



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

ATTY. ALDO P. TURIANO,
 Petitioner,

G.R. No. 222998

Present:

- versus -

CAGUIOA,
Acting Chairperson,
HERNANDO,*
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

**TASK FORCE ABONO, FIELD
 INVESTIGATION OFFICE (FIO)
 – OFFICE OF THE
 OMBUDSMAN, represented by
 LEONARDO R. NICOLAS, JR.,
 Respondent.**

Promulgated:

DEC 09 2020

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DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ (Petition) assailing the Decision² dated November 6, 2015 and Resolution³ dated February 15, 2016 of the Court of Appeals, Sixth Division (CA), in CA-G.R. SP No. 140220. The CA affirmed the Decision dated April 26, 2013 and Order⁴ dated August 13, 2014 of the Office of the Ombudsman (Ombudsman) in OMB-C-A-11-0446-G, which found petitioner Atty. Aldo P. Turiano (Turiano) administratively liable for dishonesty, grave misconduct and conduct prejudicial to the best interest of the service.

* Additional member per Raffle dated December 9, 2020 *vice* Chief Justice Diosdado M. Peralta.

¹ *Rollo*, pp. 11-45.

² *Id.* at 47-68. Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela.

³ *Id.* at 46.

⁴ *Id.* at 284-295.

The Facts of the Case

On February 3, 2004, the Department of Budget and Management issued a Special Allotment Release Order for ₱728,000,000.00, with corresponding Notice of Cash Allocation amounting to ₱291,200,000.00 for the implementation of the Farm Inputs and Farm Implements Program (FIFIP) of the Department of Agriculture (DA).⁵ The City of Iriga, Camarines Sur (Iriga City), then received a ₱3,000,000.00 sub-allotment fund.⁶

On April 26, 2004, the Pre-qualification Bids and Awards Committee (PBAC) of Iriga City, chaired by Turiano, held a meeting upon the request of the City Agriculturist Edwin S. Lapuz (Lapuz) for the immediate purchase of fertilizers. Allegedly, most of the farmers did not have enough funds to buy the needed fertilizers thereby causing them losses. The PBAC members, with the exception of Fernando S. Berina, Jr., approved the immediate purchase of the fertilizers on the basis of a Certificate of Emergency Purchase that was supposedly presented by Lapuz.⁷

On the same day, Iriga City purchased, through negotiated sale, 789 liters/bottles of “Young Magic Foliar Fertilizer” from Madarca Trading (Madarca) at ₱3,800.00 per liter/bottle, or for a total of ₱2,998,200.00. The following day, April 27, 2004, the fertilizers were delivered to Iriga City as shown by the Certificate of Acceptance signed by Property Officer Terecita Barce (Barce). Madarca was then paid a total of ₱2,895,678.50 in two installments – ₱1,887,500.00 which was paid on May 3, 2004, and ₱1,008,178.50 which was paid on January 28, 2005.⁸

On April 19, 2011, respondent Task Force Abono of the Field Investigation Office of the Ombudsman filed a complaint⁹ charging Turiano, the PBAC members, and other local government officials involved in the procurement of the fertilizers with various criminal and administrative offenses, including: (1) violation of paragraphs (e) and (g), Section 3 of Republic Act (R.A.) No. 3019,¹⁰ in relation to R.A. No. 9184;¹¹ (2) violation of Section 88 of the Commission on Audit (COA) Circular No. 92-386;¹² and (3) dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service under paragraphs 1, 3, and 20, Section 52(A) of the Uniform Rules on Administrative Cases in the Civil Service (URACCS).

⁵ Id. at 48.

⁶ Id. at 49.

⁷ Id.

⁸ Id. at 49-50.

⁹ Id. at 83-98.

¹⁰ ANTI-GRAFT AND CORRUPT PRACTICES ACT, approved on August 17, 1960.

¹¹ GOVERNMENT PROCUREMENT REFORM ACT, approved on January 10, 2003.

¹² Rules and Regulations on Supply and Property Management in the Local Governments, promulgated on October 20, 1992.



