



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

RUBY P. LAGOC,
Petitioner,

G.R. No. 184785

- versus -

MARIA ELENA MALAGA,
OFFICE OF THE OMBUDSMAN
and the OFFICE OF THE DEPUTY
OMBUDSMAN (VISAYAS),
Respondents.

X-----X

LIMUEL P. SALES,
Petitioner,

G.R. No. 184890

Present:

- versus -

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
MENDOZA,* JJ.

MARIA ELENA MALAGA,
OFFICE OF THE OMBUDSMAN
and the OFFICE OF THE DEPUTY
OMBUDSMAN (VISAYAS),
Respondents.

Promulgated:

JUL 09 2014

X-----X

DECISION

VILLARAMA, JR., J.:

Before the Court are the consolidated petitions for review filed by Ruby P. Lagoc (Lagoc) and Limuel P. Sales (Sales) which seek to reverse

* Designated additional member per Special Order No. 1715 dated July 1, 2014.

and set aside the Decision¹ dated January 24, 2008 of the Court of Appeals (CA) - Cebu City in CA-G.R. SP No. 00837 affirming the Decision² dated September 18, 2002 of respondent Deputy Ombudsman for the Visayas in OMB-VIS-ADM-2001-0408, and Resolution³ dated September 8, 2008 denying their motion for reconsideration.

The present controversy stemmed from the implementation of two projects undertaken by the Department of Public Works and Highways (DPWH) through the Iloilo City District Engineering Office: (1) Construction of Skywalk/Overpass from Iloilo Supermart to Mercury Drugstore, Valeria St., Iloilo City in the amount of ₱2,000,000.00; and (2) Construction of Skywalk/Overpass from SM Shoemart to Mercury Drugstore, Delgado St., Iloilo City in the amount of ₱3,500,000.00. The funds for the said project were provided under Republic Act (R.A.) No. 8760 otherwise known as the “General Appropriations Act, FY 2000,” and was released under SARO No. BMB-A-00-0420.

On July 20, 2001, private respondent Maria Elena Malaga filed a Complaint-Affidavit⁴ before the Office of the Ombudsman-Visayas (OMB-Visayas) against Wilfredo Agustino (Regional Director), Vicente M. Tingson, Jr. (OIC District Engineer), Reynold Soldevilla (Bids and Awards Committee [BAC] Chairman), Assistant District Engineer Sales (BAC Chairman for materials and equipment), Rodney Gustilo (BAC Member), Elizabeth H. Gardose (BAC Member), Project Engineer Ruby P. Lagoc (BAC Member), Fema G. Guadalupe (Supply Officer) and Blanca O. Pagal (Accountant III).

Malaga accused the above-named officials and employees of violating established rules and regulations, making it appear that there was open, public and competitive bidding for the materials and equipment needed for the skywalk construction projects to ensure that their favored contractor, Helen Edith Tan of IBC Int’l. Builders Corp. (IBC) got the projects. This was evident from the following: (1) the Invitation to Bid for the supply of materials and lease of equipment was not actually published or advertised; (2) said invitation to bid and the three sets of bid tenders (IBC, PKG and VN Grande) were prepared with prior knowledge that the award will go to IBC; (3) the unit bid prices for each and every article and the rental rate for each and every equipment quoted by IBC were *exactly the same* as the unit prices appearing in the Program of Work or Approved/Calculated Agency Estimate (AAE), thus indicating collusion with the other two bidders whose bid offers were all slightly higher than that of IBC; the submission of bids identical to AAE/Program of Work manifestly indicates rigging and is a ground for the blacklisting of contractors under the Construction Industry Authority of the Philippines guidelines; (4) the winning bidder, IBC, is a licensed contractor

¹ *Rollo* (G.R. No. 184785), pp. 18-29. Penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Pampio A. Abarintos and Amy C. Lazaro-Javier.

² *Id.* at 34-47.

³ *Id.* at 31-33. Penned by Associate Justice Francisco P. Acosta with Associate Justices Franchito N. Diamante and Amy C. Lazaro-Javier concurring.

