



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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JOSEFINA SAN PEDRO  
SAMSON, ENGR. ANTONIO  
VILLAROMAN SILLONA,  
BERNADETTE TECSON  
LAGUMEN, AND MARIA  
GRACIA DE LEON  
ENRIQUEZ,

G.R. No. 237837

Present:

CARPIO, J., Chairperson,  
PERLAS-BERNABE,  
CAGUIOA,  
J. REYES, JR.,\* and  
LAZARO-JAVIER, JJ.

Petitioners,

Promulgated:

- versus -

10 JUN 2019  
*HAR Cabalag Perfecto*

FIELD INVESTIGATION  
OFFICE OF THE OFFICE OF  
THE OMBUDSMAN,  
Respondent.

x-----x

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated August 31, 2017 and the Resolution<sup>3</sup> dated February 23, 2018 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 149420, which upheld the Decision<sup>4</sup> dated June 27, 2016 and the Order<sup>5</sup> dated October 10, 2016 of the Office of the Ombudsman (Ombudsman) in OMB-C-A-14-0122, finding petitioners Emmanuel Cedro Andaya (Andaya), Atty. Sylvia Crisostomo Banda (Atty. Banda), Josefina San Pedro Samson (Samson),

\* On leave.  
<sup>1</sup> *Rollo*, pp. 21-50.  
<sup>2</sup> Id. at 56-65. Penned by Associate Justice Ramon R. Garcia with Associate Justices Edwin D. Sorongon and Victoria Isabel A. Paredes, concurring.  
<sup>3</sup> Id. at 122-124.  
<sup>4</sup> Id. at 162-175. Issued by Graft Investigation and Prosecution Officer III Cezar M. Tirol II, approved by Ombudsman Conchita Carpio Morales.  
<sup>5</sup> Id. at 192-195.

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Engr. Antonio Villaroman Sillona (Sillona), Bernadette Tecson Lagumen (Lagumen), and Maria Gracia De Leon Enriquez (Enriquez; collectively, petitioners) guilty of Gross Neglect of Duty and Grave Misconduct, and imposing upon them the penalty of dismissal from the service, with accessory penalties.

### The Facts

At the time material to this case, Andaya was Acting Director of the National Printing Office (NPO) while Atty. Banda was Chairman, Samson was Vice Chairman, and Sillona, Lagumen, and Enriquez were Members of the Bids and Awards Committee (BAC).

On September 2, 2010, after obtaining a certification of availability of funds, the NPO Technical Working Group made a purchase request<sup>6</sup> to the BAC for the checkup, repair, and supply parts of Elevator II with an estimated cost of ₱680,000.00. Three (3) suppliers submitted their respective quotations, namely, Eastland Printink, Inc. (EPI), C.A. Enterprises, and Giraqui Trading.

On December 13, 2010, however, the BAC passed a Resolution<sup>7</sup> stating that it would resort to negotiated procurement for the following reasons: (a) the delay in the elevator's repair would hamper the NPO's operations which will result in considerable losses on the part of the government; and (b) the allocated budget for the elevator's repair must be disbursed before the end of the fiscal year for it not to revert to the general fund. The Resolution was approved by Andaya and the Notice of Award<sup>8</sup> was thereafter issued to EPI, having the lowest quotation in the amount of ₱665,000.00.

This prompted respondent Field Investigation Office (FIO) of the Ombudsman to file a complaint<sup>9</sup> against petitioners for Serious Dishonesty, Gross Neglect of Duty, Grave Misconduct, and Conduct Prejudicial to the Interest of the Service, alleging that the BAC failed to justify the recourse to negotiated procurement under emergency cases pursuant to Section 53 (b)<sup>10</sup> of Republic Act (RA) No. 9184<sup>11</sup> for the repair of an unserviceable elevator.

<sup>6</sup> Id. at 257-259.

<sup>7</sup> Id. at 214-215.

<sup>8</sup> Id. at 216.

<sup>9</sup> Id. at 199-206.

<sup>10</sup> SEC. 53. *Negotiated Procurement.* -- Negotiated Procurement shall be allowed only in the following instances:

x x x x

b. In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

x x x x

<sup>11</sup> Otherwise known as the "Government Procurement Reform Act."

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The FIO alleged that an unserviceable elevator did not pose any imminent danger to life or property nor was immediate action necessary to prevent damage to or loss of life and property, or to restore vital services, infrastructure facilities, and other public utilities. Further, the contract was awarded to EPI despite the latter being a printing company and not a contractor for elevator repair and maintenance. As for Andaya, the FIO added that he acted with gross inexcusable negligence in allowing the BAC to adopt negotiated procurement without complying with the formalities under RA 9184.