The complaint alleged that: (a) the procurement procedure adopted by Iriga City was designed to favor Madarca; (b) Iriga City did not conduct any public bidding or canvassing of price for the said emergency purchase; (c) the purchase request accomplished and approved by the late Mayor Emmanuel R. Alfelor (Alfelor) specified the fertilizer brand to be purchased in violation of R.A. No. 9184; (d) the retail price for “Young Magic Foliar Fertilizer” at the time of the procurement was only ₱125.00 per liter; (e) Iriga City failed to submit the certificate of emergency purchase, invitation to bid, proof of posting, proof of canvass and PBAC resolution of award; (f) Iriga City chose Madarca as its supplier despite its doubtful eligibility; (g) the transaction between Iriga City and Madarca had already transpired even before the latter submitted documents to prove its eligibility; and (h) therein respondents conspired with each other in defrauding the government.¹³

Ruling of the Ombudsman

In a Decision dated April 26, 2013, the Ombudsman found Turiano, Lapuz, and Aida V. Estonido (Estonido), the City Accountant, administratively liable for dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service, and meted them the penalty of dismissal from service with the corresponding accessory penalties.

The dispositive portion of the Ombudsman Decision reads as follows:

WHEREFORE, finding substantial evidence against Aida V. Estonido, Atty. Aldo Turiano, and Edwin S. Lapuz for the administrative offenses of Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service, they are hereby meted the penalty of DISMISSAL FROM THE SERVICE, with its accessory penalties.

In the event that the penalty of Dismissal can no longer be enforced due to respondent's separation from the service, the same shall be converted into a Fine in the amount equivalent to respondent's salary for one (1) year, payable to the office of the Ombudsman, and may be deductible from respondent's retirement benefits, accrued leave credits, or any receivable from his/her office.

It shall be understood that the accessory penalties attached to the principal penalty of Dismissal shall continue to be imposed.

The case against respondents Jean A. Bongon, Jessie S. Abomite, Jose B. Cabanes, Amparo M. Olasa, Melchor J. Nacario and Fernando S. Berina, Jr. is DISMISSED.

Pursuant to Section 7, Administrative Order No. 17 of the Office of the Ombudsman and the Ombudsman Memorandum Circular No. 01, Series of 2006, the Honorable Mayor of the City of Iriga is hereby directed to implement this Decision and to submit promptly a Compliance Report

¹³ *Rollo*, pp. 50-51.



within five (5) days from receipt indicating the OMB case number: **OMB-C-A-11-0446-G**, to this Office, thru the Central Records Division, 2nd Floor, Ombudsman Building, Agham Road, Government Center, North Triangle, Diliman, 1128 Quezon City.

Compliance is respectfully enjoined consistent with Section 15(3) of R.A. No. 6770 (Ombudsman Act of 1989).

SO ORDERED.¹⁴

With respect to Turiano, the Ombudsman held that his knowledge of and participation in the anomalous transaction is evidenced by his signatures in the two *unnumbered* and *undated* Acceptance and Inspection Reports. These documents confirmed that all 789 liters/bottles of “Young Magic Foliar Fertilizer” were delivered to, and accepted by, Iriga City in one instance, despite the indication in Disbursement Voucher No. 100-04-04-1045-B that only 514 liters/bottles of said fertilizer were initially ordered and delivered.¹⁵

Turiano sought reconsideration of the above Decision by filing a Verified Motion for Reconsideration dated July 14, 2014, and a Supplemental Motion for Reconsideration dated July 22, 2014.¹⁶ Both motions, however, were denied by the Ombudsman in its Order¹⁷ dated August 13, 2014.

In the said Order, the Ombudsman rejected Turiano’s arguments that it is his ministerial duty to sign the Acceptance and Inspection Reports and that he should not be faulted if the corresponding disbursement vouchers were erroneous. If at all, as held by the Ombudsman, these only highlighted the illegality of the transaction:

x x x Assuming *arguendo* that 789 liters/bottles of fertilizers were in fact delivered and DV No. [100-04-04-]1045-B was wrongly prepared, **he nevertheless signed check No. 257277 dated 30 April 2004, which authorized the release of ₱1,887,500.00 to Madarca Trading as payment for the 514 liters/bottles of Young Magic [Foliar] Fertilizer that were partially delivered as supported by said DV.** If he was acting in good faith, he should have exercised prudence, noted the discrepancy in the details indicated in the Acceptance and Inspection Report and DV No. [100-04-04-]1045-B as to the quantity of the delivered fertilizers, and refrained from signing Check No. 257277; but he disregarded such irregularity and signed the check which released the fund to Madarca Trading.¹⁸

Aggrieved, Turiano appealed the ruling of the Ombudsman with the CA.