⁴ *CA rollo*, pp. 31-39.

classified as Large B in Roads and Bridges, and hence it is no longer allowed to undertake roads and bridges projects with an appropriation of ₱3 million and below; if the project was implemented by straight contract, IBC would not be pre-qualified, a fact known to Tingson and his accomplices, and the only way for the project to be “given” to IBC was by resorting to the “by administration” scheme; (5) the “pakyaw” laborers hired for the projects were not independent contractors but actually just dummies for Helen Edith Tan who actually pays for their wages; (6) Tingson and his accomplices had agreed that no actual publication would be done to eliminate the possibility of other contractors seeing the invitation to bid, in collusion with the publishers who were officially paid for services not rendered and who even received additional payments from the favored contractor; such illegal act constitutes swindling or estafa under Article 315 of the Revised Penal Code, as amended; and (7) Tingson entered into a fictitious contract with the publishers which was manifestly and grossly disadvantageous to the Government, in violation of Section 3(g) of the Anti-Graft and Corrupt Practices Act.

In her Counter-Affidavit,⁵ Lagoc stated that as a matter of practice in their office, a project engineer automatically becomes a provisional member of the BAC and hence she merely acted as such provisional BAC member. She said that her main job was to prepare the program of works of the subject projects and upon completion forward copies thereof to the Assistant District Engineer and District Engineer for approval. After approval, she furnishes a copy each to the Resident Auditor, Supply Officer and Accountant. She thus claimed that “any activity relative to the bidding process is beyond [her] job” and that she really wondered why she was included in the complaint.

On his part, Sales together with Gardose, contended that the decision to implement the skywalk projects by administration was made after evaluation of the provision of the law (R.A. No. 8760) where the funds therefor were provided, and also to generate savings with the elimination of “contractor’s profit” in the preparation of the program of work. He likewise averred that the invitation to bid was duly published in *The Visayan Tribune* and *The Visayas Examiner* on March 5-11, March 12-18, 2001 and February 19 and 26, 2001, respectively, attaching photocopies of these publications to his counter-affidavit. The fact of publication was supported by Publisher’s Affidavit, contrary to Malaga’s insinuations. He further claimed that when the bids were opened, IBC’s tendered offer was below the AAE; IBC passed the post-evaluation/qualification made by the BAC; and it is not unusual that the bid of the winning bidder may jibe with the AAE because the cost reflected therein is based on the rental rates prescribed by the Association of Carriers and Equipment Lessor (ACEL) in relation/compliance with Department Order No. 58, Series of 1999 issued by the DPWH Secretary. He stressed that Malaga filed her complaint in retaliation against Tingson who filed a criminal complaint for falsification of public documents against her.⁶

⁵ Id. at 41.

⁶ Id. at 42-44.

During the preliminary conference held on May 9, 2002, the parties through their respective counsel, agreed to submit the case for decision on the basis of the evidence on record and position papers/memoranda.

In a Decision dated September 18, 2002, the public respondent Deputy Ombudsman for Visayas Primo C. Miro found substantial evidence of Misconduct against Tingson, Sales, Gardose and Lagoc, and accordingly recommended that the penalty of one year suspension without pay be imposed on them. On the other hand, the complaint against Agustino, Soldevilla and Gustilo were recommended to be dismissed for lack of sufficient evidence. Then Ombudsman Simeon V. Marcelo approved the recommendation but modified the offense and penalty to Grave Misconduct and dismissal from the service for Tingson, Sales, Gardose and Lagoc.

Petitioners along with Gardose appealed to the CA which affirmed the Ombudsman's findings of fact and conclusions. The CA held that the Ombudsman correctly concluded that petitioners committed grave misconduct when they conducted the bid process of and awarded the subject contracts without compliance with the mandatory twin-publication requirement. It likewise disagreed with petitioners' claim that the Ombudsman failed to consider their evidence as they could have presented whatever evidence they had during the preliminary conference or attach it to their memorandum.

