Republic of the Philippines
Supreme Court
Manila

**THIRD DIVISION**

**WILFRED GACUS YAMSON, Assistant General Manager A, REY CAÑETE CHAVEZ, Department Manager C, ARNOLD DOMINGO NAVALES, Department Manager C, ROSINDO JAPAY ALMONTE, Division Manager C, ALFONSO EDEN LAID, Assistant General Manager A, and WILLIAM V. GUILLEN, Department Manager C, (all of) Davao City Water District, Bajada, Davao City,**
Petitioners,

- versus -

**DANILO C. CASTRO and GEORGE F. INVENTOR,**
Respondents.

**G.R. Nos. 194763-64**

Present:

VELASCO, JR., *J.*,
*Chairperson*,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

July 20, 2016

x----------x

# DECISION

**REYES, *J.*:**

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated December 6, 2010 rendered by the Court of Appeals (CA) in the consolidated cases docketed as CA-G.R. SP No. 105868 and CA-G.R. SP No. 105869. The assailed CA decision

---

1 *Rollo*, pp. 10-74.

2 Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Ricardo R. Rosario and Samuel H. Gaerlan concurring; id. at 79-109.

affirmed the Decisions of the Office of the Ombudsman of Mindanao (Ombudsman) in **OMB-M-A-05-104-C**[3] and **OMB-M-A-05-093-C**[4] dated October 26, 2007 and November 28, 2007, respectively, and provided for the following dispositive portion:

> **WHEREFORE**, the petitions for review are **DISMISSED**. The assailed *Decisions* dated October 26, 2007 and November 28, 2007 of the Office of the Ombudsman of Mindanao, in OMB-M-A-05-104-C and OMB-M-A-05-093-C, are **AFFIRMED**.
>
> **SO ORDERED**.[5]

## Facts of the Case

The petitioners and Danilo C. Castro and George F. Inventor (respondents) are all officials and employees of the Davao City Water District (DCWD). Engr. Wilfred G. Yamson (Yamson),[6] Engr. Rey C. Chavez (Chavez), Arnold D. Navales (Navales) and Atty. William V. Guillen (Guillen)[7] occupied concurrent membership in its Pre-Bidding and Awards Committee-B (PBAC-B). Rosindo J. Almonte (Almonte), meanwhile, was the Division Manager of DCWD's Engineering and Construction Department, while Alfonso E. Laid (Laid) was the Assistant General Manager for Administration (collectively, the petitioners).

In Board Resolution No. 97-248[8] adopted on November 21, 1997, the DCWD Board of Directors approved the recommendation of DCWD General Manager Wilfredo A. Carbonquillo (Carbonquillo) to undertake the Cabantian Water Supply System Project stage by stage, with a budgetary cost of Thirty-Three Million Two Hundred Thousand Pesos (₱33,200,000.00). Initial activities for the project were the simultaneous drilling of two wells separately located in Cabantian (identified as VES 15 Project) and Communal (identified as VES 21 Project) in Davao City, both estimated at Four Million Pesos (₱4,000,000.00) each. Included in Carbonquillo's recommendation was the direct negotiation of the well drilling phase of the project to Hydrock Wells, Inc. (Hydrock).

---

3 Rendered by Graft Investigation and Prosecution Officer II Grace H. Morales; id. at 318-339.

4 Id. at 291-316.

5 Id. at 108.

6 No longer in public service, having retired on March 1, 2006 based on the records of this case; id. at 80, 292.

7 Petitioner Guillen is also no longer in public service, having resigned on July 3, 2006; id.

8 Id. at 129-131.

On November 24, 1997, Hydrock President Roberto G. Puentespina (Puentespina) wrote Carbonquillo informing DCWD that his company is "willing to take the risk of undertaking the project to test the availability of water by drilling the pilot hole so that electric logging could be done."[9] Puentespina also wrote that they were willing to undertake the drilling even without the approval of DCWD as their crew and equipment were idle.[10]

Thereafter, in Resolution No. 05-97[11] approved on November 25, 1997, the PBAC-B resolved to dispense with the advertisement requirement in the conduct of the bidding and instead, opted to send letters to accredited well drillers and invited their participation in the VES 15 and VES 21 well drilling projects. Invited were Hydrock, AMG Drilling and Construction, Inc. (AMG) and Drill Mechanics Incorporated (DMI).[12]

Only Hydrock and AMG responded favorably by submitting their respective quotations for the projects:

| Project | Hydrock | AMG |
|---|---|---|
| VES 15 | ₱2,807,100.00 | ₱3,080,000.00 |
| VES 21 | ₱2,349,180.00 | ₱2,596,900.00 |

AMG, however, requested that the project be implemented in July 1998 due to the unavailability of its equipment at the time of the invitation. DMI, for its part, sent its "regrets" as its drilling rigs are not available for immediate use.[13]

Thereafter, in Resolution No. 06-97[14] dated December 16, 1997, the PBAC-B resolved, "due to the urgency, importance and necessity of the well drilling project," to endorse the matter to the head of agency for approval, with a "recommendation that the project be pursued by a negotiated agreement contract with [HYDROCK] taking into account its track record, efficiency of performance, and quoted price."[15]

The PBAC-B's recommendation was well-taken by the DCWD Board of Directors, and in Resolution No. 98-27[16] dated February 13, 1998, it resolved to award to Hydrock the VES 15 Project at ₱2,807,100.00, and the VES 21 Project at ₱2,349,180.00. On the same date, February 13, 1998, Carbonquillo issued a notice of award to Hydrock, informing the latter that

---

9 Id. at 143.
10 Id.
11 Id. at 132-133.
12 Id. at 134-136.
13 Id. at 138-139.
14 Id.
15 Id. at 139.
16 Id. at 140-142.

the contract for the VES 21 Project has been awarded to it at the cost of ₱2,244,780.00.[17] Notice to proceed was then issued on February 20, 1998.[18]

After more than six years, or on January 12, 2005, the respondents filed a joint Affidavit-Complaint[19] with the Ombudsman, charging the petitioners[20] with Violation of Section 3(e) of Republic Act (R.A.) No. 3019, or the Anti-Graft and Corrupt Practices Act, for the alleged non-observance of the proper bidding procedure in the VES 21 Project and for allegedly giving Hydrock unwarranted benefits, advantage or preference in the "surreptitious" grant of the contract to it. The case was docketed as OMB-M-C-05-0051-A.

Two weeks after, or on January 26, 2005, the respondents filed another joint Affidavit-Complaint[21] with the Ombudsman, likewise charging the petitioners with Violation of Section 3(e) of R.A. No. 3019, this time for the VES 15 Project, docketed as OMB-M-C-05-0054-A.

Less than two months later, the respondents filed two separate joint Affidavit-Complaints[22] with the Ombudsman, administratively charging the petitioners with Grave Misconduct, Grave Abuse of Authority, Dishonesty and Gross Negligence. The respondents adopted the allegations in the separate criminal complaints they filed with the Ombudsman against the petitioners in OMB-M-C-05-0051-A and OMB-M-C-05-0054-A as bases for the administrative charges. For the VES 21 Project, the administrative case against the petitioners was docketed as **OMB-M-A-05-093-C**, while the administrative case for the VES 15 Project was docketed as **OMB-M-A-05-104-C**.

The pertinent allegations in the Affidavit-Complaint filed on January 12, 2005 in OMB-M-C-05-0051-A, are as follows:

> 14. That the awarding of the said contract is riddled with irregularities and anomalies from its inception up to the actual execution of the same;
>
> 15. That for one, the Resolution No. 05-97 of the [PBAC-B] x x x is a systemic violation of the P.D. No. 1594 as amended, x x x
>
> x x x x

---

17 Id. at 145.
18 Id. at 148.
19 Id. at 215-221.
20 Also included as respondent in the affidavit-complaint was Carbonquillo, who earlier resigned from DCWD on February 11, 2000; id. at 292.
21 Id. at 222-228.
22 Id. at 229-229A, 230-231.