¹⁴ Id. at 51-52.

¹⁵ Id. at 290.

¹⁶ Id. at 285.

¹⁷ Id. at 284-295.

¹⁸ Id. at 291; emphasis in the original.



Ruling of the CA

On November 6, 2015, the CA promulgated the assailed Decision,¹⁹ the dispositive portion of which reads:

WHEREFORE, the petition is denied for lack of merit. Accordingly, the Decision dated April 26, 2013 and Order dated August 13, 2014 of the Office of the Ombudsman are **AFFIRMED**.

SO ORDERED.²⁰

According to the CA, Turiano's right to due process was not violated because he was afforded fair and reasonable opportunity to be heard.²¹ At any rate, any procedural defect attending the proceedings before the Ombudsman was cured by his filing of motions for reconsideration.²² The CA also rejected his argument that the Ombudsman acted as an impartial judge. After all, it is the Ombudsman's constitutional and legal mandate to investigate and prosecute, even *motu proprio*, the acts or omissions of public officers and employees which are contrary to law, and to impose corresponding administrative sanctions.²³

On the substantive issues, the CA concurred with the findings of the Ombudsman that Turiano, together with Lapuz, Estonido and former Mayor Alfelor, conspired in the anomalous procurement of the fertilizers. With respect to Turiano, his participation is shown by his signatures on the *undated* and *unnumbered* Acceptance and Inspection Reports which confirm the complete delivery of the fertilizers despite the fact that Disbursement Voucher No. 100-04-04-1045-B shows that only 514 liters/bottles were initially delivered.²⁴ The CA further held that Turiano, as the PBAC Chairman, had the responsibility of ensuring that the city government abides by the standards set by procurement laws, rules and regulations. Thus, he cannot downplay his role as merely recommendatory, and claim that his acts of affixing his signatures on the pertinent documents were ministerial.²⁵

Turiano sought reconsideration of the CA Decision but was denied in a Resolution²⁶ dated February 15, 2016.

¹⁹ Supra note 2.

²⁰ Id. at 67; emphasis in the original.

²¹ Id. at 56.

²² Id. at 55.

²³ Id. at 57-60.

²⁴ Disbursement Voucher No. 100-04-04-1045-B (Annex K-42) indicates 514 liters of Young Magic Foliar Fertilizer; *see rollo* p. 124.

²⁵ Id. at 62-65.

²⁶ Supra note 3.



Hence, this Petition.

Turiano, once again, argues that his right to due process was violated because he was not properly informed of the charges against him.²⁷ Citing *PAGCOR v. CA*²⁸ (*PAGCOR*), he contends that the violation of his right to due process cannot be cured by his filing of motions for reconsideration.²⁹ He also reiterates that the Ombudsman, acting as both the complainant-witness and judge in this case, had in effect, already pre-judged him and could not be expected to play the role of an impartial arbiter.³⁰ The foregoing circumstances, Turiano argues, render the Ombudsman's Decision and Order null and void.³¹

Furthermore, Turiano insists that his signatures on the Acceptance and Inspection Reports and the checks are insufficient proof of his involvement in the supposed conspiracy to defraud the government. He cites *Arias v. Sandiganbayan*³² (*Arias*) to bolster his argument that he merely relied on the signatures and representations of his subordinates and co-signatories when he affixed his signatures on the said documents. He further argues that the exoneration and/or exclusion of other signatories in the complaint negates the existence of conspiracy.³³ Finally, Turiano maintains that he exercised diligence and prudence in the performance of his duties as PBAC Chairman. He points out that the delivery of and payment for the fertilizers were confirmed by officials from the city government, the DA and the COA, and that the alleged completion of FIFIP in Iriga City is also a testament to the dutiful performance of his functions.³⁴

On the other hand, Task Force Abono, as represented by the Office of the Solicitor General (OSG), counters that the Petition should be dismissed outright for raising questions of facts. Nonetheless, the OSG remains firm that there is no reason for the Court to depart from the CA Decision, and that Turiano's right to due process was not violated because he was given the opportunity to seek a reconsideration of the Ombudsman Decision.³⁵

In his Reply,³⁶ Turiano reiterates his arguments and maintains that his Petition must be given due course considering that deprivation of due process is a question of law, and that the factual issues raised in the Petition fall under the exceptions where the Court may entertain questions of facts. Additionally,

²⁷ Id. at 20-31.