Their motion for reconsideration having been denied by the CA, petitioners filed their respective petitions before this Court.

As condensed from petitioners' arguments, the main issues to be resolved are (1) whether the Ombudsman's finding of irregularities in the bidding for the equipment and materials for the skywalk projects was based on substantial evidence, and (2) whether the Ombudsman correctly concluded that petitioners conspired to rig the bidding in favor of IBC, the winning bidder.

We deny both petitions.

By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition. Another self-evident purpose of public bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.⁷

Presidential Decree (PD) No. 1594⁸ established a set of rules and regulations to ensure competitive public bidding for construction projects.

⁷ *Danville Maritime, Inc. v. Commission on Audit*, 256 Phil. 1092, 1103 (1989).

⁸ "Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts" issued on June 11, 1978.

The Implementing Rules and Regulations⁹ (IRR) of said law mandates the publication of the invitation to pre-qualify/bid, *viz*:

IB 3 - INVITATION TO PREQUALIFY/APPLY FOR ELIGIBILITY
AND TO BID

1. For locally funded contracts, contractors shall be invited to apply for eligibility and to bid through:
 - a. for contracts to be bid costing P5,000,000 and below or for contracts authorized to be bid by the regional/district offices involving costs as may be delegated by the head of office/agency/corporation, **the invitation to bid shall be advertised at least two (2) times within two (2) weeks in a newspaper of general local circulation in the region where the contract to be bid is located**, which newspaper has been regularly published for at least six (6) months before the date of issue of the advertisement. During the same period that the advertisement is posted in the newspaper or for a longer period determined by the head of the office/agency/corporation concerned, the same advertisement shall be posted in the website of the office/agency/corporation concerned and at the place reserved for this purpose in the premises of the office/agency/corporation concerned. In addition to the foregoing, the invitation may also be advertised through other forms of media such as radio and television, provided that based on the agency's short list of contractors or referral within the Philippine contractors accreditation board, there are at least four contractors indigenous to the region duly classified and registered to undertake such contracts. The advertisement may likewise be made in a newspaper of general nationwide circulation as defined in the foregoing when there is evident lack of interest to participate among the region-based contractors. (Emphasis supplied.)

In this case, the Ombudsman found discrepancies in the evidence presented by the complainant (Malaga) and petitioners to prove compliance with the publication requirement. That petitioners submitted mere photocopies of the issues of *The Visayan Tribune* and *The Visayas Examiner* added credence to the Ombudsman's conclusion that petitioners were covering up for their omission as the invitation to bid for the materials and equipment was actually never published. We quote the Ombudsman's finding on this matter:

...there is strong evidence that the requisite Invitations to Pre-qualify and to Bid were not actually published in violation of existing rules and regulation, specifically the Implementing Rules and Regulations of E.O. No. 302. Contrary to herein respondents' assertions that such invitations were published in the March 5-11, 2001 and March 12-18, 2001 issues of *The Visayan Tribune* and the February 19 and 26, 2001 issues of *The Visayas Examiner*, the evidences on record tend to show otherwise. Not only that copies of said newspaper issues submitted in evidence by the complainant carried nothing about the said Invitation (Annexes "K", "L", "M" & "N", Complaint, *supra*), copies of same

⁹ DPWH Department Order No. 152-A, Series of 2000.

newspaper issues submitted in evidence by the respondents betrayed efforts of manipulation to make it appear that said invitations were therein published, when in truth and in fact there really was no publication made (Annexes “A”, “B”, “C” & “D”, Counter-Affidavit of Limuel P. Sales, et al., supra).