16. That the act of the PBAC-B in passing Resolution No. 06-97 x x x is in flagrant violation of the requirement of P.D. 1594, IB-10.4.2, which requires that there must be two failure of bidding before negotiated contract may be entered into;

17. That the urgency, importance and necessity of the drilling, which was then cited by the PBAC-B as a reason in resorting to negotiated contract and in not observing the rules in case of failure of bidding as provided by P.D. 1594 were merely interposed by the members of the PBAC-B x x x to mislead the Board of the DCWD into approving the said project, because up to this date VES No. 15, which was simultaneously drilled with VES 21 remained to be unused;

18. That x x x, in fact the entire bidding process was just a mere farce to put a color of legitimacy to an otherwise illegal drilling of VES 21;

x x x x

20. That as borne out by the Project Inspector's Daily Report dated December 29, 1997, x x x the [Hydrock] had actually started drilling VES 21 as early as December 29, 1997. x x x;

x x x x

22. That undeniably, during the time (December 29, 1997) [Hydrock] started the drilling of VES 21, its contract was then still in the stage of negotiation. Parenthetically, we can conclude that the project has already been pre-awarded by the members of the PBAC-B, x x x;

23. That it is quite obvious that there exists a complicity among the members of the [PBAC-B] x x x;

x x x x

25. That per Project Inspector's Daily Report, the drilling of VES 21 has already been completed on February 24, 1998. x x x;

26. That despite its completion on February 24, 1998, [Hydrock] submitted on March 10, 1998, a request for Change Order, requesting for the increase of the contract cost by Php 64,745.00, x x x;

27. The above mentioned request for change order was absurd, because how can the cost of VES #21 be changed when the same has already been completed;

x x x x

30. That, however, despite of the knowledge of the Department Manager of the SIA, [Navales], of the anomalies surrounding the transactions concerning the drilling of VES 21, he even defended the same and prepared a report, which in effect affirms the said anomalies and much worse recommended for the approval of the said Change Order No. 1. x x x;

x x x x

> 32. That to justify the said Change Order, the project was made to appear, through the conspiracy x x x, to have been completed on July 2, 1998, but the final billing was submitted only by the contractor [Hydrock] on October 1998;
>
> 33. That through the said final billings, it was made to appear that the drilling was still on progress on the dates between February 24 till July 2, 1998 and that certain percentage of the cost of contract is due to the contractor based on the accomplished work, when in truth and in fact the same had already been completed on February 24, 1998 x x x; the same is designed primarily to deceive the Board of Directors, the entire DCWD and the general public at large. x x x;
>
> 34. That [o]n January 27, 1999, a Certificate of Completion and Acceptance was issued supposedly by [Carbonquillo], but was signed by [Laid], who was then the Assistant General Manager for Administration, certifying to the effect that the Drilling of Production Well VES #21 has been physically completed on February 24, 1998 and that whatever withheld retentions be released. x x x;
>
> 35. That to a reasonable mind, the only conclusion that can be drawn in issuing the said Certificate of Completion x x x is that [Laid] was aware that the drilling of VES 21 has already been completed as early as February 24, 1998[.][23]

Meanwhile, the Affidavit-Complaint filed on January 26, 2005 in OMB-M-C-05-0054-A contained essentially the same allegations as that filed in OMB-M-C-05-0051-A, albeit it referred to the VES 15 Project.[24]

The petitioners filed their Joint Counter-Affidavit[25] on April 15, 2005 to the administrative charges, adopting as defenses the contentions in their Joint Counter-Affidavit[26] dated February 22, 2005 in OMB-M-C-05-0051-A.[27] In the said Joint Counter-Affidavit, the petitioners denied the respondents' accusations and alleged, among others, that:

> 14.e The recourse of PBAC-B to adopt limited source bidding is allowed by law. The law applicable is Executive Order No. 164 x x x[.]
>
> x x x x
>
> 14.f It may help that we let this Honorable Office know that there was a public outcry for water in the areas of Buhangin, Cabantian, Lanang, Sasa and Panacan during the time PBAC-B deliberated on whether to proceed with the usual advertisement in a newspaper or adopt a simplified bidding. x x x.

---

23 Id. at 216-219.
24 Id. at 222-228.
25 Id. at 246-248.
26 Id. at 235-245.
27 Id. at 247.

x x x x

16. x x x Thus, considering that the time was of essence in the prosecution of the project, and considering that only Hydrock can timely respond and meet the needs of DCWD at that moment, we, Yamson, Chavez, Navales, and Guillen x x x declared a failure of bidding as there was only one bidder that qualified and recommended for negotiated contract to Hydrock. PBAC-B could have awarded the project to Hydrock being the only responsive evaluated bidder at the price the latter had offered. Yet, PBAC-B recommended a negotiated contract with Hydrock because it was more advantageous to DCWD as it could haggle more for a cheaper contract price through negotiation taking into account Section 5 (3) of Executive Order No. 164 x x x.

x x x x

17. Thus, on December 16, 1997, PBAC-B passed Resolution No. 06-97, in which, it declared a failure of bidding and recommended for a negotiated contract with Hydrock. From December 16, 1997, our participation, x x x, as PBAC-B members in relation to the project (VES 21) officially ended, as it has in fact ended.

x x x x

19.a I, [Yamson], do hereby declare that I was personally instructed by [Carbonquillo] x x x to send personnel to the project site on December 29, 1997 for inspection purposes. As I understood things up, [Carbonquillo] again made a verbal notice to proceed to Hydrock as what he did earlier in Production Wells Nos. 30, 31 and 32. I asked [Carbonquillo] whether the award of the project was already approved by the Board but I was cut-off and told to do things as instructed – no more questions asked as he took full responsibility of the project. Thus, in my capacity as Assistant General Manager for Operations, I instructed [Chavez], x x x, to send his men to the project site on December 29, 1997 per instruction of [Carbonquillo].

19.b I[,] [Chavez], was instructed by [Yamson] to send ECD personnel to the project site on December 29, 1997 per instruction of [Carbonquillo]. With what I went through with [Carbonquillo] when I tried to suspend the sealing of Production Well No. 30 (*please see subparagraphs 13.b and 13.b*), I just complied the marching order and instructed [Almonte] to do the things per construction.

19.c I, [Almonte], in compliance with the instruction of [Chavez], had in turn instructed Jose David Colindres to proceed to the project site on December 29, 1997. Being an employee of DCWD, I am bound to protect the interest of the DCWD. At that time, it was not within my power to suspend the prosecution of the drilling project. Thus, the most that I can do was to verify, check and evaluate the drilling procedure undertaken by Hydrock. x x x.

x x x x

> 21. The implementation of the change order for VES 21 happened before its completion on February 24, 1998. In fact, I, [Navales], had been straightforward and transparent on this matter in my communication to the Board. x x x[.]
>
> x x x x
>
> [21].e In fact, in a much earlier date, I, [Navales], has reported the matter to the Board and advised [Carbonquillo] to defer any payment thereon and secure first the approval of the Board. x x x.
>
> x x x x
>
> 23. With respect to the non-use of VES 15, the same is the result to the rotation of department managers of the DCWD following the dismissal of [Carbonquillo].
>
> x x x x[28]

The petitioners' allegations and defenses in OMB-M-C-05-0054-A are likewise similar to the foregoing allegations and defenses in OMB-M-A-05-104-C.[29]

**OMB-M-A-05-093-C (VES 21 Project)**

In its Decision[30] dated November 28, 2007, the Ombudsman found the petitioners administratively liable for grave misconduct and ordered their dismissal from service. The dispositive portion of the decision provides:

> WHEREFORE, premises considered, this Office finds substantial evidence to hold [the petitioners] administratively liable for Grave Misconduct pursuant to Rule IV, Section 52, par. A(3) of the Civil Service Resolution No. 99-1936.
>
> [Petitioners Laid, Chavez, Navales and Almonte] are hereby meted the penalty of DISMISSAL FROM SERVICE with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for reemployment in the government service.
>
> [Petitioners Yamson and Guillen], who are no longer in the public service, are hereby meted the applicable aforementioned accessory penalties.
>
> With respect to [Carbonquillo], the instant case is rendered moot by the penalty of dismissal from service imposed on him in case no. OMB-MIN-ADM-98-090.

