

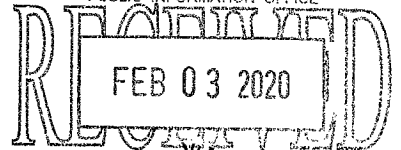


Mis-DC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

Republic of the Philippines
Supreme Court
Manila

JAN 30 2020

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



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THIRD DIVISION

MANUEL AGULTO AND
JOSELITO JAMIR,

G.R. No. 221884

Petitioners,

Present:

LEONEN, J.,
GESMUNDO,*
CARANDANG,
LAZARO-JAVIER,** and
ZALAMEDA, JJ.

- versus -

168 SECURITY, INC. (168
SECURITY AND ALLIED
SERVICES, INC.), represented by
JAIME ANG,

Promulgated:

November 25, 2019

Respondent.

Mis-DC Batt

X-----X

DECISION

CARANDANG, J.:

Before this Court is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court, assailing the Decision² dated December 14, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 140711 filed by Drs. Manuel B. Agulto (Agulto) and Joselito C. Jamir (Jamir; collectively, petitioners), the Chancellor and Vice-Chancellor, respectively, of the University of the Philippines-Manila (UP-Manila).

* On official leave.

** Designated as Additional Member of the Third Division per Special Order 2728 dated October 25, 2019.

¹ Rollo, pp. 10-56.

² Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Priscilla J. Baltazar and Socorro B. Inting, concurring; id. at 336-345.

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Antecedents

In December 2011, a contract for security services was entered between 168 Security and Allied Service, Inc. (168 SASI) and UP-Manila, represented by Agulto and Jamir, for a period of one year from January 1, 2012 to December 31, 2012.³ The last whereas clause of the agreement states that the same may be renewed for another year, provided that the performance rating for the first year is at least very satisfactory.⁴ The contract expired on December 31, 2012.⁵

On February 21, 2013, Jamir informed 168 SASI that their security services will be extended for six months only or until June 30, 2013.⁶ On March 12, 2013, 168 SASI protested, demanding that the contract should be extended for one year since it obtained a very satisfactory rating the previous year.⁷

On June 28, 2013, Jamir informed 168 SASI that the UP-Manila Management Team decided to terminate its services effective July 15, 2013 due to loss of trust and confidence. The reasons for the loss of trust and confidence, as claimed by petitioners, included the incidents of theft in the different offices in the campus, the fact that a large group of protesters was able to gain access to the 8th floor of the LCB Building where petitioners hold office, and destruction of public properties.⁸ 168 SASI challenged the decision, which prompted Jamir to send a letter asking whether 168 SASI was still interested in continuing its services and gave it until July 31, 2013 to act on the query.⁹ At 2:40 p.m. of July 31, 2013, 168 SASI served its reply expressing its willingness to continue providing services until the termination of its contract. However, on the same day, Agulto sent a letter to 168 SASI informing it of the termination of contract for its failure to reply.¹⁰ On August 2, 2013, Jamir issued a memorandum to all deans, directors and heads of offices of UP-Manila directing them not to recognize 168 SASI since its security services contract had been terminated.¹¹ Agulto also sent a letter to Camelo Ayson of Commander Security Services, Inc. (CSSI), directing it to take over as the security agency of UP-Manila. 168 SASI alleged that petitioners awarded the contract of service to CSSI without conducting a public bidding, and thus, guilty of grave misconduct.¹²

Petitioners, on the other hand, countered that the extension of the contract for security services for six months was in accordance with the Revised Guidelines on the Extension of Contracts for General Support Services in relation to Resolution No. 23-2007 of the Government

³ Id. at 65-66.

⁴ Id. at 66.

⁵ Id.

⁶ Id.

⁷ Id. at 67.

⁸ Id. at 76.

⁹ Id.

¹⁰ Id. at 68-69.

¹¹ Id. at 69.

¹² Id. at 207.