The March 5-11, 2001 issue of *The Visayan Tribune* submitted in evidence by herein respondents Engineer III Limuel P. Sales and Administrative Officer III Elizabeth H. Gardose, which is stamped “certified xerox copy”, clearly shows that the subject Invitation to Bid was only added and superimposed the original news item entitled “Eminem, Robbie Williams win big British Pop Awards” (as shown by a copy of the same newspaper issue, page 4 thereof, submitted by the complainant), which apparently was purposely deleted. Unfortunately for the respondents, they failed to delete the continuation of that news item on page 5 thereof, which still carries the abbreviated sub-headline “Eminem, Robbie Williams...”, thus exposing the manipulation. With respect to the March 12-18, 2001 issue of *The Visayan Tribune*, there is good reason to believe the complainant’s allegation, not only because she has in her position *[sic]* an original copy of said newspaper issue which did not carry the subject Invitation to Bid but also because the copy presented by the respondents is only a “xerox” copy and, therefore, highly susceptible to manipulation.

Copies of the February 19 and 26, 2001 issues of *The Visayas Examiner*, on the other hand, which were presented in evidence by said respondents Limuel P. Sales and Elizabeth Gardose, appear to carry in their Special Issues the subject Invitation to Bid. This, however, is highly suspicious because said Special Issues could be easily inserted, with the help of the Publisher (who is in fact a co-respondent in the criminal aspect of this case), to make it appear that the aforementioned Invitation was published on the dates mentioned. That a similar invitation to bid of DPWH, Capiz Engineering District was published in the regular page, i.e. page 9, of the said newspaper issues added more weight to the suspicion.

It is, therefore, the belief of this Office that no such publication actually happened of the subject Invitation to Bid for the purchase of construction materials and lease of equipment, contrary to the claims of herein respondents.¹⁰

Sales suggests there could have been errors in the printing of the pages in the newspapers by the publisher which were beyond the control of petitioners and should not be blamed on petitioners. He contends that the fact that the publishers of *The Visayan Tribune* and *The Visayas Examiner* executed an affidavit of publication clearly established that the invitations to bid were indeed published. And assuming *arguendo* that petitioners presented mere photocopies of the said newspaper issues, he asserts that it is no proof that they had knowledge and participation in the manipulation of the publication of the Invitation to Bid. Sales maintains that as BAC Chairman, his authority is limited to recommending the Program of Work prepared by Lagoc and it was his ministerial duty to approve the award to the winning bidder (IBC) after the Technical Committee had submitted their

¹⁰ *Rollo* (G.R. No. 184785), pp. 43-44.

recommendation.¹¹

Similarly, Lagoc assails the CA in sustaining the Ombudsman's finding that she conspired in rigging the bidding in favor of IBC, as she quoted portions of the comment filed by private respondent (Malaga) herself before this Court asserting that she (Lagoc) was not even present during the opening of the bids and that she was not in fact in good terms with the District Engineer but being the Project Engineer she had to sign the Abstract of Bids as it was "SOP" in their office. To Lagoc, said admission by complainant practically absolved her (Lagoc) from any participation in the publication of the Invitation to Bid.

We affirm the CA in ruling that Ombudsman's finding that there was no compliance with the requirement of publication of the Invitation to Bid is well supported by substantial evidence.

On the issue of non-publication of the Invitation to Bid, the CA correctly held:

...Verily, if the copy of the March 5-11, 2001 issue of The Visayan Tribune relied upon by the petitioners is existing and that the Invitation to Bid advertised therein is an accommodated advertisement/notice which allegedly cannot be found in private respondent's copy, what they could have done, granting that what they say is true, was to obtain their own copy of the same issues that the private respondent used as evidence against them and compare these to the original copy of the subsequent issues of the March 5-11, 2001, which they allegedly have in their possession. But they did not. Without the original copies of the supposed subsequently-circulated copies of the March 5-11 and March 12-18, 2001 issues of The Visayan Tribune there is no way to determine whether the appended certified xerox copies are indeed true and faithful reproductions of the originals allegedly in the custody of the petitioners. So how can the Court therefore consider and appreciate their supposed own original copies of the subsequent issues of the March 5-11, 2001 and March 12-18, 2001, if the same are not extant in the records?