---

28 Id. at 239-244.

29 *See* Position Paper, *rollo*, pp. 262-265.

30 Id. at 291-317.

> Accordingly, Engr. Rodora N. Gamboa, General Manager of the [DCWD], is hereby requested to immediately implement the penalty of dismissal from service pursuant to this Office's Memorandum Circular Order No. 01, Series of 2006, forthwith advising this Office of her compliance therewith.
>
> SO DECIDED.[31]

The Ombudsman did not accept the petitioners' explanation as regards the PBAC-B's resort to a "simplified bidding", finding that the circumstances of the project do not call for the application of the exception to the general rule on competitive public bidding, *viz.*: (1) the "public outcry" was not a natural calamity; (2) there was no prior failure of competitive public bidding; (3) there was no adjacent or continuous project being undertaken by Hydrock; and (4) the VES 21 Project was not a take-over project. Thus, the Ombudsman found the petitioners guilty of Grave Misconduct, ruling that: (1) the petitioners failed to conduct the required public bidding; (2) the project was implemented by Hydrock ahead of the contract award, with the knowledge and approval of Carbonquillo, and with the cooperation of the petitioners; (3) the petitioners' justification that Carbonquillo was responsible for the mobilization of Hydrock prior to contract award is self-serving considering that the petitioners hold managerial positions and should not follow orders blindly; and (4) the change order was allowed even before proper documentation was accomplished, among others.[32]

**OMB-M-A-05-104-C (VES 15 Project)**

The petitioners were likewise found guilty of grave misconduct by the Ombudsman for the VES 15 Project in its Decision[33] dated October 26, 2007. The dispositive portion of which provides:

> WHEREFORE, premises considered, this Office finds substantial evidence to hold [petitioners YAMSON, CHAVEZ, LAID, ALMONTE AND NAVALES] administratively liable for Grave Misconduct pursuant to Rule IV, Section 52, par. A(3) of the Civil Service Resolution No. 99-1936.
>
> [Petitioners CHAVEZ, LAID, ALMONTE and NAVALES] are hereby meted the penalty of DISMISSAL FROM SERVICE with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for reemployment in the government service.

---

31 Id. at 315-316.
32 Id. at 311-314.
33 Id. at 318-340.

> [Petitioner YAMSON], who is no longer in the government service, is hereby meted the applicable aforementioned accessory penalties.
>
> With respect to [CARBONQUILLO], the instant case is rendered moot by the penalty of dismissal from service imposed on him in case nos. OMB-MIN-98-275 and OMB-MIN-ADM-98-090.
>
> Accordingly, Engr. Rodora N. Gamboa, General Manager of the [DCWD], is hereby requested to immediately implement the penalty of dismissal from service pursuant to this Office's Memorandum Circular Order No. 01, Series of 2006, forthwith advising this Office of her compliance therewith.
>
> x x x x
>
> SO DECIDED.[34]

The Ombudsman's findings and conclusion on the petitioners' accountability under the VES 15 Project are similar to its discussion regarding the petitioners' liability under the VES 21 Project. Thus, it ruled that the VES 15 Project did not fall under the exceptions to competitive bidding in Presidential Decree (P.D.) No. 1594,[35] and that the VES 15 Project was riddled with irregularities.[36]

## Ruling of the CA

The petitioners' separate appeals to the CA were consolidated, and in the assailed Decision[37] dated December 6, 2010, the petitioners' dismissal from service was affirmed, *viz.*:

> **WHEREFORE**, the petitions for review are **DISMISSED**. The assailed *Decisions* dated October 26, 2007 and November 28, 2007 of the [Ombudsman] in OMB-M-A-05-104-C and OMB-M-A-05-093-C, are **AFFIRMED**.
>
> **SO ORDERED**.[38]

The CA rejected the petitioners' argument that the filing of the separate complaints filed against them in the Ombudsman constituted forum shopping. According to the CA, the rule on forum shopping applies exclusively to judicial cases/proceedings and not to administrative cases, and as such, the filing of the identical complaints with the Ombudsman does not

---

34 Id. at 338-339.

35 Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts. Issued on June 11, 1978.

36 *Rollo*, pp. 334-337.

37 Id. at 79-109.

38 Id. at 108.

violate the rule.[39]

The CA also found no reversible error in the Ombudsman's ruling that the petitioners are liable for grave misconduct, finding that they violated the mandatory provisions of P.D. No. 1594, particularly the absence of a public bidding on the award of the VES 15 and VES 21 Projects to Hydrock.[40] The CA ruled that the attendant circumstances do not justify dispensing with the public bidding and entering into a negotiated contract with Hydrock as the conditions set in P.D. No. 1594 were not met.

Thus, the petitioners are now before this Court, arguing that the CA Decision dated December 6, 2010 was not in accord with law or with the applicable decisions of the Court in that:

(i) the ruling in *Office of the Ombudsman v. Rodriguez*,[41] which states that forum shopping applies exclusively to judicial cases, pertains only to administrative cases filed prior to the effectivity of Administrative Order (A.O.) No. 17 amending A.O. No. 07 of the Ombudsman. Under Section 3, Rule III of A.O. No. 07, as amended by A.O. No. 17, dated September 7, 2003, an administrative complaint must be accompanied by a certificate of non-forum shopping duly subscribed and sworn to by the complainant or his counsel. It is clear, therefore, that the Ombudsman itself has made the proscription against forum shopping, and the penalties therefor, applicable to administrative cases filed with it; and

(ii) the petitioners did not violate the provisions of P.D. No. 1594 which they were dismissed for grave misconduct.[42]

The arguments raised by the petitioners are anchored on two (2) points – forum-shopping and lack of administrative liability based on the circumstances of the VES 15 and VES 21 Projects.

On the issue of forum shopping, the petitioners contend that the case of *Rodriguez*[43] cited by the CA is not applicable for the reasons that *Rodriguez* involved an Ombudsman and a Sangguniang Bayan case, and that the complaints in these cases were filed before the issuance of A.O. No. 07 (dated September 7, 2003) of the Ombudsman, which prescribed the filing of a certificate of non-forum shopping. The petitioners also insist that the respondents in this case violated the rule on forum shopping when they filed

---

39 Id. at 101.
40 Id. at 102-107.
41 639 Phil. 312 (2010).
42 *Rollo*, pp. 26-27.
43 Supra note 41.

the administrative complaints separately, given that these arose from the same set of facts involving identical rights asserted and prayed for the same relief, and thus, entitling the dismissal of the cases. The petitioners also decry the splitting of the prosecution for the VES 15 and VES 21 Projects, arguing that the essence of the respondents' complaint is based actually on the same set of facts.

With regard to their culpability for the acts complained of, the petitioners argue that it was not the PBAC-B that approved the negotiation of the contract but the DCWD's Board of Directors, as evidenced by Board Resolution No. 97-248 dated November 21, 1997. What the PBAC-B merely did was recommend the negotiation of the contract to Hydrock and the ultimate decision to approve its recommendation was still with the Board of Directors. The petitioners attribute: (1) bad faith on the part of the CA when it allegedly failed to even mention the existence of Board Resolution No. 97-248; and (2) conspiracy on the part of the respondents and Ombudsman when they deliberately "hid" the contents of Board Resolution No. 97-248 to make it appear that it was the PBAC-B that unilaterally decided the award of the contract to Hydrock.