²⁸ G.R. Nos. 185668, December 13, 2011, 662 SCRA 294.

²⁹ *Rollo*, pp. 27-28.

³⁰ Id. at 29-31.

³¹ Id. at 31.

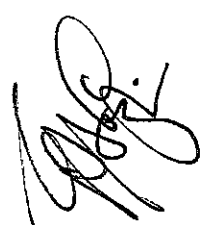
³² G.R. No. 81563 & 82512, December 19, 1989, 180 SCRA 309.

³³ *Rollo*, pp. 31-35.

³⁴ Id. at 35-38.

³⁵ Id. at 224-237.

³⁶ Id. at 264-280.



Turiano bolsters his claim of innocence by referring to the dismissal of Criminal Case No. SB-16-CRM-0460, entitled "*People of the Philippines vs. Aida V. Estonido, et al.*"³⁷

Issues

The parties raised the following issues for resolution of the Court:

1. Whether the Petition should be dismissed in accordance with Section 5, Rule 45 of the Rules of Court, for raising questions of facts;
2. Whether the CA erred in ruling that Turiano was not denied his right to due process;
3. Whether the CA erred in ruling that there is sufficient evidence to establish conspiracy among Turiano, Lapuz, Estonido and former Mayor Alfelor; and
4. Whether the CA erred in ruling that Turiano failed to exercise due diligence and prudence in the performance of his duties as PBAC Chairman.

Ruling of the Court

The Petition is denied.

On the procedural issue of whether the Petition raises questions of facts, the Court finds Task Force Abono's argument as erroneous. Indeed, the Court is not a trier of facts. And in a petition for review on *certiorari* under Rule 45 of the Rules of Court, generally, only questions of law can be raised. A question of law is one that does not call for the examination of the probative value of the evidence presented by any of the litigants, or the truth or falsity of the alleged facts. It concerns with the correct application of law and jurisprudence on the matter.³⁸ The test to determine whether a question is one of law or of fact is not the appellation given to such question by the party raising the same. Instead, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.³⁹

Here, an examination of the Petition shows that it does not exclusively raise questions of facts. It also challenges the legal conclusions arrived at by the Ombudsman and the court *a quo* with respect to the observance of due

³⁷ Id. at 277.

³⁸ *Heirs of Nicolas S. Cabigas v. Limbaco*, G.R. No. 175291, July 27, 2011, 654 SCRA 644, 651.

³⁹ *Office of the Ombudsman v. De Villa*, G.R. No. 208341, June 17, 2015, 759 SCRA 289, 300.



process, the finding of conspiracy, and Turiano's exercise of diligence and prudence, in light not only of the established facts, but also of the prevailing law and jurisprudence on these matters. These are questions of law which the Court has jurisdiction to entertain.

The Court shall now resolve the substantive issues.

Turiano's right to due process was not violated

Turiano claims that the administrative complaint here, which allegedly does not conform to Section 11,⁴⁰ Rule 3 of the URACCS, deprived him of his right to due process and his right to be informed of the charges against him. According to Turiano, while the complaint charged him in his capacity as PBAC Chairman, the April 26, 2013 Ombudsman Decision found him administratively liable based on his participation as an Inspector, *i.e.*, signing the Acceptance and Inspection Reports. Yet, after seeking reconsideration of the said Decision, the Ombudsman, in its August 13, 2014 Order, cited his participation as City Administrator, *i.e.*, signing of the checks used as payment to Madarca, as another basis to hold him administratively liable.

It bears emphasis, however, that the proceedings before the Ombudsman are governed by the Rules of Procedure of the Office of the Ombudsman⁴¹ (Ombudsman Rules), and not by the URACCS. Under Section 3, Rule III of the Ombudsman Rules, an administrative case may be initiated in the following manner –

Section 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.⁴²

The complaint filed by Task Force Abono satisfies the foregoing since it is written, under oath, and accompanied by evidence in support of the


⁴⁰ Section 11. Requisites of a Valid Complaint. x x x

The complaint shall be written in a clear, simple and concise language and in a systematic manner as to apprise the person complained of, of the nature and cause of the accusation and to enable the person complained of to intelligently prepare a defense or answer/comment. Should there be more than one person complained of, the complainant is required to submit additional copies corresponding to the number of persons complained of.

x x x x

⁴¹ Ombudsman Administrative Order No. 07 approved on April 10, 1990.