Procurement Policy Board.¹³ It was, likewise, claimed that the eventual termination thereof was based on loss of trust and confidence, taking into consideration the incidents of theft around the UP-Manila Campus and in the Philippine General Hospital (PGH), as well as the inability to control the protesters who gained access to the 8th floor in one of the buildings in the University where petitioners hold office.¹⁴ Petitioners also asserted that the apparent inability of 168 SASI to provide security services despite their accommodation prompted them to secure the services of another security agency to prevent hiatus in the security of the University and the hospital. The take-over was, likewise, under the same terms and conditions currently enforced, negating any undue injury or disadvantage to the government.¹⁵ In fact, in a letter¹⁶ dated July 31, 2013 sent by petitioners to CSSI, it was clearly spelled out that their acceptance of the take-over was further subject to a bidding that would commence at the soonest possible time. This meant that the same pay per month for each guard on an 8-hour and 12-hour duty shall be paid to CSSI, and the same shall only be for the period until a winning bidder is contracted.¹⁷ Further, petitioners claimed that as early as January 2013, they had commenced the activities for the conduct of a public bidding. Unfortunately, the activities were interrupted by an untimely and much-publicized incident of a suicide by a student of UP-Manila, whereby the administration focused on the welfare of the students first. The conduct of the public bidding was again delayed due to the filing of a civil case for specific performance by 168 SASI, which sought for a writ of mandatory injunction.¹⁸ In the civil case, 168 SASI prayed for the renewal of the contract of service for one year from January 1, 2013 to December 31, 2013, as allegedly contained in the 2012 contract entered by them with petitioners.¹⁹ On December 6, 2013, petitioners issued an administrative order for the constitution of a technical working group to evaluate bid proposals for security services for 2014. Ultimately, on January 28, 2014, the new Vice-Chancellor directed the commencement of the bidding process in accordance with Republic Act No. (R.A) 9184.²⁰

Ombudsman's Ruling

On October 13, 2014, the Office of the Ombudsman rendered its Decision²¹ finding petitioners guilty of grave misconduct and meted upon them the penalty of dismissal from service.²² The Ombudsman found that CSSI was engaged without the benefit of a public bidding as required under the Government Procurement Reform Act. For the Ombudsman, petitioners cannot hide behind the excuse that CSSI was engaged in order to prevent a hiatus in the service because records show that 168 SASI continued

¹³ Id. at 75.

¹⁴ Id. at 76.

¹⁵ Id. at 79.

¹⁶ Id. at 163.

¹⁷ Id. at 135.

¹⁸ Id. at 81-82.

¹⁹ Id. at 104-130.

²⁰ Id. at 82.

²¹ Id. at 204-217.

²² Id. at 215-216.

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providing security services beyond July 31, 2013, which negated the claims of imminent interruption in security services.²³ Besides, the contract of service granted to CSSI amounted to ₱46,710,555.48. It was not unreasonable to expect that petitioners should have been more diligent and prudent in making sure that the transaction observed the requirements of competitive bidding.²⁴

On reconsideration,²⁵ the Ombudsman affirmed the finding of grave misconduct but dismissed the criminal complaint for lack of probable cause, stating that:

X X X X

Viewed in this context, respondents-movants' action of giving CSSI the green light to assume the provision of security services -- though patently irregular for not following the proper procedures in R.A. No. 9184 and its Implementing Rules, hence the finding of gross misconduct in the administrative aspect -- may have been prompted by respondents-movants' desire to prevent the unenviable scenario of leaving UP Manila, both the school and the hospital, un-secured. It is also in this context that respondents-movants' move to institute a more detailed security plan, which matter was also averred previously, is reconsidered in support of their claim of good faith. This new facet, which entitles respondents-movants to the benefit of the doubt, negates the element of manifest partiality or gross inexcusable negligence.²⁶

Aggrieved, petitioners filed a Petition for Review under Rule 43 to the CA.

CA Ruling

A Decision²⁷ dated December 14, 2015 was rendered by the CA affirming the finding of grave misconduct against petitioners.²⁸

The CA ratiocinated that petitioners' engagement with CSSI without a public bidding was a flagrant disregard of procurement laws.²⁹ The CA also concluded that petitioners cannot say that the Ombudsman made a conclusive finding in the resolution for the motion for reconsideration that they were in good faith. Contrary to petitioners' assertions, the Ombudsman never made a categorical finding that petitioners acted in good faith. That the Ombudsman reconsidered its finding of probable cause for violation of R.A. 3019 does not automatically mean that they acted in good faith or that the

²³ Id. at 213-214.

²⁴ Id. at 214.