## Ruling of the Court

### *Forum shopping*

Generally, the rule on forum shopping applies only to judicial cases or proceedings, and not to administrative cases.[44] Nonetheless, A.O. No. 07, as amended by A.O. No. 17, explicitly removed from the ambit of the rule the administrative cases filed before it when it required the inclusion of a Certificate of Non-Forum Shopping in complaints filed before it. Thus, Section 3 of Rule III (Procedure in Administrative Cases) provides:

> Sec. 3. *How initiated.* – An administrative case may be initiated by a written complaint under oath accompanied by affidavits of witnesses and other evidence in support of the charge. **Such complaint shall be accompanied by a Certificate of Non-Forum Shopping duly subscribed and sworn to by the complainant or his counsel.** An administrative proceeding may also be ordered by the Ombudsman or the respective Deputy Ombudsman on his initiative or on the basis of a complaint originally filed as a criminal action or a grievance complaint or request for assistance. (Emphasis ours)

The respondents in this case attached a Certificate of Non-Forum Shopping to their separate Affidavit-Complaints,[45] which amounts to an express admission on their part of the applicability of the rule in the

---

44 *Laxina, Sr. v. Office of the Ombudsman*, 508 Phil. 527, 535 (2005).

45 *Rollo*, pp. 229A and 231.

administrative cases they filed against the petitioners. But compliance with the certification requirement is separate from, and independent of, the avoidance of forum shopping itself.[46] Both constitute grounds for the dismissal of the case, in that non-compliance with the certification requirement constitutes sufficient cause for the dismissal without prejudice to the filing of the complaint or initiatory pleading upon motion and after hearing, while the violation of the prohibition is a ground for summary dismissal thereof and for direct contempt.[47] The respondents' compliance, thus, does not exculpate them from violating the prohibition against forum shopping.

The rule against forum shopping prohibits the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment.[48] Forum shopping may be committed in three ways: (1) **through *litis pendentia*** – filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet; 2) **through *res judicata*** – filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved; and 3) **splitting of causes of action** – filing multiple cases based on the same cause of action but with different prayers – the ground to dismiss being either *litis pendentia* or *res judicata*.[49] Common in these is the identity of causes of action. Cause of action has been defined as "the act or omission by which a party violates the right of another."[50]

In this case, a review of the Affidavit-Complaints separately filed by the respondents in **OMB-M-A-05-104-C** and **OMB-M-A-05-093-C** reveals the respondents' violation of the prohibition *via* the first mode, that is, through *litis pendentia*. The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[51]

The identity of parties in **OMB-M-A-05-104-C** and **OMB-M-A-05-093-C** is undeniable. Save for the inclusion of petitioner Guillen in **OMB-M-A-05-093-C**, the parties in these two cases are all the same, *viz.*: herein respondents as complainants, and petitioners Yamson, Laid, Chavez, Navales

---

46 *Juaban, et al. v. Espina, et al.*, 572 Phil. 357, 373 (2008), citing *Spouses Melo v. CA*, 376 Phil. 204, 213 (1999).

47 *Office of the Ombudsman (Visayas) v. Court of Appeals, et al.*, 720 Phil. 466, 472 (2013), citing *Abbott Laboratories, Phils., et al. v. Alcaraz*, 714 Phil. 510, 530 (2013).

48 *Sps. Marasigan v. Chevron Philippines, Inc., et al.*, 681 Phil. 503, 515 (2012).

49 *Plaza v. Lustiva*, G.R. No. 172909, March 5, 2014, 718 SCRA 19, 32.

50 Id. at 32-33.

51 Id. at 32.

and Almonte as respondents, together with Carbonquillo. On this score, the non-inclusion of Guillen in **OMB-M-A-05-104-C** is inconsequential because the rule does not require absolute identity of parties; only substantial identity of parties is sufficient to qualify under the first requisite.[52]

There is also no denying the identity of rights asserted and relief prayed for in these cases.

The administrative complaint filed in **OMB-M-A-05-093-C** was based on the criminal complaint filed in OMB-M-C-05-0051-A for the VES 21 Project. On the other hand, the administrative complaint filed in **OMB-M-A-05-104-C** was based on the criminal complaint filed in OMB-M-C-05-0054-A for the VES 15 Project. These two criminal complaints alleged exactly the same set of antecedent facts and circumstances. To illustrate[53] –

| **OMB-M-C-05-0054-A (VES 15 Project)** | **OMB-M-C-05-0051-A (VES 21 Project)** |
|---|---|
| 11. That by virtue of [Resolution No. 06-97] of the PBAC-B, the matter was endorsed by the general manager to the Board for approval and award, and as per Board Resolution No. 98-27 dated February 13, 1998, the Drilling of VES # 21 x x x was awarded to [Hydrock] x x x; | 13. That by virtue of [Resolution No. 06-97] of the PBAC-B, the matter was endorsed by the general manager to the Board for approval and award, and as per Board Resolution No. 98-27 dated February 13, 1998, the Drilling of VES # 15 x x x was awarded to [Hydrock] x x x; |
| 14. That the awarding of the said contract is riddled with irregularities and anomalies from its inception up to the actual execution of the same; | 17. That **similar to the awarding of VES #21**, which was the subject of a similar complaint that we filed before this Honorable Office on January 12, 2005, the awarding of the contract for the drilling of VES # 15 to [Hydrock], was also riddled with irregularities and anomalies from its inception up to the actual execution of the same; |
| 16. That the act of the PBAC-B in passing Resolution No. 06-97 x x x which is in flagrant violation of the requirement of P.D. 1594, IB-10.4.2 x x x; | 19. That the act of the PBAC-B in passing Resolution No. 06-97 x x x which is in flagrant violation of the requirement of P.D. 1594, IB-10.4.2 x x x; |
| 18. That the sheer disregard of the PBAC-B of P.D. 1594 in railroading the bidding of the drilling project of **VES 15 and 21** is not the only malevolent act committed by the members of the said committee, in fact the entire bidding process was just a mere farce to put a color of legitimacy to an otherwise illegal drilling of VES 21[.] | 21. That the sheer disregard of the PBAC-B of P.D. 1594 in railroading the bidding of the drilling project of VES# 15 was nothing compared to the fact that the said bidding process was just a mere farce[.] |

52 *Sps. Marasigan v. Chevron Philippines, Inc., et al.*, supra note 48, at 516.

53 *Rollo*, pp. 216-217, 223-225. (Emphasis ours)

More importantly, the rights asserted and relief prayed for in these administrative cases are also identical. The Affidavit-Complaints in the two administrative cases contained similar allegations, to wit: [54]

| OMB-M-A-05-104-C (VES 15 Project) | OMB-M-A-05-093-C (VES 21 Project) |
|---|---|
| 1. That we have caused the filing of the Case now pending x x x OMB-M-C-05-0054-A, for Violation of Section 3(e)[,] R.A. 3019 | 1. That we have caused the filing of the Case now docketed x x x OMB-M-C-05-0051-A, for Violation of Section 3(e)[,] R.A. 3019; |
| 2. That [since] no Administrative Case has as yet been filed concerning the said case, we hereby submit to this Honorable Office our intention to file Administrative Cases against the Respondents in the above-mentioned case; | 2. That since no Administrative Case has as yet been filed, we hereby submit to this Honorable Office our intention to file Administrative Cases against the Respondents in the above-mentioned case; |
| 3. That we are have attached [sic] herein our Affidavit-Complaint in the above-mentioned Criminal Case and forming part of this affidavit[.] | 3. That we are hereby attaching our Affidavit-Complaint in the above-mentioned Criminal Case and forming part of this affidavit[.] |

Moreover, both the complaints filed in these cases alleged a common cause of action, that is, the petitioners' alleged failure to conduct a public bidding on the drilling of two wells for the Cabantian Water Supply System Project, the alleged premature award of the contract to Hydrock and irregularities in the implementation of the projects. **The only distinction is the location of the drilling project**, with **OMB-M-A-05-093-C** involving the VES 21 Project located in Communal and **OMB-M-A-05-104-C** involving the VES 15 Project located in Cabantian. Notwithstanding the difference in location, it should be noted that there was only one procedure carried out by the PBAC-B in undertaking the negotiated procurement of the VES 15 and VES 21 Projects. Note, too, that the actions on these two projects were contained in the same resolutions – the PBAC-B's Resolution No. 05-97 approved on November 25, 1997 resolved to dispense with the advertisement requirement and opted to send letters to well drillers "for the proposed Well Drilling Projects in Communal and Cabantian;"[55] the PBAC-B's Resolution No. 06-97 dated December 16, 1997 recommended the negotiated procurement of the VES 15 and VES 21 Projects to Hydrock;[56] and pursuant to the PBAC-B's recommendation, the DCWD Board of Directors issued Resolution No. 98-27 dated February 13, 1998, awarding the VES 15 and VES 21 Projects to Hydrock.[57] Clearly, the identity of these two cases is such that judgment in one administrative case would amount to *res judicata* in the other administrative case. As ruled by the Court in *Lagoc v. Malaga*,[58] "[w]hile the questioned transactions