⁴² <[Administrative Order No 07.pdf \(ombudsman.gov.ph\)](#)> visited last December 7, 2020.



allegations. Moreover, in conformity with the procedure prescribed under the Ombudsman Rules, Turiano was furnished a copy of the complaint together with the annexes, which included copies of the Acceptance and Inspection Reports and Check No. 257277.⁴³ Thereafter, he filed, with his co-respondents, a Verified Joint Counter-Affidavit, and then a Verified Position Paper. Furthermore, it is undisputed that Turiano “actively participated in the entire course of the investigation and hearings conducted by [the Ombudsman], through the Special Panel on Task Force Abono Cases.”⁴⁴ Thus, he cannot claim that he is unaware as to what he was accused of.

More importantly, the right to be informed of the charges is a constitutional right afforded to an accused in a criminal proceeding, and not to a respondent in an administrative proceeding where it is only required that the latter be given the opportunity to be heard.⁴⁵

Relevantly, the Court, in *PAGCOR v. Marquez*,⁴⁶ held that an administrative charge need not be drafted with the precision of an information in a criminal prosecution. In the earlier case of *Dadubo v. Civil Service Commission*,⁴⁷ the Court similarly ruled that the stringent requirements on information in criminal proceedings do not apply in administrative cases, and that the requirements of due process in the latter are satisfied so long as the respondent is given the opportunity to be heard. As held by the Court therein:

The petitioner’s invocation of due process is without merit. Her complaint that she was not sufficiently informed of the charges against her has no basis. While the rules governing judicial trials should be observed as much as possible, their strict observance is not indispensable in administrative cases. As this Court has held, “the standard of due process that must be met in administrative tribunals allows a certain latitude as long as the element of fairness is not ignored.”

The essence of due process is distilled in the immortal cry of Themistocles to Eurybiades: “Strike, but hear me first!” Less dramatically, it simply connotes an opportunity to be heard. The petitioner had several opportunities to be heard and to present evidence that she was not guilty of embezzlement but only of failure to comply with the telling procedure. Not only did she testify at her formal investigation but she also filed a motion for reconsideration with the DBP, then appealed to the Merit System Protection Board (MSPB), and later elevated the case to the Civil Service Commission. Having been given all these opportunities to be heard, which she fully availed of, she cannot now complain that she was denied due process.⁴⁸

⁴³ Id.

⁴⁴ *Rollo*, p. 55; underscoring supplied.

⁴⁵ *Valera v. Office of the Ombudsman*, G.R. No. 167278, February 27, 2008, 547 SCRA 43, 56-57.

⁴⁶ 711 Phil. 385 (2013).

⁴⁷ G.R. No. 106498, June 28, 1993, 223 SCRA 748.

⁴⁸ Id. at 753; citations omitted.

*PAGCOR*⁴⁹ — the case relied upon by Turiano in arguing that his filing of motions for reconsideration cannot cure the violation of his right to due process — finds no application herein. Unlike here, in *PAGCOR*, there was utter disregard of the rules of procedure, including the absence of a valid formal charge and lack of a proper investigation. The filing of a motion for reconsideration simply could not right those wrongs. Hence, the ruling of the Court therein that the motion for reconsideration could not cure the violation of the respondent's right to due process.

The cornerstone of due process in administrative proceedings is the opportunity to be heard. To reiterate, Turiano was given every opportunity to present his side of the case — through his counter-affidavit, position paper, motions for reconsideration, and his participation in the investigation and hearings. Having participated in the proceedings before the Ombudsman extensively, he cannot be permitted to clamor for the nullification of its Decision and Order.

Turiano's invocation of *Cojuangco, Jr. v. Presidential Commission on Good Government*⁵⁰ (*PCGG*), to assail the jurisdiction and authority of the Ombudsman to decide the present case, is likewise misplaced. *PCGG* involves a unique set of facts where a subsequent criminal case was filed before the *PCGG* after the latter had found *prima facie* case against the petitioners therein in an earlier civil complaint. Hence, the observation of the Court that the *PCGG* cannot be expected to conduct the preliminary investigation in the second case with a cold neutrality of an impartial judge.