²⁵ Id. at 218-239.

²⁶ Id. at 279.

²⁷ Id. at 336-345.

²⁸ Id. at 345.

²⁹ Id. at 341.

administrative charge of grave misconduct against them should also be dismissed.³⁰

Still aggrieved, petitioners filed this petition for review on certiorari. Thereafter, 168 SASI filed its Comment.

Issue

The issue in this case may only be summed up by whether or not petitioners were guilty of grave misconduct.

Our Ruling

UP-Manila is an academic as well as a medical complex. It houses not only the offices and colleges as a University but also the country's premier government hospital – the PGH. As argued by petitioners, security inside and outside the campus is a primordial concern. Unlike the UP-Diliman campus, for instance, which has a vast area for the students, faculty and visitors, the Manila campus is surrounded by the Metro's busiest highways. Hence, it is necessary to have steady and reliable security officers on the ground. This was how petitioners justified their direct agreement with CSSI to take over as security guards of the UP-Manila campus without the conduct of public bidding as required by R.A. 9148. Hence, the question that needs to be addressed is whether every failure to conduct the public bidding as required by R.A. 9184 automatically qualifies the act as grave misconduct.

We have already answered this in the negative and We reiterate such ruling.

In the case of *Office of the Ombudsman-Mindanao v. Martel and Guinares*,³¹ while the Court categorized the lack of public bidding as an offense constituting grave misconduct and dishonesty,³² *Martel* is not applicable in this case. In *Martel*, the Provincial Accountant and the Provincial Treasurer of Davao del Sur were found guilty of grave misconduct and gross neglect of duty³³ in failing to conduct public bidding for the purchase of five additional vehicles for the Office of the Provincial Governor. Specifically, this Court stated that respondents “allowed the Governor of Davao del Sur to purchase and use more than one vehicle”³⁴ in violation of a Commission on Audit circular. Otherwise stated, there was grave misconduct because the lack of public bidding was deliberately done in order to benefit the Governor of Davao del Sur.

³⁰ Id. at 343-344.

³¹ G.R. No. 221134, 806 Phil. 649 (2017).

³² Id. at 658.

³³ Id. at 655.

³⁴ Id. at 622.

In other words, as ruled in the case of *Office of the Ombudsman v. De Guzman*,³⁵ in addition to the lack of public bidding, there must be an independent finding that petitioners have deliberately resorted to negotiated procurement to benefit themselves or some other person for them to be held liable for grave misconduct.

In this case, it was not alleged, much less proved, that the direct engagement by petitioners with CSSI was deliberately done in order to benefit themselves or some other person. Records reveal that the element of intent to commit a wrong required under the administrative offense of grave misconduct³⁶ is lacking to warrant petitioners' dismissal from service. Besides, CSSI was engaged to take over as security service provider under the same terms and conditions as previously enforced in order to negate undue injury or disadvantage to the government.

In their letter³⁷ to 168 SASI, petitioners decided to extend the contract for security services for six months from January 1, 2013 to June 30, 2013 in order to come up and develop a comprehensive security plan, which would be used as terms of reference on the public bidding for security services. Petitioners did this in order to rectify the unsound practice that it was only after an award to the winning bidder that the latter would draw up a security plan for UP-Manila.³⁸ Besides, the engagement of CSSI was merely on a temporary basis³⁹ in order to have a stop-gap measure brought about by the termination of the contract of service with 168 SASI.

Misconduct is **intentional wrongdoing** or **deliberate violation** of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of **corruption**, **clear intent to violate the law**, or **flagrant disregard of an established rule** must be manifest. Without any of these elements, the transgression of an established rule is properly characterized as simple misconduct only.⁴⁰

The Ombudsman's pronouncements in its resolution⁴¹ determining the motion for reconsideration is telling on petitioners' good faith in giving CSSI the green light to take over the provision of security services, that is, petitioners may have been prompted by their desire to prevent the unenviable scenario of leaving UP-Manila, both the school and the hospital, unsecured. Hence, petitioners cannot be held guilty of misconduct – either grave or simple.

³⁵ G.R. No. 197886, October 4, 2017.

³⁶ *Office of the Ombudsman v. Racho*, 656 Phil. 149, 155 (2011).
³⁷ *Rollo*, p. 86.