In defense, petitioners claimed that their resort to negotiated procurement was justified as the elevator in question was used to transfer heavy rolls and pallets of paper, as well as printed forms from one floor to another. Moreover, they believed in good faith that the repair was urgent and necessary to restore public services and infrastructure facilities and they had no intent to circumvent RA 9184 or to cause any damage to the government or the NPO. Finally, they maintained that EPI is a qualified contractor, as the company's secondary purpose is "to engage in general construction business."

### **The Ombudsman Ruling**

In a Decision<sup>12</sup> dated June 27, 2016, the Ombudsman found petitioners guilty of Gross Neglect of Duty and Grave Misconduct, and accordingly, dismissed them from service. In ruling that petitioners were guilty of Grave Misconduct, the Ombudsman found that they violated the rules of procurement under RA 9184 when they resorted to negotiated procurement instead of conducting a public bidding, taking into account that the cost of the contract was ₱665,000.00, which is beyond the threshold for alternative modes of procurement. Likewise, the project was hastily awarded to EPI, a contractor engaged in printing, not in elevator repair and services.<sup>13</sup> Moreover, it observed that the public was not duly notified of the award to EPI for failure to comply with the required publication of the procurement in the Philippine Government Electronic Procurement System.<sup>14</sup>

Further, petitioners failed to substantiate that immediate and compelling justification exists in this case to dispense with public bidding.<sup>15</sup> Contrary to petitioners' explanation that immediate action was necessary to restore vital public services of the NPO, records show that they resorted to negotiated procurement "in order not to hamper [the NPO's] day to day transactions since the elevator has been inoperational since July 2010 and in order not to lose the budget."<sup>16</sup> Likewise, the repair was undertaken only for

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<sup>12</sup> *Rollo*, pp. 162-175.

<sup>13</sup> *Id.* at 168.

<sup>14</sup> *Id.* at 168-169.

<sup>15</sup> *Id.* at 169-170.

<sup>16</sup> *Id.* at 170.

the convenience of the NPO employees in carrying documents in the NPO building; therefore, the emergency procurement was not necessary to address an unforeseen emergency or to restore vital services.<sup>17</sup> Finally, the Ombudsman added that petitioners' negligence denied the government of a fair system of determining the best possible price for its procurement.<sup>18</sup>

Petitioners moved for reconsideration, which was denied in an Order<sup>19</sup> dated October 10, 2016. Aggrieved, petitioners appealed to the CA via petition for review under Rule 43 of the Rules of Court.

### **The CA Ruling**

In a Decision<sup>20</sup> dated August 31, 2017, the CA affirmed the Ombudsman's Decision, finding that petitioners failed to justify their resort to negotiated procurement considering that: (a) the elevator became non-functional in July 2010 but the purchase request was made only in September 2010, thereby disproving the alleged immediacy of its repair; (b) the elevator, which was merely used for carrying loads of paper and other printed materials, is not indispensable to the NPO's mandate to provide printing services for the government; and (c) the reversion of the budget allocation for the repair of the elevator to the general fund is too flimsy a reason to dispense with the required public bidding.<sup>21</sup> Stressing that alternative modes of procurement can be resorted to only in highly exceptional cases, the CA opined that petitioners' justifications failed to satisfy any of the extraordinary circumstances under RA 9184 permitting resort to negotiated procurement. As such, it affirmed the penalty of dismissal from the service meted by the Ombudsman.<sup>22</sup>

Petitioners' motion for reconsideration<sup>23</sup> was denied in a Resolution<sup>24</sup> dated February 23, 2018; hence, this petition.

### **The Issue Before the Court**

The issue for the Court's resolution is whether the CA erred in upholding the administrative liability of petitioners for Grave Misconduct and Gross Neglect of Duty and for meting upon them the penalty of dismissal from the service.

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<sup>17</sup> Id.

<sup>18</sup> Id. at 172.

<sup>19</sup> Id. at 192-195.

<sup>20</sup> Id. at 56-65.

<sup>21</sup> Id. at 63.

<sup>22</sup> See id. at 64-65.

<sup>23</sup> Dated September 27, 2017; id. at 66-96.

<sup>24</sup> Id. at 122-124.

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## The Court's Ruling

The petition is bereft of merit.