Petitioners rely on the affidavit of the publishers of the subject newspapers to support their claim that the Invitation to Bid was indeed published. However, the said affidavits, particularly in the affidavit of the managing editor of The Visayan Tribune, no statement/admission was given about the existence of the supposed subsequently-circulated copies of the March 5-11, 2001 issues thereof. And while it is true, that the said affidavit, being notarized, enjoys the presumption of regularity, nevertheless, the same can be overturned by clear and convincing evidence, such as the original copy of the March 5-11, 2001 issue of The Visayan Tribune submitted by the private respondents, where it is shown that the Invitation to Bid was not at all published. In this respect, the petitioners' reliance on the said affidavits does not in any way strengthen their claim of compliance with the mandatory requirement of publication of the Invitation to Bid.

From the foregoing, it [is] clear that the factual findings of the

¹¹ Memorandum of Petitioner Limuel P. Sales, *rollo* (G.R. No. 184890), pp. 190-193.

Office of the Ombudsman are substantiated by evidence, and thus, correctly concluded that the petitioners committed grave misconduct when they conducted the bid process of and awarded the subject contracts without compliance with the mandatory twin-publication requirement. "Strict observance of the rules, regulations, and guidelines of the bidding process is the only safeguard to a fair, honest and competitive public bidding."¹²

As to petitioners' assertions that they neither conspired in nor had any knowledge of the non-publication of the Invitation to Bid, we find no merit in the same.

In *Desierto v. Ocampo*¹³ we held:

Collusion implies a secret understanding whereby one party plays into another's hands for fraudulent purposes. It may take place between and every contractor resulting in no competition, in which case, the government may declare a failure of bidding. Collusion may also ensue between contractors and the chairman and members of the PBAC to simulate or rig the bidding process, thus insuring the award to a favored bidder, to the prejudice of the government agency and public service. For such acts of the chairman and the members of the PBAC, they may be held administratively liable for conduct grossly prejudicial to the best interest of the government service. **Collusion by and among the members of the PBAC and/or contractors submitting their bids may be determined from their collective acts or omissions before, during and after the bidding process.** The complainants are burdened to prove such collusion by clear and convincing evidence because if so proved, the responsible officials may be dismissed from the government service or meted severe administrative sanctions for dishonesty and conduct prejudicial to the government service.¹⁴ (Emphasis and underscoring supplied.)

We find in this case clear and convincing evidence that petitioners colluded in the rigging of the bidding process to favor IBC, the winning bidder. Petitioners signed the Abstract of Bids and approved the award to IBC of the contract for the materials and equipment needed for the skywalk projects despite the absence of an Invitation to Bid duly published in accordance with the IRR of PD 1594. They cannot simply feign ignorance of such non-compliance with a basic requirement because as Chairman (Sales) and Member (Lagoc) of the BAC, they are responsible for the conduct of pre-qualification, or eligibility screening, bidding, evaluation of bids, postqualification, and recommending award of contract. As such, it is their duty to ensure that the rules and regulations for the conduct of bidding for government projects are faithfully observed. They may thus be held liable for collective acts and omissions as when they affixed their signatures in official documents as BAC Chairman/Members, and recommended approval of the bids, in effect certifying to compliance with the aforesaid rules.

¹² *Rollo* (G.R. No. 184785), pp. 24-25.

¹³ 493 Phil. 140 (2005).

¹⁴ *Id.* at 160.

Petitioner Lagoc claimed that even the complainant acknowledged that she simply signed the Abstract of Bids in her capacity as Project Engineer and provisional member of the BAC. Such excuse is flimsy and unacceptable. Indeed, the affixing of *signatures* by the committee members are not mere ceremonial acts but proofs of authenticity and marks of regularity.¹⁵ Moreover, there is nothing in the IRR that exempts a provisional BAC member from liability in case of violation of its provisions. The administrative sanctions are provided in Part V, paragraph 3 which states:

Violation of the provisions of the IRR of PD 1594 will subject the erring government official/employee to the sanctions provided under existing laws particularly Republic Acts 3019 (known as the “Anti-Graft and Corrupt Practices Act”) and 6713 (known as the “Code Of Conduct And Ethical Standards For Public Officials And Employees”), and the Civil Service Law, among others. x x x