³⁸ *Id.* at 81.

³⁹ *Id.* at 102.

⁴⁰ *Daplas v. Department of Finance*, G.R. No. 221153, April 17, 2017.

⁴¹ *Rollo*, pp. 269-280.

Neither may petitioners be held liable for negligence. As a rule, negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time, and of the place. In the case of public officials, there is negligence when there is a **breach of duty or failure to perform the obligation**, and there is gross negligence when a breach of duty is flagrant and palpable.⁴² An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes, is merely simple negligence.⁴³

As discussed above and duly proved, petitioners were not remiss in their duty to conduct public bidding as required by R.A. 9184. They had started drawing up a security plan as early as January 2013. They intended to use the six-month extension given to 168 SASI in order to conduct public bidding, but the plan was cut short because of the unfortunate incident of suicide concerning a student – something that is out of the control of petitioners. Additionally, 168 SASI filed a civil case against them and prayed for a writ of mandatory injunction, naturally; petitioners waited for the decision in said case resulting in the further postponement of the public bidding. Despite all of these setbacks, on January 28, 2014, the commencement of the bidding process was pushed through in accordance with R.A. 9184.

Absent any wrongful and intentional wrongdoing on the part of petitioners who were motivated only by their desire to secure the UP-Manila campus, thereby necessitating the direct negotiation to CSSI for the provision of security services inside the campus, they are likewise not liable of negligence – either gross or simple.

WHEREFORE, the petition is **GRANTED**. The assailed Decision dated December 14, 2015 of the Court of Appeals in CA-G.R. SP No. 140711 is hereby **REVERSED** and **SET ASIDE**. Since petitioners Manuel B. Agulto and Joselito C. Jamir have retired from government service, the Government Service Insurance System is **ORDERED** to give them their pension and other retirement benefits not received during the pendency of this case.

SO ORDERED.


ROSMARIE D. CARANDANG
Associate Justice

⁴² *Navarro v. Office of the Ombudsman*, 793 Phil. 453, 475-476 (2016).

⁴³ *Pleyto v. PNP-Criminal Investigation & Detection Group*, 563 Phil. 842, 910 (2007).

WE CONCUR:



MARVIC MARIO VICTOR F. LEONEN

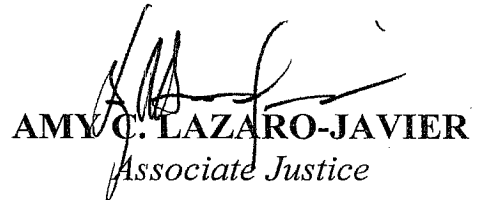
Associate Justice

Chairperson

(on official leave)

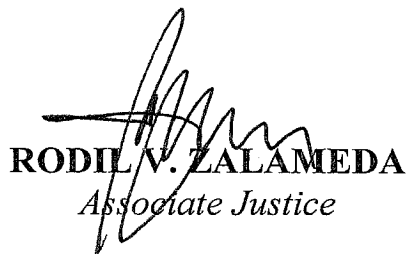
ALEXANDER G. GESMUNDO

Associate Justice



AMY C. LAZARO-JAVIER

Associate Justice

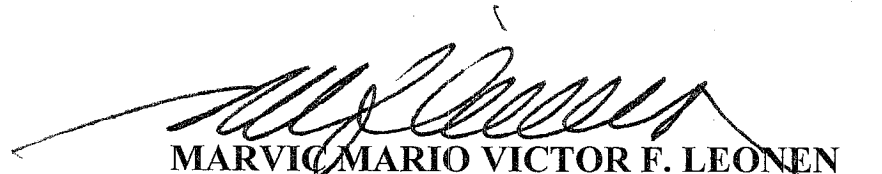


RODIL V. ZALAMEDA

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.



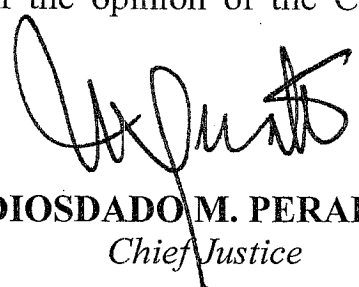
MARVIC MARIO VICTOR F. LEONEN

Associate Justice

Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA

Chief Justice

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MISAEEL DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division

JAN 30 2020