On the other hand, the Court agrees and affirms the ruling of the CA that the Ombudsman has the legal and constitutional mandate to investigate and prosecute the acts or omissions of public officers or employees that are contrary to law, and to impose corresponding administrative penalties. As aptly held by the CA:

The above provision [(Section 15 of R.A. No. 6770)] covers the entire range of administrative activities attendant to administrative adjudication, including, among others, the authority to receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the corresponding penalty. These powers unmistakably grant the Office of the Ombudsman the power to directly impose administrative sanctions.⁵¹

⁴⁹ Supra note 28.

⁵⁰ G.R. Nos. 92319-20, October 2, 1990, 190 SCRA 226.

⁵¹ *Rollo*, pp. 59-60.

Turiano is administratively liable for grave misconduct and conduct prejudicial to the best interest of the service regardless of whether or not he acted in conspiracy with others

On the issue of conspiracy, both the CA and the Ombudsman anchored Turiano's administrative liability on a finding that he conspired with Lapuz, Estonido, and former Mayor Alfelor in defrauding the government:

x x x Their participation in the acceptance and inspection of the delivered fertilizers, in the release of the fund to Madarca Trading, and in the distribution of the fertilizers to their intended beneficiaries, coupled with their utter lack of regard in signing the documents, prove their knowledge and participation in the conspiracy to defraud the government. x x x For such reasons, they are not guilty of Simple Misconduct, but of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.⁵²

On the other hand, Turiano contends that Task Force Abono failed to prove that such conspiracy exists, and that the exoneration of and/or absence of charges against the other signatories on the Acceptance and Inspection Reports and the checks negate the existence of conspiracy. He also relies on *Arias* to argue that he should not be faulted for relying on the signatures of those who signed the documents before him.⁵³

The Court finds that regardless of the existence of conspiracy among Turiano, Lapuz, Estonido, and former Mayor Alfelor, Turiano is administratively liable on the basis of his own actions. There is substantial evidence to hold Turiano guilty of **grave misconduct** and **conduct prejudicial to the best interest of the service**.

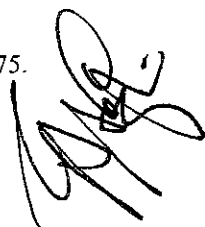
Misconduct has been defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. To amount to grave misconduct the elements of corruption, flagrant disregard of an established rule, or willful intent to violate the law must be proved by substantial evidence; otherwise, the misconduct is only simple.⁵⁴ Meanwhile, flagrant disregard of an established rule has been demonstrated in cases where the respondent's propensity to ignore the rules is clearly manifested by his or her actions –

Flagrant disregard of rules is a ground that jurisprudence has already touched upon. It has been demonstrated, among others, in the instances

⁵² *Id.* at 294.

⁵³ *Id.* at 31-35.

⁵⁴ *Office of the Ombudsman v. Rojas*, G.R. Nos. 209274 & 209296-97, July 24, 2019, 910 SCRA 164, 175.



when there had been open defiance of a customary rule; in the repeated voluntary disregard of established rules in the procurement of supplies; in the practice of illegally collecting fees more than what is prescribed for delayed registration of marriages; when several violations or disregard of regulations governing the collection of government funds were committed; and when the employee arrogated unto herself responsibilities that were clearly beyond her given duties. **The common denominator in these cases was the employee's propensity to ignore the rules as clearly manifested by his or her actions.**⁵⁵

The totality of the facts shows the glaring irregularities in the procurement proceedings undertaken by Iriga City. It was established, among others, that: (1) the fertilizers were purchased through negotiated sale despite the absence of an emergency; (2) the purchase was made immediately after the PBAC meeting; (3) the purchase order indicated the brand of the fertilizers to be procured; (4) most of the documents, including the Acceptance and Inspection Reports, are undated and/or unnumbered; (5) the Acceptance and Inspection Reports state that all 789 liters/bottles of fertilizers were delivered while Disbursement Voucher No. 100-04-04-1045-B indicates that only 514 liters/bottles of fertilizers were initially delivered by Madarca the following day; and (6) the transaction had already transpired before Madarca submitted the requisite documents showing its eligibility.