Section 10,<sup>25</sup> Article IV, in relation to Section 5, paragraphs (n) and (o),<sup>26</sup> Article I of RA 9184, mandates that all acquisition of goods, consulting services, and the contracting for infrastructure projects by any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units shall be done through competitive bidding. This is in consonance with the law's policy and principle of promoting transparency in the procurement process, implementation of procurement contracts, and competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding.<sup>27</sup>

Public bidding is the primary process to procure goods and services for the government.<sup>28</sup> A competitive public bidding aims to protect public interest by giving it the best possible advantages through open competition. It is precisely the mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts.<sup>29</sup> Strict observance of the rules, regulations, and guidelines of the bidding process is the only safeguard to a fair, honest, and competitive public bidding.<sup>30</sup>

Alternative methods of procurement, however, are allowed under RA 9184 which would enable dispensing with the requirement of open, public, and competitive bidding,<sup>31</sup> but *only in highly exceptional cases* and under the conditions set forth in Article XVI thereof. One of these alternative modes of procurement is *negotiated procurement*, which, pursuant to

<sup>25</sup> SEC. 10. *Competitive Bidding*. – All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

<sup>26</sup> SEC. 5. *Definition of Terms*. – For purposes of this Act, the following terms or words and phrases shall mean or be understood as follows:

x x x x

(n) *Procurement* – refers to the acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of Republic Act No. 8974, entitled “An Act to Facilitate the Acquisition of Right-of-Way Site or Location of National Government Infrastructure Projects and for Other Purposes” and other applicable laws, rules and regulations.

(o) *Procuring Entity* – refers to any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units procuring Goods, Consulting Services and Infrastructure Projects.

<sup>27</sup> *De Guzman v. Office of the Ombudsman*, G.R. No. 229256, November 22, 2017.

<sup>28</sup> *Office of the Ombudsman-Mindanao v. Martel*, G.R. No. 221134, March 1, 2017, 819 SCRA 131, 141.

<sup>29</sup> *Id.*, citing *Rivera v. People*, 749 Phil. 124, 145-146 (2014).

<sup>30</sup> *Id.* at 141-142, citing *Republic v. Capulong*, 276 Phil. 136, 152 (1991).

<sup>31</sup> *De Guzman v. Office of the Ombudsman*, supra note 27.

Section 53 of RA 9184, may be availed by the procuring entity only in the following instances, to wit:

Section 53. *Negotiated Procurement*. – Negotiated Procurement shall be allowed only in the following instances:

- a. In case of two (2) failed biddings as provided in Section 35 hereof;
- b. **In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;**
- c. Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;
- d. Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR: *Provided, however*, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and, the contractor has no negative slippage: *Provided, further*, That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service; or,
- e. Subject to the guidelines specified in the IRR, purchases of Goods from another agency of the government, such as the Procurement Service of the DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letter of Instruction No. 755 and Executive Order No. 359, series of 1989. (Emphasis supplied)

In this case, competitive public bidding was dispensed with by petitioners for the checkup, repair, and supply parts of Elevator II in the NPO building. However, as correctly found by the Ombudsman and affirmed by the CA, petitioners' resort to negotiated procurement as an alternative mode of procurement was not proper and justified. Their reasons do not satisfy any of the highly exceptional circumstances enumerated in Section 53 as above-quoted, particularly paragraph (b), as records are bereft of evidence to show that the immediate repair of the subject elevator was necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities, and other public utilities.

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*First*, the alleged urgency of the repair of the subject elevator is belied by the fact that the purchase request<sup>32</sup> therefor was made only in September 2010, whereas it supposedly became non-operational in July 2010. The delay in the submission of the purchase request is inconsistent with the immediate nature of the service required and negates the existence of an emergency. *Second*, the elevator, which was merely used for carrying loads of paper and other printed materials, is not indispensable to the NPO's mandate to provide printing services for the government. To be sure, the NPO can continue with its day-to-day operations even without the elevator, albeit, perhaps, with some inconvenience. Such inconvenience, however, does not warrant a complete disregard of the required public bidding. *Finally*, the adoption of negotiated procurement in order to utilize the funds allocated for the repair and service of the elevator before the end of the fiscal year lest the amount revert to the general fund is likewise devoid of legal justification. Clearly, therefore, petitioners utterly failed to justify the negotiated procurement in this case.

All told, substantial evidence exist to hold petitioners guilty for Grave Misconduct and Gross Neglect of Duty.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer. The misconduct is considered to be *grave* if it also involves other elements such as corruption or the willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule, must be evident.<sup>33</sup> 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.<sup>34</sup>

On the other hand, Gross Neglect of Duty is defined as “[n]egligence characterized by want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property.”<sup>35</sup> In contrast, Simple Neglect of Duty is the failure of an employee or official to give proper attention to a task expected of him or her, signifying a “disregard of a duty resulting from carelessness or indifference.”<sup>36</sup>

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<sup>32</sup> *Rollo*, pp. 257-259.

<sup>33</sup> *Office of the Ombudsman-Mindanao v. Martel*, supra note 28 at 144-145.

<sup>34</sup> *Office of the Ombudsman v. Mallari*, 749 Phil. 224, 249 (2014).