We stress that the Ombudsman’s finding of collusion to rig the bidding was based not only on the non-publication of the Invitation to Bid but also the highly suspicious circumstance that the bid submitted by IBC contained the unit prices of items/rental rates exactly similar to those listed in the Program of Work. This unexplained fact, along with the deliberate disregard of the requisite publication of the Invitation to Bid, convinced the Ombudsman that the BAC Chairman and Members acted in conspiracy in committing a misconduct, thus:

Adding to the questionable nature of the supposed bidding for the purchase of materials and lease of equipment is the astonishing fact that the price bids submitted by IBC International Builders Corp. for the construction materials and equipment to be used in the subject two (2) skywalk/overpass projects, as per Abstracts of Bids (Annexes “T”, “U”, “Y” & “Z”, Complaint, *supra*), were exactly the same as the estimated costs of said materials and equipment per Programs of Work (Annexes “Q” & “V”, *ibid.*). This fact indubitably shows that the biddings were rigged in order to favor one contractor – IBC International Builders Corp. – as in fact, the contracts for the said purchase of materials and lease of equipment were awarded to said contractor as shown by the Purchase Orders issued to it (Annexes “R”, “S”, “W” & “X”, *ibid.*).

Evidences on record substantially show that a transgression of some established and definite rule of action in the matter of procurement of materials and equipment for the construction of the subject two (2) skywalk/overpass projects was committed, with the wrongful intention of awarding the contracts to the favored private supplier/contractor by rigging the biddings, which constitutes the administrative offense of Misconduct. This was made possible with the following respondents conspiring and acting together, namely: the OIC-District Engineer VICENTE M. TINGSON, JR.; the Chairman and Members of Bids and Awards Committee (BAC), namely: OIC Asst. District Engineer LIMUEL P. SALES, Engineer III RUBY P. LAGOC (Project Engineer) and Administrative Officer III ELIZABETH H. GARDOSE (Executive Officer for the acquisition of supplies and materials), in collaboration and

¹⁵ See *Oani v. People*, 494 Phil. 417, 433 (2005).

cooperation with the favored private contractor and two (2) other supposed bidders and the newspaper publishers.

The fact that the aforementioned Bids and Awards Committee (BAC) allowed the bids of IBC International Builders Corp. and declared it the winning bidder, and approved by said respondent OIC-District Engineer Tingson, despite the fact that the prices of materials and rents of equipments it quoted in its bids were obviously exact and the same as the estimated costs of materials and rents of equipments as per Programs of Work of the subject two skywalk/overpass projects, only shows that they really intended to rig the biddings and favor IBC to win the contracts. They could not have allowed it without the knowledge of, and an agreement with, Helen Edith L. Tan, who is IBC President, because the exactness of the IBC price quotations to the agency cost estimates are just too much of a coincidence. We do not believe that an IBC personnel, Juliana Praile, in-charge of preparing IBC's bids, just accidentally came across the project's Program of Work or the Approved/Calculated Estimate of the Agency and simply copied every unit price of the materials and the rental costs of the equipment stated therein to simplify her work. As already said, the exactness between the quotations and the estimates are just too palpable to escape notice from the Bids and Awards Committee, who would not have allowed it in the absence of an agreement with respondent Tan. In fact, said respondents Ruby P. Lagoc (Project Engineer and BAC Member), Limuel P. Sales (BAC Chairman) and Vicente M. Tingson, Jr. (OIC-District Engineer) were the ones who prepared, recommended for approval and approved, respectively, the subject projects' Programs of Work and Agency Estimates (Annexes "Q" & "V", Complaint, *supra*).

The two (2) other "losing" bidders, namely: VN Grande Co. and PKG Commercial, were willing participants in the fixed biddings for purposes of compliance with the required number of at least three (3) bidders to evade a failed bidding. Their cooperation is revealed by the fact that they were able to submit their supposed bids even in the absence of publication of the Invitation to Bid. Furthermore, the fact that they did not contest the bids of IBC in spite of the clearly questionable price and rent quotations it submitted only shows that the whole thing was pre-arranged.

