ombudsman declared that it will no longer challenge the decisions

---

84 Id. at 528.

85 Id. at 530.

86 Id. at 530-531.

87 Id. at 531-536.

88 Id. at 537-538.

89 Id. at 550-555.

90 Id. at 556-557. Revised policy on actions to be taken in cases of Decisions/Judgment of dismissal of administrative cases and acquittal and dismissal of criminal cases.

Supreme Court E-Library

of the Court of Appeals dismissing [the] administrative cases."[91] They thus prayed for the dismissal of the petition against them, or for petitioner to be required to comment on the motion.[92]

This Court required petitioner to comment on whether it still intended to pursue its petition.[93]

Petitioner, through the Office of the Ombudsman–Office of Legal Affairs, manifested that it will not comment on the Joint Motion and will instead submit the case for this Court's resolution.[94]

The sole question for this Court's resolution is whether or not the Office of the Ombudsman gravely abused its discretion when it found respondents administratively liable for dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service.

The Petition is partially meritorious.

It is well established that "[f]indings of fact by the [Office] of the Ombudsman when supported by substantial evidence are conclusive."[95] *Dagan v. Office of the Ombudsman*[96] emphasized that this Court generally accords due respect and weight to the Office of the Ombudsman's findings of fact, and that this Court will only analyze and weigh evidentiary matters when there is a clear showing of grave abuse of discretion by the Ombudsman. Thus, "only arbitrariness will warrant judicial intervention of the Office of the Ombudsman's findings."[97]

The Office of the Ombudsman's findings of fact are supported by substantial evidence, which is defined as "such relevant

---

91 Id. at 551.

92 Id. at 554.

93 Id. at 560-561.

94 Id. at 580-582.

95 Republic Act No. 6770 (1989), sec. 27, otherwise known as "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes."

96 721 Phil. 400 (2013) [Per J. Perez, En Banc].

97 *Office of the Ombudsman v. Delos Reyes, Jr.*, 745 Phil. 366, 380 (2014) [Per J. Leonen, Second Division].

Supreme Court E-Library

evidence which a reasonable mind may accept as adequate to support a conclusion."[98]

The Ombudsman concluded that there was sufficient evidence that respondents committed the acts charged against them in procuring Bio Nature from Feshan, because they failed to justify the resort to direct contracting:

> [Respondents] Rumbawa, Almajose, Arcilla, Durusan, Olea, Torres, Collantes and Esguerra committed acts of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service in connection with the procurement of Bio Nature Liquid Fertilizer. *For failing to observe the due care and vigilance expected of them in the discharge of their respective duties, said respondents committed flagrant breach thereof, to the serious damage of the government and the public in general*.[99] (Emphasis supplied)

Direct contracting is one of the recognized alternative methods to the usual mode of competitive bidding.[100] It is sanctioned under Sections 48(b) and 50 of Republic Act No. 9184 or the Government Procurement Reform Act which state:

> Sec. 48. Alternative Methods. — Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:
>
> ... ...
>
> (b) Direct Contracting, otherwise known as Single Source Procurement — a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations;

---

[98] RULES OF COURT, Rule 133, sec. 5.

[99] *Rollo*, p. 283.

[100] Republic Act No. 9184 (2003), sec. 10 provides:

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

Supreme Court E-Library

... ...

Sec. 50. Direct Contracting. — Direct Contracting may be resorted to only in any of the following conditions:

(a) Procurement of Goods of proprietary nature, which can be obtained only from the proprietary source, i.e., when patents, trade secrets and copyrights prohibit others from manufacturing the same item;

(b) When the Procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract; or,

(c) Those sold by an exclusive dealer or manufacturer, which does not have subdealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.

Under the *Manual of Procedures for the Procurement of Goods and Services*,[101] direct contracting may be justified as follows:

To justify the need to procure through the Direct Contracting method, the BAC should conduct a survey of the industry and determine the supply source. This survey should confirm the exclusivity of the source of goods or services to be procured. In all cases where Direct Contracting is contemplated, the survey must be conducted prior to the commencement of the procurement process. Moreover, the Procuring Entity must justify the necessity for an item that may only be procured through Direct Contracting, and it must be able to prove that there is no suitable substitute in the market that can be obtained at more advantageous terms.[102]

The resort to an alternative mode of procurement such as direct contracting instead of competitive bidding must be clearly justified. To reiterate, the Bids and Awards Committee bears the burden of justifying its resort to direct contracting by conducting an industry survey and determining the supply source to confirm the exclusivity of the goods or services to be procured. It must

---

[101] *Manual of Procedure for the Procurement of Goods and Services*, Volume 2 (2010) available at http://www.gppb.gov.ph/downloadables/forms/GPM%20-%20Vol.2.pdf, (last accessed on March 11, 2022).

[102] Id. at 85.

Supreme Court E-Library

likewise be able to prove that there is no suitable alternative that can be obtained at a lower cost.