<sup>35</sup> *Office of the Ombudsman v. Espina*, G.R. No. 213500, March 15, 2017, 820 SCRA 541, 554, citing *Office of the Ombudsman v. Delos Reyes, Jr.*, 745 Phil. 366, 381 (2014).

<sup>36</sup> *Id.* at 554-555, citing *Ombudsman v. De Leon*, 705 Phil. 26, 38 (2013).

In the recent cases of *De Guzman v. Office of the Ombudsman*<sup>37</sup> and *Office of the Ombudsman-Mindanao v. Martel (Martel)*,<sup>38</sup> where the members of the BAC dispensed with competitive public bidding and failed to justify the resort to alternative modes of procurement, the Court ruled that their actions constitute grave misconduct. The respondents in *Martel* were additionally found guilty of gross neglect of duty for their infractions. Similarly, in *Lagoc v. Malaga*,<sup>39</sup> the members of the BAC were found guilty of grave misconduct for their failure to conduct a public bidding. The Court emphasized thereat that it was the duty of the BAC to ensure that the rules and regulations for the conduct of bidding for government projects were faithfully observed.<sup>40</sup>

Indubitably, the same transgressions were committed by petitioners in this case. They grossly disregarded the law and were remiss in their duties in strictly observing the directives of RA 9184, which resulted in undue benefits to EPI. Such gross disregard of the law is so blatant and palpable that the same amounts to a willful intent to subvert the clear policy of the law for transparency and accountability in government contracts,<sup>41</sup> thereby warranting the penalty of dismissal from the service pursuant to Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, with accessory penalties. Considering that both Grave Misconduct and Gross Neglect of Duty are of similar gravity and that both are punished by dismissal under the pertinent civil service laws and rules applicable to petitioners,<sup>42</sup> they are thus punished with the said ultimate penalty, together with the attending disabilities.<sup>43</sup>

Verily, it must be stressed that serious offenses, such as Grave Misconduct and Gross Neglect of Duty, have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee, but the improvement of public service and the preservation of the public's faith and confidence in the government.<sup>44</sup> Indeed, public office is a public trust, and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives.<sup>45</sup> This high constitutional standard of conduct is not intended to be mere rhetoric and taken lightly as those in the public service are enjoined to fully comply with this standard or run the risk of facing administrative

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<sup>37</sup> Supra note 27.

<sup>38</sup> Supra note 28.

<sup>39</sup> 738 Phil. 623 (2014).

<sup>40</sup> Id. at 636.

<sup>41</sup> See *De Guzman v. Office of the Ombudsman*, supra note 27.

<sup>42</sup> See Section 46 (A) (2) and (3) of THE REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS), CSC Resolution No. 1101502, promulgated on November 8, 2011.

<sup>43</sup> See Section 52 (a), RRACCS.

<sup>44</sup> See *Office of the Ombudsman-Mindanao v. Martel*, supra note 28 at 148.

<sup>45</sup> See Section 1, Article XI of the 1987 Constitution.


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sanctions ranging from reprimand to the extreme penalty of dismissal from the service,<sup>46</sup> as in this case.

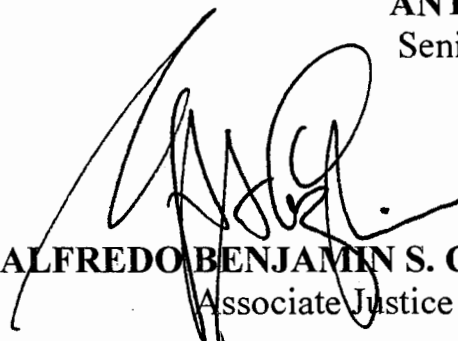
**WHEREFORE**, the petition is **DENIED**. The Decision dated August 31, 2017 and the Resolution dated February 23, 2018 rendered by the Court of Appeals in CA-G.R. SP No. 149420 are **AFFIRMED**.

**SO ORDERED.**


  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
Senior Associate Justice  
Chairperson

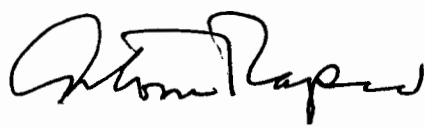
  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

On leave  
**JOSE C. REYES, JR.**  
Associate Justice

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

**ATTESTATION**

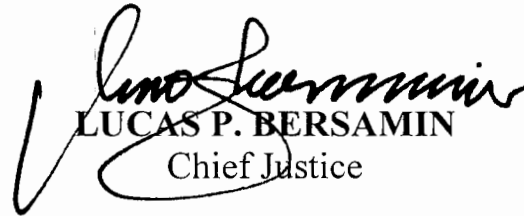
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

<sup>46</sup> See *Amit v. Commission on Audit*, 699 Phil. 9, 26 (2012).

**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.



LUCAS P. BERSAMIN  
Chief Justice