Despite all the foregoing, Turiano nevertheless signed the Acceptance and Inspection Reports and checks. He did so in disregard of the pertinent provisions of R.A. No. 9184 and the 2009 Implementing Rules and Regulation (IRR) of R.A. No. 9184.⁵⁶

In addition, his actions also frustrate the functions of the bids and awards committee as delineated under Section 12.1 and 12.2 of the IRR-A of R.A. No. 9184:

Section 12. *Functions of the BAC.*

12.1. The BAC shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, resolve motions for reconsideration, recommend award of contracts to the head of the procuring entity or his duly authorized representative: *Provided, however,* That in the event the head of the procuring entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Rule XXIII, and perform such other related functions as may be

⁵⁵ *Imperial, Jr. v. Government Service Insurance System*, G.R. No. 191224, October 4, 2011, 658 SCRA 498, 507-508; citations omitted and emphasis in the original.

⁵⁶ Implementing Rules and Regulations (IRR) Part A (IRR-A) of R.A. No. 9184, September 23, 2003; the IRR applicable at the time of the subject procurement.

necessary, including the creation of a Technical Working Group (TWG) from a pool of technical, financial and/or legal experts to assist in the procurement process, particularly in the eligibility screening, evaluation of bids and post-qualification. In proper cases, the BAC shall also recommend to the head of the procuring entity the use of Alternative Methods of Procurement as provided for in Rule XVI hereof.

12.2. **The BAC shall be responsible for ensuring that the procuring entity abides by the standards set forth by the Act and this IRR-A**, and it shall prepare a procurement monitoring report that shall be approved and submitted by the head of the procuring entity to the GPPB on a semestral basis. x x x (Emphasis supplied)

Turiano's participation, through his signatures in the Acceptance and Inspection Reports and checks, was crucial to the completion of the transaction. The Acceptance and Inspection Reports were among the documents prepared to support the issuance of the disbursement vouchers, which in turn were prepared to support the issuance of the checks. More importantly, checks that were then consequently issued to Madarca could not have also been effected without Turiano's signature.

Turiano cannot find refuge behind the Court's ruling in *Arias* which involved a criminal prosecution for violation of R.A. No. 3019. In *Arias*, the Court held:

We can, in retrospect, argue that *Arias* should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office *could personally* do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise *personally* look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.⁵⁷

It must be emphasized that *Arias* did not license complete reliance on a subordinate's representations. Certain circumstances, such as the apparent incompleteness of the document and the knowledge of irregularities in the underlying transaction, as in this case, warrant more detailed and circumspect

⁵⁷ *Arias v. Sandiganbayan*, supra note 32, at 316; italics in the original.



examination of the documents. As held by the Court in *Office of the Ombudsman v. Venancio G. Santidad*⁵⁸ (*Santidad*), “when a matter is irregular on the document’s face, so much so that a detailed examination becomes warranted, the *Arias* doctrine is unavailing.”⁵⁹ Following *Santidad*, Turiano’s absolute reliance on his co-signatories and subordinates here is improper and inexcusable.

As to the alleged participation of the COA and the DA in the procurement, this was unsubstantiated, and raised for the first time. This contravenes the rule that “a party is not permitted to change his theory on appeal[, for to] allow him to do so is unfair to the other party and offensive to the rules of fair play, justice and due process.”⁶⁰

All things considered, Turiano’s acts of signing the Acceptance and Inspection Reports and checks in light of the circumstances described above show a propensity to ignore established procurement rules, if not a willful disregard of the said rules. For this, he should be held accountable for grave misconduct.

His actions also constitute conduct prejudicial to the best interest of the service. Although there is no exacting definition for this administrative violation, jurisprudence instructs that for an act to constitute such an administrative offense, it need not be related to or connected with the public officer’s official functions, but the questioned conduct must be one that tarnishes the image and integrity of his public office.⁶¹

Here, Turiano’s participation in the questionable transaction and the imprimatur given by him through his signatures on the checks, taint the public’s perception of Iriga City PBAC. This is conduct prejudicial to the best interest of the service.

However, the Court finds no substantial evidence to hold him administratively liable for dishonesty.

Dishonesty has been defined as the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth. Dishonesty — like bad faith — is not simply bad judgment or negligence, but a question of intention.⁶²

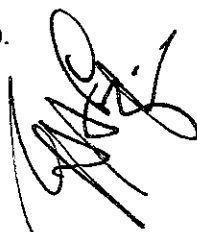
⁵⁸ G.R. Nos. 207154 & 222046, December 5, 2019.