Respondent Rumbawa claimed to have submitted a Purchase Request after referring to the studies and research made by the Office of the Provincial Agriculturist.[103] However, aside from his mere say-so, respondent Rumbawa failed to substantiate his claim that studies and research were indeed conducted which then became the basis for his recommendation of a liquid organic fertilizer with specific ingredients with the required concentration per ingredient.

As petitioner pointed out, the Purchase Request read as if it reproduced a product label[104] and it certainly did mirror Bio Nature's list of fertilizer components printed on the bottle.[105] Additionally, this Court noticed that the Purchase Request already indicated a unit price of ₱1,500.00, which was Bio Nature's price per bottle sold by Feshan to the Province of Rizal. Clearly then, even if the Purchase Request did not specify a brand or seller, it was unnecessary because by listing down Bio Nature's ingredients, composition per ingredient, *and* its unit price, it is evident that it was the product being referred to.

Respondents Arcilla, Durusan, Torres, Olea, Rumbawa, and Esguerra, as members of the Bids and Awards Committee, assert that in recommending direct contracting, they relied in good faith on the Technical Working Group's research, because they were not familiar with the technical specifications of the fertilizer requested by the Provincial Agriculturist.[106]

Respondents fail to convince.

The Bids and Awards Committee has the mandate of ensuring that the procuring entity abides by the standards set forth by

---

[103] *Rollo*, p. 441.

[104] Id. at 92.

[105] Id. at 99.

[106] Id. at 471-472.

Supreme Court E-Library

procurement laws.[107] Thus, it takes an active role in choosing, among others, the mode of procurement and, as an independent committee, cannot "pass the buck to others."[108]

Respondents Bids and Awards Committee members cannot take refuge behind the Provincial Agriculturist's and the Technical Working Group's recommendations, because aside from being baseless, they were merely just that: Recommendations. Respondents Bids and Awards Committee members were behooved to personally satisfy themselves that the recommendations presented to them would redound to the best interest of the public.

Respondents should not have closed their eyes to the unduly restrictive specifications in the Provincial Agriculturist's Purchase Request. At the very least, they should have asked for a copy of the Office of the Provincial Agriculturist's purported research and surveys which led respondent Rumbawa to recommend a liquid organic fertilizer with a very specific ingredients list — with corresponding percentage per ingredient — instead of relying on his mere say-so.

In the same manner, respondents Bids and Awards Committee members should have carefully studied the Technical Working Group's documentation from the research and survey it supposedly conducted, instead of merely rubberstamping the recommendation for the direct contracting of a prohibitively expensive liquid organic fertilizer from a company that could not even legally transact business in the Philippines because of its expired license to operate.

Clearly, respondents Bids and Awards Committee members were remiss in their duties and failed to exercise the diligence required of them.

The acts of respondents Bids and Awards Committee members also showed a deliberate effort to give unwarranted benefits to

---

[107] Republic Act No. 9184 (2003), Sec. 12.

[108] *Office of the Ombudsman-Mindanao v. Martel*, 806 Phil. 649, 661 (2017) [Per J. Mendoza, Second Division].

Supreme Court E-Library

Feshan by resorting to an unjustified direct contracting of Bio Nature. From the Provincial Agriculturist's unduly restrictive Purchase Request, which could only lead to no other product but Bio Nature, and a Bids and Awards Committee which refused to see the red flags of an expired license to operate and a grossly overpriced fertilizer, a scheme was obviously laid to favor Feshan. These acts are a flagrant disregard of the established rule of promoting economy and efficiency in procurement proceedings for the State's advantage.

As such, the Office of the Ombudsman did not abuse its discretion when it found respondents liable for dishonesty, grave misconduct, conduct prejudicial to the best interest of the service.

Dishonesty is defined as "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."[109]

Misconduct, in turn, is a "transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[110] *Office of the Ombudsman v. Espina*[111] elaborated on the general definition of and the types of misconduct:

> Misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. It is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.
>
> There are two (2) types of misconduct, namely: grave misconduct and simple misconduct. In grave misconduct, as distinguished from simple

---

[109] *Light Rail Transit Authority v. Salvaña*, 736 Phil. 123, 151 (2014) [Per J. Leonen, En Banc] *citing* Civil Service Commission Resolution No. 060538 dated April 4, 2006.

[110] *Office of the Ombudsman v. Espina*, 807 Phil. 529, 541 (2017) [Per Curiam, First Division].

[111] Id.