54 Id. at 229, 230.
55 Id. at 132-133.
56 Id. at 138-139.
57 Id. at 140-142.
58 G.R. No. 184785, July 9, 2014, 729 SCRA 421.

involved two (2) different projects, there was present only a singular wrongful intent to award the contracts x x x. Hence, the respondents concerned may be held liable for only one administrative infraction."[59]

The finding of forum shopping does not, however, automatically render the two administrative cases dismissible. The consequences of forum shopping depend on whether the act was wilful and deliberate or not. If it is not wilful and deliberate, the subsequent cases shall be dismissed without prejudice. But if it is wilful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice on the ground of either *litis pendentia* or *res judicata*.[60] In this case, the Court cannot grant the petitioners' prayer for the dismissal of the two administrative cases as there is no clear showing that the respondents' act of filing these was deliberate and wilful. Records show that these cases were premised on the two criminal complaints for Violation of Section 3(e) of R.A. No. 3019, which were separately filed and entertained by the Ombudsman. At the most, **OMB-M-A-05-104-C** (VES 15 Project), which was filed subsequent to **OMB-M-A-05-093-C** (VES 21 Project), should be, and is hereby, dismissed.[61]

In view of the dismissal of **OMB-M-A-05-104-C** (VES 15 Project), the Court will only resolve the petitioners' respective administrative liabilities in **OMB-M-A-05-093-C** (VES 21 Project).

***P.D. No. 1594 and the VES 21 Project***

The petitioners do not dispute the antecedent facts of this case. The query lies in the conclusion that is to be derived from these antecedent facts, that is, whether the petitioners are liable for grave misconduct.

P.D. No. 1594, and even the subsequent laws on procurement, set the order of priority in the procurement of government construction projects. First, by competitive public bidding and second, by negotiated procurement (or by administration or force account, as the case may be).[62] Its Implementing Rules and Regulation (IRR),[63] meanwhile, provide for the specific instances when a negotiated contract may be entered into, *viz.*: (1) in

---

59 Id. at 437.

60 *Heirs of Marcelo Sotto v. Palicte*, 726 Phil. 651, 663 (2014).

61 *See Chua, et al. v. Metropolitan Bank & Trust Company, et al.*, 613 Phil. 143, 158-159 (2009).

62 Section 4 of P.D. No. 1594 states that "[c]onstruction projects shall generally be undertaken by contract **after competitive public bidding**. Projects may be undertaken by administration or force account or by negotiated contract only in exceptional cases where time is of the essence, or where there is lack of qualified bidders or contractors, or where there is a conclusive evidence that greater economy and efficiency would be achieved through this arrangement, and in accordance with provision of laws and acts on the matter, x x x. *See* also *D.M. Consunji, Inc. v. Commission on Audit*, 276 Phil. 595, 605 (1991).

63 As amended on May 24 and July 5, 2000.

times of emergencies arising from natural calamities where immediate action is necessary to prevent imminent loss of life and/or property; (2) when there is a failure to award the contract after competitive bidding for valid cause or causes, in which case bidding is undertaken through sealed canvass of at least three (3) contractors; and (3) in cases of adjacent or contiguous contracts.[64]

Even Executive Order (E.O.) No. 164,[65] which the petitioners claim as the applicable law, provides for open public bidding as the norm, and negotiations/simplified bidding as the exception.[66] This is because competitive public bidding protects the public interest by giving the public the best possible advantages thru open competition, and avoids or precludes suspicion of favoritism and anomalies in the execution of public contracts.[67]

In this case, the petitioners justify their resort to a negotiated procurement/simplified bidding by claiming that "there was a public outcry for water in the areas of Buhangin, Cabantian, Lanang, Sasa and Panacan."[68] Thus, they dispensed with the public bidding and instead, opted to send out invitations to "accredited well drillers." But as correctly concluded by both the Ombudsman and the CA, such "public outcry for water" does not qualify as an *emergency arising from natural calamities*, as required by both P.D. No. 1594 and E.O. No. 164. Natural calamities, as opposed to man-made calamities, usually refer to catastrophic events that result from the natural processes of the earth and which give rise to loss of lives or property or both. These include floods, earthquakes, storms and other similar natural events.[69] Water shortage, clearly, does not belong to the list of natural calamities. In fact, the "public outcry for water" relied upon by the petitioners was brought about by insufficient water supply connections in the affected areas.[70] Records also

---

64 IB 10.6.2 (1).

65 Providing Additional Guidelines in the Processing and Approval of Contracts of the National Government. Issued on May 5, 1987.

66 Sec. 5. *Public Bidding of Contracts; Exceptions*. **As a general rule, contracts for infrastructure projects shall be awarded after open public bidding to bidders who submit the lowest responsive/evaluated bids**. x x x The Award of such contracts through negotiation shall not be allowed by the Secretary or Governing Board of the Corporation concerned within the limits as stated in Section 1 hereof in the following cases:

a. In times of emergencies arising from natural calamities where immediate action is necessary to prevent imminent loss of life and/or property, in which case, direct negotiations or simplified bidding may be undertaken;

b. Failure to award the contract after competitive public bidding for valid cause or causes, in which case, simplified bidding may be undertaken;

c. Where the construction project covered by the contract is adjacent or contiguous to an on-going projects and it could be economically prosecuted by the same contractor, in which case, direct negotiation may be undertaken with the said contractor at the same unit prices and contract conditions, less mobilization costs, provided, that he has no negative shippage and has demonstrated a satisfactory performance. Otherwise, the contract shall be awarded through public bidding.

67 *Lagoc v. Malaga*, supra note 58, at 427.

68 *Rollo*, p. 240.

69 See CIVIL CODE OF THE PHILIPPINES, Article 1734.

70 *See rollo*, pp. 127, 128.

show that as early as May 1997, residents of the affected area have already been demanding for the improvement in their water supply system;[71] yet, it was only in November 1997 that DCWD started to act on the matter[72] and apparently, only after the clamour has been publicized in the local newspapers.[73] This contradicts the petitioners' claim of urgency given the lapse of time that it took the DCWD to address the situation. The petitioners, clearly, had no justifiable reason to dispense with the public bidding of the VES 21 Project.

The petitioners also contend that failure of the first bidding justified resort to a simplified bidding, citing Section 5(b) of E.O. No. 164, which provides: "Failure to award the contract **after competitive public bidding** for valid cause or causes, in which case, simplified bidding may be undertaken."[74]

The applicable IRR of P.D. No. 1594[75] dictates the steps in carrying out a competitive public bidding – first, the execution and approval of a detailed engineering investigation, survey and design for the project;[76] second, in contracts costing ₱5,000,000.00 and below, the posting and advertisement of the Invitation to Bid at least two (2) times within two (2) weeks in a newspaper of general local circulation;[77] third, the pre-qualification/eligibility screening of prospective bidders in accordance with Section II, IB 4; fourth, after the prospective bidders have been screened and pre-qualified, the issuance of the plans, specifications, proposal book form/s for the contract to be bid by the Bid and Award Committee (BAC) to the eligible bidders;[78] fifth, the holding of a pre-bid conference in case the contract to be bid has an approved budget of ₱5,000,000.00 or more;[79] sixth, the submission, opening and abstracting of the bids;[80] seventh, the evaluation of the bids;[81] and last, the award of the contract to the lowest bidder.[82]

The procedure for a negotiated procurement, on the other hand, is also set out in the IRR of P.D. No. 1594, *viz.*:

---

71 Id. at 115.
72 Id. at 129-131.
73 Id. at 127, 128.
74 Id. at 239-241.
75 Since the procurement of the VES 21 Project happened in 1997-1998, the applicable rule is the IRR of P.D. No. 1594 prior to its amendment in 2000.
76 IRR, Section I. *See* also *Albay Accredited Constructors Association, Inc. v. Ombudsman Desierto*, 516 Phil. 308 (2006).
77 Section II, IB 3. *See* also *Lagoc v. Malaga*, supra note 58.
78 Section II, IB 7.
79 Id. at IB 8.
80 Id. at IB 10.2.
81 Id. at IB 10.4.
82 Id. at IB 10.6.1.