⁵⁹ Id. at 14.

⁶⁰ *Balitaosan v. Secretary of Education Culture and Sports*, G.R. No. 138238, September 2, 2003, 410 SCRA 233, 235-236.

⁶¹ *Mansue Nery Lukban v. Ombudsman Conchita Carpio-Morales*, G.R. No. 238563, February 12, 2020.

⁶² *Office of the Ombudsman v. P/C Supt. Luis L. Saligumba*, G.R. No. 212293, June 15, 2020.



Here, the *undated* and *unnumbered* Acceptance and Inspection Reports certifying complete delivery of all 789 liters/bottles of fertilizers do not amount to a distortion of truth since it is nonetheless established that all 789 liters/bottles of fertilizers were subsequently delivered to and received by Iriga City. While, the Ombudsman and the CA found that only 514 liters/bottles of fertilizers were *initially* ordered and delivered the following day,⁶³ it is undisputed that all the fertilizers were subsequently received by Iriga City. This is so alleged in the complaint and also supported by other evidence.⁶⁴

The Court is, thus, inclined to rule that the Acceptance and Inspection Reports do not distort the number of fertilizers delivered to and received by Iriga City, neither did Turiano exhibit a disposition to deceive in signing the said documents.

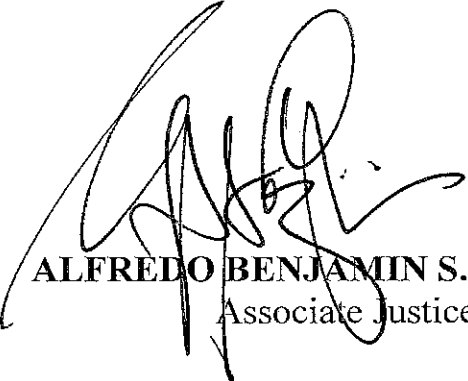
Imposable penalty

Under Section 52 of URACCS, the administrative offense of grave misconduct is punishable with dismissal for the first offense⁶⁵ while conduct prejudicial to the best interest of the service is punishable with suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense.⁶⁶

In accordance with Section 55 of URACCS, the penalty prescribed for grave misconduct, the most serious charge, shall be imposed. Thus, the penalty of dismissal is proper.

WHEREFORE, in view of the foregoing premises, the Petition for Review on *Certiorari* dated April 7, 2016 is **DENIED**. The Decision dated November 6, 2015 and Resolution dated February 15, 2016 of the Court of Appeals, Sixth Division, in CA-G.R. SP No. 140220 are hereby **AFFIRMED**.

SO ORDERED.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

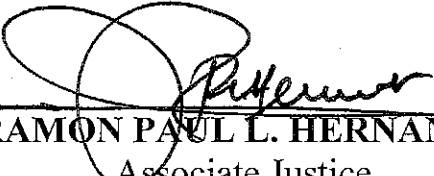
⁶³ Supra notes 2 and 4; italics supplied.

⁶⁴ Delivery Receipt No. 0135 (Annex F), *rollo*, p. 78; and Letter dated August 10, 2004 (Annex I), *id.* at 81.


⁶⁵ URACCS, Rule IV, Section 52(A)(3).


⁶⁶ *Id.*, Section 52(A)(20).

WE CONCUR:


RAMON PAUL L. HERNANDO
 Associate Justice

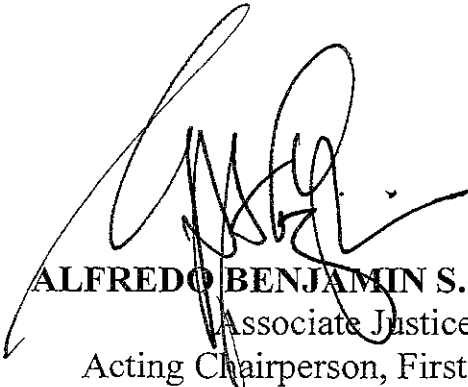

ROSMARI D. CARANDANG
 Associate Justice


RODIL V. ZALAMEDA
 Associate Justice


SAMUEL H. GAERLAN
 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.


ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice
 Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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.


DIOSDADO M. PERALTA
 Chief Justice