Supreme Court E-Library

misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest. Without any of these elements, the transgression of an established rule is properly characterized as simple misconduct only.[112] (Citations omitted)

Grave misconduct is much more than failure to comply with the law. For a charge of grave misconduct to prosper, it must be proven with competent evidence that the failure to comply was accompanied by "corruption, clear intent to violate the law[,] or flagrant disregard of established rule."[113] Thus, in *Yamson v. Castro*:[114]

> [T]o be disciplined for grave misconduct or any grave offense, the evidence should be competent and must be derived from direct knowledge. There must be evidence, independent of the [offender's] failure to comply with the rules, which will lead to the foregone conclusion that it was deliberate and was done precisely to procure some benefit for themselves or for another person.[115]

On the other hand, conduct prejudicial to the best interest of the service is an act that tarnishes the image and integrity of a public employee's office.[116]

Here, the Office of the Ombudsman presented substantial evidence to show that respondents Rumbawa, Durusan, Torres, Arcilla, Olea, and Esguerra colluded with each other to ensure that Feshan would get the contract to supply the Province of Rizal with a grossly overpriced liquid organic fertilizer. This is a flagrant transgression of our procurement laws which demonstrate respondents' intention to defraud the government.

Nonetheless, the Office of the Ombudsman gravely abused its discretion in finding respondent Almajose administratively liable.

---

[112] Id. at 540-541.

[113] *Office of the Ombudsman v. Magno*, 592 Phil. 636, 658 (2008) [Per J. Chico-Nazario, Third Division].

[114] 790 Phil. 667 (2016) [Per J. Reyes, Third Division].

[115] *Yamson v. Castro*, 790 Phil. 667, 704 (2016) [Per J. Reyes, Third Division].

[116] *Pia v. Gervacio, Jr.*, 710 Phil. 196, 206 (2013) [Per J. Reyes, First Division].

Supreme Court E-Library

As the Officer in Charge-Provincial Accountant at the time of procurement, it was incumbent on respondent Almajose to review the supporting documents as she had to certify the "completeness and propriety of support documents"[117] before signing the disbursement vouchers for the release of payment. The Office of the Ombudsman itself found that the procurement of the irrigation pumps and Bio Nature complied with established accounting rules.[118]

Petitioner harps that respondent Almajose failed to closely scrutinize the supporting documents, leading to the wrongful release of payment to Feshan.[119] However, apart from the purchase orders, disbursement vouchers, and inspection acceptance reports, petitioner failed to specify what other documents respondent Almajose was supposed to certify. The Office of the Ombudsman likewise failed to specify how exactly respondent Almajose colluded with the other respondents or what her contribution was in the scheme favoring Feshan.

As the Officer in Charge-Provincial Accountant, it was respondent Almajose's duty to ensure that the disbursement vouchers correctly reflected the purchase amounts agreed upon by the Province of Rizal and Feshan. It was likewise her duty to make sure that the delivered items complied with the contracted quantity and specifications before signing the disbursement vouchers for the release of payment.[120]

However, it was not respondent Almajose's responsibility to review the Provincial Agriculturist's request, the Technical Working Group's survey, and the Bids and Awards Committee's recommendation. This is because auditing the procurement process was outside of her mandate as the Officer in Charge-Provincial Accountant. Thus, when the amounts in the disbursement vouchers tallied with the purchase price agreed upon, and the deliveries coincided with the volume and quantity indicated in the Purchase

---

[117] *Rollo*, pp. 241 and 252.

[118] Id. at 277.

[119] Id. at 98.

[120] Id. at 240.

Supreme Court E-Library

Orders, it became respondent Almajose's ministerial duty to sign the disbursement vouchers, because by then, all the supporting documents were indeed already complete and proper.

WHEREFORE, premises considered, the Petition is **PARTLY GRANTED**. The Court of Appeals September 2, 2016 Decision and December 28, 2016 Resolution, in so far as they dismissed the administrative charges against respondents Danilo R. Rumbawa, Romulo P. Arcilla, Jr., Eugene P. Durusan, Victorina A. Olea, Eduardo L. Torres, Danilo O. Collantes, and Virgilio R. Esguerra, are **REVERSED** and **SET ASIDE**.

Accordingly, respondents Danilo R. Rumbawa, Romulo P. Arcilla, Jr., Eugene P. Durusan, Victorina A. Olea, Eduardo L. Torres, Danilo O. Collantes, and Virgilio R. Esguerra are found **GUILTY** of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service. They are meted out the penalty of **DISMISSAL FROM THE SERVICE** which shall carry with it the cancellation of their eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office, pursuant to Section 52 of the Revised Rules on Administrative Cases in the Civil Service. In case the penalty of dismissal from the service can no longer be implemented due to retirement, resignation or separation from the service for any reason, the alternative penalty of **FINE EQUIVALENT TO ONE YEAR SALARY** of each respondent shall be imposed, with the same accessory penalties thereof.

The administrative charges against respondent Cecilia C. Almajose are **DISMISSED** for insufficiency of evidence.

SO ORDERED.

M. Lopez, J. Lopez, and *Kho, Jr., JJ.*, concur.

Lazaro-Javier, J., on official business.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioners.
Eric Paul Fetalino for respondents Arcilla and Almajose.
Rodvick J. Abarca for respondents Durusan, Torres, Olea, et al.