IB 10.6.2 - BY NEGOTIATED CONTRACT

1. Negotiated contract may be entered into only where any of the following conditions exists and the implementing office/agency/corporation is not capable of undertaking the project by administration:

x x x x

In cases a [in times of emergencies arising from natural calamities] and b [failure to award the contract after two (2) public biddings for valid cause or causes], **bidding may be undertaken through sealed canvass of at least three (3) qualified contractors**. x x x Authority to negotiate contracts for projects under these exceptional cases shall be subject to prior approval by heads of agencies within their limits of approving authority.

x x x x (Emphasis ours)

Records show that there was no competitive public bidding undertaken to begin with. The pertinent provisions of PBAC-B's Resolution No. 06-97 dated December 16, 1997 state:

WHEREAS, an urgent meeting was called by the PBAC-B to evaluate **the letter proposal[s]** of the well drillers, **who were invited to participate in the bidding** of the proposed well drilling project at Communal and Cabantian, [Davao] [C]ity.

x x x x

With the foregoing, **a failure of competitive bidding is the result**. Meanwhile, the urgency of the project is of extreme importance. This Committee is in fact aware of the street demonstration, and public outcry of the residents in the affected area. The Committee therefore decided to indorse the matter to the Head of Office for his disposal with a recommendation that [HYDROCK] be given due consideration taking into account its track record, efficiency of performance, and quoted price.[83]

It is plain to see that what was undertaken at the very first instance was already a negotiated procurement of the VES 21 Project. As reported by Navales in his Audit Report dated March 26, 1998, there was no detailed engineering that was carried out for the project.[84] Such detailed engineering design is a preliminary requirement before any bidding or award may be made.[85] The petitioners also admit that there was no posting of the invitation to bid, which is necessary in a competitive public bidding.[86] Instead, they

---

83 Id. at 138-139.

84 Resolution No. 05-97 stated: "That, in consideration with the Committee's experience as regards the poor participation of well drillers in bidding invitation for well drilling projects, **it was agreed that popular advertisement through newspaper be dispensed with** x x x." Id. at 132, 634-635.

85 IRR, Section I. 1.

86 *See rollo*, p. 132.

directly sent out letter-invitations to "[a]ccredited [w]ell [d]rillers as provided by Local Water Utilities Administration, and known and capable well drillers in the city"[87] and it was from those who submitted their proposals that the PBAC-B eventually recommended Hydrock. These circumstances show that the procedure undertaken by the petitioners did not conform to the procedure provided in the IRR for competitive public bidding; hence, there was no failure of competitive bidding to speak of such that the PBAC-B may resort to a negotiated procurement.

To restate, before the petitioners can resort to a negotiated procurement through sealed canvass of at least three qualified contractors, whether under Section II, IB 10.6.2 of the IRR of P.D. No. 1594 or Section 5 of E.O. No. 164, there must first be a failure of a competitive public bidding undertaken in accordance with the IRR of P.D. No. 1594. In this regard, the Court has emphasized that "violation of the provisions of the IRR of [P.D. No.] 1594 will subject the erring government official/employee to the sanctions provided under existing laws particularly [R.A. No.] 3019 (known as the "Anti-Graft and Corrupt Practices Act") and [R.A. No.] 6713 (known as the "Code of Conduct and Ethical Standards for Public Officials and Employees"), and the Civil Service Law, among others."[88] Consequently, the petitioners should be held administratively liable.

The remaining question now is the classification of the particular offense/s committed by the petitioners, and their respective participation and liabilities.

***(a) Petitioners Yamson, Chavez, Navales and Guillen's non-compliance with P.D. No. 1594***

As noted beforehand, the petitioners were held accountable by the Ombudsman and the CA based on the finding that they committed the offense in collusion or in conspiracy with each other and/or Carbonquillo. The CA affirmed the Ombudsman's finding that the petitioners are liable for grave misconduct, relying mainly on the Audit Report dated March 26, 1998 submitted by Navales stating the following findings and observations:

> 1. The detailed engineering which is a basic requirement prior to bidding/awarding of any project was not carried out. x x x.
> 2. There was no bidding conducted prior to the awarding of the projects. x x x.
> 3. The project was awarded to the contractor by way of negotiation by the General Manager himself, x x x.

---

87 Id.

88 *Lagoc v. Malaga*, supra note 58, at 434.

> 4. The contractor started the project without an approved contract confirmed by the Board nor that there was an authority for the General Manager to sign the Contract. x x x.
> 5. The Board Resolution approving the project dated February 13, 1998 is just a week prior to the completion of the project – February 23, 1998. x x x.[89]

The Ombudsman, meanwhile, found that there was no competitive bidding conducted prior to the negotiated contract with Hydrock; the drilling for VES 21 Project was started by Hydrock even before they were informed by Carbonquillo to proceed; and the change order for the VES 21 Project was allowed even without proper documentation and came ahead of the awarding of the contract to Hydrock, among others.[90]

Misconduct is defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. It becomes grave if it involves any of the additional elements of corruption, such as wilful intent to violate the law or to disregard established rules, which must be established by substantial evidence.[91] "**Corruption**, as an element of Grave Misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others."[92] Moreover, like other grave offenses classified under the Civil Service laws, bad faith must attend the act complained of. **Bad faith** connotes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.[93]

But to be disciplined for grave misconduct or any grave offense, the evidence should be competent and must be derived from direct knowledge.[94] There must be evidence, independent of the petitioners' 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.

In the present case, **there is no evidence on record that will convincingly establish that petitioners Yamson, Chavez, Navales and Guillen, who were the members of the PBAC-B, conspired or colluded with Carbonquillo and/or each other or with the invited well drillers, or that they schemed to rig the procurement process to favor Hydrock.** There is also no evidence showing that they benefited from the procurement

---

89 *Rollo*, pp. 634-635.
90 Id. at 310-314.
91 *Encinas v. PO1 Agustin, Jr., et al.*, 709 Phil. 236, 263 (2013), citing *Re: Complaint of Mrs. Salvador against Spouses Serafico*, 629 Phil. 192, 210 (2010).
92 *Ampil v. Office of the Ombudsman, et al.*, 715 Phil. 733, 769 (2013).
93 *Andrade v. CA*, 423 Phil. 30, 43 (2001).
94 *Litonjua v. Justices Enriquez, Jr. and Abesamis*, 482 Phil. 73, 101 (2004).

of the project. Much less was there any evidence that petitioners Almonte and Laid, who were not even members of the PBAC-B, conspired with their co-petitioners and the other bidding participants in the procurement of the VES 21 Project. Collusion may be determined from the collective acts or omissions of the PBAC-B members and/or contractors before, during and after the bidding process, and the respondents, as complainants, have the burden to prove such collusion by clear and convincing evidence.[95] And while Hydrock eventually benefited from the VES 21 Project, having been awarded the contract, it should be stressed that Hydrock was not the only well driller invited by the PBAC-B to participate in the project. AMG and DMI were likewise invited by the PBAC-B, only that it was Hydrock's acceptable proposal and track record that clinched the award. And even then, the role of the PBAC-B was only to recommend the award of the project to Hydrock. It is DCWD, through its Board of Directors, that has the authority to approve,[96] and has in fact, ultimately decided to award the contract to Hydrock.[97]

What is unmistakeable here is that it was Carbonquillo who was predisposed to award the project to Hydrock *sans* the benefit of any bidding. This is clear from the tenor of his letter to DCWD's Board of Directors already recommending direct negotiation of the project to Hydrock.[98] But to the credit of both the PBAC-B and the Board of Directors, Carbonquillo's recommendation was disregarded, and the PBAC-B proceeded to invite other accredited well drillers. And absent any evidence establishing corruption, bad faith or complicity with Carbonquillo, the petitioners cannot be held liable for grave misconduct or any other grave offense classified under the Civil Service Law. At most, it is only petitioners Yamson, Chavez, Navales and Guillen, as members of the PBAC-B, who should be held individually accountable for their failure to strictly comply with the procurement procedure laid down in P.D. No. 1594 and its IRR, which constitutes Simple Neglect of Duty.

