

EN BANC

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

Promulgated:

September 18, 2018

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DISSENTING OPINION

LEONEN, J.:

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

I dissent that he should be acquitted.

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

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

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

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

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

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

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

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

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

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

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

¹ *Rollo*, p. 299.

² *Ponencia*, p. 9.

³ *Rollo*, pp. 74–215.

⁴ *Id.* at 125.

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

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

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

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

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

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

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

⁵ Id. at 126–127.

⁶ Id. at 127.

⁷ Id.

⁸ Id. at 126–129.

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

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

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

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

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

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

⁹ CODE OF PROFESSIONAL RESPONSIBILITY, Canon 1.

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

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

¹² *Rollo*, p. 296.

¹³ *Id.* at 306–307.

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

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

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

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

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

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

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

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

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

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

¹⁷ *Rollo*, p. 300.

¹⁸ *Id.*

¹⁹ *Id.* at 299–300.

²⁰ *Id.* at 229.

²¹ *Id.* at 124.

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

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

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

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

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

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

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

²³ CONST., art. XI, sec. 1.

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

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

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

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

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

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

Section 52, Rule IV of the URACCS provides:

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

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

1. Dishonesty — 1st Offense — Dismissal

....

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

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

²⁵ CONST., art. XI, sec. 1.

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

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

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

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

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

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

²⁷ Id. at 151–152.

²⁸ CSC Res. No. 06-0538, sec. 1.

²⁹ CSC Res. No. 06-0538, sec. 3.


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

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

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

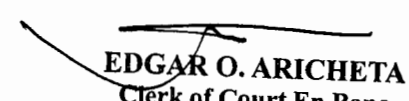
Thus, I dissent.

A



MARVIC M.V.F. LEONEN
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court