Notwithstanding the contracts of publication entered into (Annexes "I" & "J", Complaint, *supra*), the publishers of The Visayan Tribune and The Visayas Examiner did not publish the aforementioned Invitation to Bid. The only apparent reason for the non-publication was to prevent other legitimate and qualified contractors from participating in the biddings, and thus ensuring that the contracts for the supply of materials and lease of equipment to be used in the subject two skywalk/overpass projects would go to IBC International Builders Corp., the favored contractor. Their participation in this conspiracy of rigging the biddings has been clearly exposed by an apparent cover-up discussed above. As mentioned above, copies submitted in evidence by herein respondents of the newspaper issues purportedly carrying the Invitation to Bid show strong and clear signs of manipulation, which would only point to a cover-up for an intentional omission.

While the questioned transactions involved two (2) different projects, there was present only a singular wrongful intent to award the contracts for the said purchase of materials and lease of equipment to be used therefor to one favored contractor, IBC Int'l. Builders Corp. This singularity of intent can be deduced from the fact that the

biddings/opening of bids for said purchase and lease were held on the same date (March 23, 2001), and all the Purchase Orders issued to IBC Int'l. Builders Corp. in connection thereto bear the same date (March 26, 2001). Hence, the respondents concerned may be held liable for only one administrative infraction.¹⁶

Findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight especially when they are affirmed by the CA. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made.¹⁷ And as long as there is substantial evidence in support of the Ombudsman's decision, that decision will not be overturned.¹⁸ No such grave abuse of discretion is shown in this case.

Misconduct is defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."¹⁹ Misconduct becomes grave if it "involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence."²⁰

Section 52 (A) (3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service provides that the penalty for grave misconduct is dismissal from the service, which was correctly imposed by the Ombudsman on petitioners, along with OIC District Engineer Tingson, Jr. and the other BAC Member Elizabeth H. Gardose.

WHEREFORE, the consolidated petitions are **DENIED** for lack of merit. The Decision dated January 24, 2008 and Resolution dated September 8, 2008 of the Court of Appeals - Cebu City in CA-G.R. SP No. 00837 **AFFIRMING** the Decision of the Office of the Ombudsman in OMB-VIS-ADM-2001-0408 finding the petitioners **GUILTY** of Grave Misconduct and imposing upon them the severe penalty of **DISMISSAL** from office are **UPHELD**.

With costs against the petitioners.

SO ORDERED.


MARTIN S. VILLARAMA, JR.
Associate Justice

¹⁶ Rollo, pp. 44-46.

¹⁷ *Gaas v. Mitmug*, 576 Phil. 323, 331 (2008), citing *Bedruz v. Office of the Ombudsman*, 519 Phil. 426, 432 (2006).

¹⁸ *Tolentino v. Loyola*, G.R. No. 153809, July 27, 2011, 654 SCRA 420, 436, citing *Francisco, Jr. v. Desierto*, G.R. No. 154117, October 2, 2009, 602 SCRA 50, 125, further citing *Morong Water District v. Office of the Deputy Ombudsman*, 385 Phil. 45, 58 (2000).

¹⁹ *Civil Service Commission v. Ledesma*, 508 Phil. 569, 579 (2005)), citing *Bureau of Internal Revenue v. Organo* 468 Phil. 111, 118 (2004) and *Castelo v. Florendo*, 459 Phil. 581, 597-598 (2003).

²⁰ *Id.*

WE CONCUR:



MARIA LOURDES P. A. SERENO

Chief Justice

Chairperson



TERESITA J. LEONARDO-DE CASTRO

Associate Justice



LUCAS P. BERSAMIN

Associate Justice



JOSE CATRAL MENDOZA

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 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.



MARIA LOURDES P. A. SERENO

Chief Justice