As defined, Simple Neglect of Duty is the failure of an employee to give proper attention to a task expected of him, signifying disregard of a duty resulting from carelessness or indifference.[99] In *Office of the Ombudsman v. Tongson*,[100] the Court ruled that failure to use reasonable diligence in the performance of officially-designated duties has been characterized as Simple Neglect of Duty. According to the Court:

---

95 *Lagoc v. Malaga*, supra note 58.

96 Under Section 17 of P.D. No. 198, all powers, privileges, and duties of local water districts are exercised and performed by and through its Board, although executive, administrative or ministerial power may be delegated and redelegated by the board to officers or agents designated for such purpose by the board. *See* also *Engr. Feliciano v. Commission on Audit*, 464 Phil. 439 (2004); *Davao City Water District v. Civil Service Commission*, 278 Phil. 605 (1991).

97 *See* Resolution No. 98-27 dated February 13, 1998, *rollo*, pp. 140-142.

98 Id. at 130.

99 *Republic of the Philippines v. Canastillo*, 551 Phil. 987, 996 (2007).

100 531 Phil. 164 (2006).

> **Respondents' failure to comply with P.D. No. 1594 cannot be trivialized and classified as a mere oversight. At the very least, it constitutes neglect of duty**. It must be stressed that respondents were mandated to comply with P.D. No. 1594 to insure that the terms and conditions of the contract are clear and unambiguous and, thus, prevent damage and injury to the government, and the consequent prejudice to the beneficiaries of project like the commuters and other road users. x x x.[101] (Emphasis ours)

In this case, it has been established that there was no competitive bidding held in the first place and hence, there was no justification for the negotiated contract with Hydrock. **Petitioners Yamson, Chavez, Navales** and **Guillen** were obliged to faithfully comply with the rules on competitive public bidding, as mandated by P.D. No. 1594, which states: "[e]ach office/agency/corporation shall have in its head office or in its implementing offices a [BAC] which shall be responsible for the conduct of *prequalification, bidding, evaluation of bids*, and *recommending award of contracts*."[102] **Consequently, they should only be liable for Simple Neglect of Duty.**

***(b) Alleged irregularities committed by petitioners Yamson, Chavez, Almonte, Laid and Navales in the implementation of the VES 21 Project***

The CA and the Ombudsman also held the petitioners accountable for alleged irregularities in the implementation of the VES 21 Project, *i.e.*, premature implementation of the project and unauthorized change order. According to the Ombudsman, these irregularities were with the knowledge and approval of petitioners Yamson, Chavez and Almonte, and that Laid, despite knowledge of these irregularities, signed the Certificate of Completion without objection, effectively releasing Hydrock's retention money.[103]

Note should be made that these alleged infractions do not pertain anymore to petitioners Yamson and Chavez's functions as members of the PBAC-B; rather these already refer to their, including Almonte and Laid's, functions as employees and officials of the implementing agency itself, which in this case is DCWD. And as was previously established, it was Carbonquillo who was predisposed to award the VES 21 Project to Hydrock without the benefit of a public bidding. Records also show that Hydrock, in fact, commenced with the drilling of the pilot hole as early as December

---

101 Id. at 185.

102 IRR, Section II, IB 2(1). *See* also *Executive Order No. 292 (Revised Administrative Code of 1987)*, Book IV, Chapter 13, Section 64.

103 *Rollo*, pp. 311-314.

1997, prior to the award of the contract, issuance of the notice of award and the notice to proceed in its favor.[104] The Court, however, cannot agree with the Ombudsman's conclusion that petitioners Yamson, Chavez and Almonte colluded with Carbonquillo in the premature implementation of the VES 21 Project.

As borne by the records, Carbonquillo instructed Yamson to inspect the project site on December 29, 1997. Yamson, in turn, instructed Chavez, who then instructed Almonte to conduct the inspection. At this point, the procurement for the VES 21 Project was still ongoing and yet to be awarded to Hydrock. As it turned out, the drilling was already ongoing at that time. But these facts, without more, are not sufficient to support the conclusion that the petitioners were in conspiracy with Carbonquillo, or as the respondents claimed, that the contract has already been pre-awarded to Hydrock. As the Court has ruled, for Grave Misconduct to attach, it must be shown that the acts of the petitioners were tainted with corruption, clear intent to violate the law, or flagrant disregard of an established rule, which must be proven by substantial evidence.[105]

Nevertheless, the petitioners cannot put the blame entirely on Carbonquillo. It behooved the petitioners to exercise diligence in the performance of their official duties. Had they been circumspect to begin with, it would not have been possible for Carbonquillo to commit these acts with impunity. The petitioners must be reminded that in the discharge of duties, a public officer must use prudence, caution, and attention which careful persons use in the management of their affairs.[106] **Thus, petitioners Yamson and Chavez, together with Almonte, are individually liable for Simple Misconduct.**

With regard to the change order, it was also established that this was implemented for the VES 21 Project even before proper documentation was accomplished. This was admitted by petitioner Navales when he stated that:

> 21. The implementation of the change of order for VES 21 happened before its completion on February 24, 1998. In fact, I, [Navales], had been straightforward and transparent on this matter in my communication to the Board. This was embodied in the Report dated August 20, 1998 x x x, quoted as follows:
>
> x x x x

---

104 Id. at 141-142, 145, 148.

105 *Miro v. Vda. de Erederos, et al.*, 721 Phil. 772, 796-797 (2013).

106 *Seville v. Commission on Audit*, 699 Phil. 27, 32 (2012).

> 8. The implementation of this change order occurred on January 30, 1998 and [was] completed on February 19, 1998, presented as Annex "G".
>
> 9. **Presentation of documents for the change order for Board approval was made only on June 22, 1998,** presented as Annex "H".[107] (Emphasis ours)

In *Office of the Ombudsman v. Agustino*,[108] the Court held that a change order could only be performed by the contractor once it was confirmed and approved by the appropriate officials. Economic viability, and the DCWD's Board of Directors' and the Commission on Audit's acceptance of their explanation regarding the delayed documentation[109] are not exculpatory reasons for non-compliance with P.D. No. 1594 and its IRR.[110] **Navales, likewise, should therefore be individually held accountable for Simple Misconduct.**

Finally, Laid was held liable for grave misconduct for affixing his signature on the Certificate of Completion despite his alleged knowledge of the irregularities attending the procurement and implementation of the VES 21 Project. The Ombudsman stated:

> Having known of the completion of the physical works on 24 February 1998, [Laid] would have been aware of the irregularities attending the awarding of the VES 21 [P]roject contract to [Hydrock], its implementation and the issues attending the change order. Yet, [Laid] signed a Certificate of Completion without evident objection. This effectively released the withheld retention money to [Hydrock].[111]

The Court, however, cannot find any substantiation in the records of this case that will justify the conclusion that Laid had prior knowledge of the irregularities attending the VES 21 Project. All Laid did was certify that the VES 21 Project has been completed on February 24, 1998. There is nothing on record that will show Laid's direct and active participation during the planning, procurement and implementation of the VES 21 Project such that he should be aware of its surrounding circumstances. There is also no showing that his official duties as Assistant General Manager for Administration involved active participation in the project or that his act in certifying the date of completion was tainted with corruption, clear intent to violate the law, or flagrant disregard of an established rule. **If at all, Laid should be individually liable only for Simple Misconduct for his failure to exercise the necessary prudence to ensure that the completion of the**

---

107 *Rollo*, pp. 242-243.
108 G.R. No. 204171, April 15, 2015, 755 SCRA 568.
109 *See rollo*, p. 212.
110 P.D. No. 1594, Section 9, and its IRR, Section III, CI 1.2.
111 *Rollo*, p. 314.

**VES 21 Project was above board.**[112]

***Imposable penalties and service thereof***

Under Section 52(B) of Revised Uniform Rules in Administrative Cases in the Civil Service,[113] Simple Neglect of Duty and Simple Misconduct are classified as less grave offenses, punishable by suspension of one (1) month and one (1) day suspension to six (6) months for the first offense; and dismissal from the service for the second offense. Section 54, meanwhile, provides the manner of imposition of the penalties, to wit:

> 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 ours)

There being no finding of conspiracy in this case, the petitioners' respective liabilities are individual in nature and the penalty to be imposed on them shall be as follows:

(1) For petitioners **Yamson**, **Chavez** and **Navales** who are found guilty of Simple Neglect of Duty for their failure to strictly comply with P.D. No. 1594 and its IRR while they were members of the PBAC-B, the penalty of suspension to be imposed on them shall be in its maximum period, or six (6) months, as the offense was aggravated by the Simple Misconduct committed as a result of their lack of due diligence in ensuring the proper implementation of the VES 21 Project;

(2) For petitioner **Guillen**, who is found guilty only of Simple Neglect of Duty for his failure to strictly comply with P.D. No. 1594 and its IRR while he was a member of the PBAC-B, the penalty of suspension to be imposed shall be in its medium period, or three (3)

---

112 *See Seville v. COA*, supra note 106.

113 Memorandum Circular No. 19, Series of 1999, Rule IV, Section 52 (B)(1) and (2).

months, there being no mitigating or aggravating circumstances present; and

(3) For petitioners **Almonte** and **Laid**, who are found guilty of Simple Misconduct for their lack of due diligence in ensuring the proper implementation of the VES 21 Project, the penalty of suspension to be imposed shall likewise be in its medium period, or three (3) months, there being no mitigating or aggravating circumstances present.

Records show, however, that petitioners Navales, Chavez, Almonte and Laid were already removed from the employ of DCWD in 2008.[114] Petitioner Yamson, meanwhile, retired on March 1, 2006,[115] while petitioner Guillen resigned on July 3, 2006.[116]

In *Hon. Gloria v. CA*,[117] the Court ruled that **the period when an employee was preventively suspended pending appeal shall be credited to form part of the penalty of suspension imposed.**[118] An employee is considered to be on *preventive suspension pending appeal* while the administrative case is on appeal.[119] Such preventive suspension is punitive in nature and the period of suspension becomes part of the final penalty of suspension or dismissal.[120] Consequently, the period within which petitioners Chavez, Navales, Almonte and Laid were preventively suspended pending appeal, *i.e.*, from 2008 until the promulgation of this Decision, shall be credited in their favor, and they may now be reinstated to their former positions having served more than eight years of preventive suspension. With regard to petitioners Yamson and Guillen, their separation from DCWD has rendered any modification as to the service of their respective penalties moot.[121] Their permanent employment record, however, must reflect the modified penalty.

---

114 *See rollo*, pp. 460A-461, 463-464, 466-467, 469-470.

115 Id. at 292.

116 Id.

117 365 Phil. 744 (1999).

118 Id. at 764.

119 Section 47, Book V of the Administrative Code of 1987 provides, among others, that in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal. *See* also Section 7, Rule III of the Rules of Procedure of the Ombudsman, as amended by A.O. No. 17 dated September 15, 2003. *See* also *Villasenor v. Ombudsman*, G.R. No. 202303, June 4, 2014, 725 SCRA 230, 238.

120 *Hon. Gloria v. CA*, supra note 117, at 764.

121 *See Light Rail Transit Authority v. Salvana*, 736 Phil. 123 (2014).

***Award of backwages/back salaries***

Aside from reinstatement, one of the reliefs the petitioners prayed for was the award of full backwages. In *Civil Service Commission v. Cruz*,[122] the Court already definitively settled the issue of a government employee's entitlement to backwages/back salaries. Thus, it was held that before a government employee may be entitled to back salaries, two conditions must be met, to wit: a) the employee must be found innocent of the charges, and b) his suspension must be unjustified. To be considered innocent of the charges, the Court explained that there must be complete exoneration of the charges levelled against the employee. According to the Court:

> [I]f the exoneration of the employee is relative (as distinguished from complete exoneration), an inquiry into the factual premise of the offense charged and of the offense committed must be made. If the administrative offense found to have been actually committed is of lesser gravity than the offense charged, the employee cannot be considered exonerated if the factual premise for the imposition of the lesser penalty remains the same. The employee found guilty of a lesser offense may only be entitled to back salaries when the offense actually committed does not carry the penalty of more than one month suspension or dismissal.[123] (Citation omitted)

Unjustified suspension, on the other hand, meant that the employee's separation from service is not warranted under the circumstances because there was no cause for suspension or dismissal, *e.g.*, where the employee did not commit the offense charged, punishable by suspension or dismissal (total exoneration); or the government employee is found guilty of another offense for an act different from that for which he was charged.[124]

These conditions were clearly not met in this case. For one, the petitioners were not completely exonerated of the charges against them. Indeed, they were found culpable of lesser offenses – Simple Neglect of Duty and Simple Misconduct; nevertheless, these emanated from the same acts that were the basis of the original charges against them – Grave Misconduct, Grave Abuse of Authority, Dishonesty and Gross Negligence – only that the Court does not find any element of corruption or bad faith. For another, Simple Neglect of Duty and Simple Misconduct carry with them the penalty of more than one month suspension.

In the same vein, their suspension (preventive suspension pending appeal) finds sufficient basis in this case. As earlier found, they were not completely exonerated of the charges against them and the lesser offense, which they were eventually found guilty of, merited a suspension of more

---

122 670 Phil. 638 (2011).
123 Id. at 659.
124 Id. at 661.

than one month. Petitioners Chavez, Navales, Almonte and Laid, therefore, are not entitled to backwages.

**WHEREFORE**, the Decision dated December 6, 2010 of the Court of Appeals in CA-G.R. SP No. 105868 and CA-G.R. SP No. 105869 is hereby **MODIFIED** as follows:

(1) OMB-M-A-05-104-C is **DISMISSED** on ground of forum shopping;

(2) Petitioners Wilfred G. Yamson, Rey C. Chavez and Arnold D. Navales are found **GUILTY** of Simple Neglect of Duty, aggravated by Simple Misconduct and are imposed the penalty of six (6) months suspension;

(3) Petitioner William V. Guillen is found **GUILTY** of Simple Neglect of Duty and is imposed the penalty of three (3) months suspension;

(4) Petitioners Rosindo J. Almonte and Alfonso E. Laid are found **GUILTY** of Simple Misconduct and are imposed the penalty of three (3) months suspension;

(5) Petitioners Rey C. Chavez, Arnold D. Navales, Rosindo J. Almonte and Alfonso E. Laid are hereby ordered **REINSTATED** to their former or equivalent positions without loss of seniority rights, but without backwages/back salaries; and

(6) Let a copy of this Decision be reflected in the permanent employment records of petitioners Wilfred G. Yamson and William V. Guillen.

**SO ORDERED.**

**BIENVENIDO L. REYES**
Associate Justice

**WE CONCUR:**

**PRESBITERO J. VELASCO, JR.**
Associate Justice
Chairperson

**DIOSDADO M. PERALTA**
Associate Justice

**JOSE PORTUGAL PEREZ**
Associate Justice

**FRANCIS H. JARDELEZA**
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.

**PRESBITERO J. VELASCO, JR.**
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.

**MARIA LOURDES P. A. SERENO**
Chief Justice

**CERTIFIED TRUE COPY**

**WILFREDO V. LAPITAN**
**Division Clerk of Court**
**Third Division**

SEP 07 2016