



Republic of the Philippines
Supreme Court
 Baguio City

THIRD DIVISION

HJA FERWINA JIKIRI G.R. No. 257871
AMILHAMJA, ANANG AGANG
HAWANG, NENITA PINO
AGUIL, AUDIE SINCO JANEA,
and ABDURASA SARIOL Present:
ARASID,*

Petitioners, **CAGUIOA, J., Chairperson,**
LAZARO-JAVIER,**
INTING,
GAERLAN, and
DIMAAMPAO, JJ.

- versus -

OMBUDSMAN-MINDANAO,
FIELD INVESTIGATION UNIT,
 represented by: **LIWAYWAY Promulgated:**
SUMAGAYSAY-RONDINA,
 Respondent April 15, 2024

x-----~~Mis-DC-Pr~~-----x

D E C I S I O N

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*¹ filed by Hja² Ferwina Jikiri Amilhamja (Amilhamja), Anang Agang Hawang (Hawang), Nenita Pino Aguil (Aguil), Audie Sinco Janea (Janea), and

* Erroneously named as “Abdarasa Sariol Arasid” in the Ombudsman Decision and the Court of Appeals Decision and Resolution.

** Designated as additional Member per raffle dated March 8, 2023, *vice* Associate Justice Maria Filomena D. Singh.

¹ *Rollo*, pp. 11–32.

² “Hja.”; *see id.* at 62–63.

Abdurasa Sariol Arasid (Arasid) (collectively, petitioners) assailing the Decision³ and Resolution⁴ of the Court of Appeals (CA) in CA-G.R. SP No. 157038. The CA affirmed with modification the Decision⁵ of the Office of the Ombudsman (OMB) in OMB-M-A-17-0268.

The Antecedents

Arasid, in his capacity as President of Sulu State College (SSC), issued a Memorandum⁶ dated May 10, 2011, requesting the SSC Board of Trustees (SSC-BOT) to formulate a resolution to purchase physics, computer engineering, and agricultural equipment (subject items) with funds sourced from SSC's local income. Pursuant to his request, the SSC-BOT issued Resolution No. 19⁷ on May 12, 2011, setting aside the amount of PHP 20,000,000.00 to be paid in quarterly installments for two years. The following day, SSC's Bids and Awards Committee (BAC), composed of Amilhamja, as Chairperson, and Hawang, Aguil, Janea, and Joseph Pescadera (Pescadera), as members, issued Resolution No. 3, Series of 2011,⁸ approving the publication of the Invitation to Bid for the subject items.⁹

The BAC caused the publication of an Invitation to Apply for Eligibility and to Bid (IAEB) in the Zamboanga Star.¹⁰ On May 25, 2011, the BAC issued Resolution No. 4, Series of 2011,¹¹ stating that only one prospective bidder, State Alliance Enterprises, Inc.¹² (SAEI), applied for eligibility check; and that it is the exclusive distributor of the subject items willing to deliver them and to be paid on installment basis. The BAC recommended that SSC should negotiate with SAEI as the lone bidder, after finding the latter's bid to be advantageous to SSC.¹³

³ *Id.* at 40–56. The September 2, 2020 Decision of the CA in CA-G.R. SP No. 157038 was penned by Associate Justice Ricardo R. Rosario (now a Member of the Court), and concurred in by Associate Justices Maria Filomena D. Singh (now a Member of the Court) and Florencio Mallanao Mamauag, Jr.

⁴ *Id.* at 57–59. The October 26, 2021 Resolution of the CA in CA-G.R. SP No. 157038 was penned by Associate Justice Florencio M. Mamauag, Jr., and concurred in by Associate Justices Fernanda Lampas Peralta and Maria Filomena D. Singh (now a Member of the Court).

⁵ *Id.* at 72–81. The February 5, 2018 Decision in OMB-M-A-17-0268 was penned by Graft Investigation and Prosecution Officer II Jay M. Visto, reviewed by Graft Investigation and Prosecution Officer III, Officer-in-Charge, Evaluation and Investigation Bureau-A Hilde C. Dela Cruz-Likit, recommended by Deputy Ombudsman for Mindanao Rodolfo M. Elman, and approved by Ombudsman Conchita Carpio Morales.

⁶ *Id.* at 60.

⁷ *Id.* at 61.

⁸ *Id.* at 62.

⁹ *Id.* at 41.

¹⁰ *See id.* at 66.

¹¹ *Id.* at 69.

¹² Also referred to as State Alliance, Inc. in some parts of the *rollo*, *id.* at 41.

¹³ *Id.* at 41–42.

On May 30, 2011, SSC and SAEI entered into a Contract of Agreement for the purchase of tractor, shovel, water hose, grass cutter, knapsack sprayer, wheelbarrow, *bolos*, magnetism, and electrostatics EST. The total purchase price was PHP 22,000,000.00, to be paid in installments from 2011 to 2014.¹⁴

On November 28, 2011, some parents and students of SSC wrote the Regional Director of the Commission on Audit (COA) requesting an investigation on the alleged illegal procurement of school computers and agricultural equipment for PHP 22,000,000.00.¹⁵

On December 13, 2011, the SSC-BOT issued Resolution No. 56, Series of 2011,¹⁶ confirming the authority of Arasid, as President of SSC, to enter into a contract with SAEI through a loan extended by the latter for the purchase of the subject items.¹⁷

Meanwhile, the COA made the following findings after investigating the purchase made by SSC: *first*, the public bidding was insufficient and did not comply with Republic Act No. (RA) 9184, or the "Government Procurement Reform Act";¹⁸ *second*, the Zamboanga Star was not a publication of national circulation; and *third*, the BAC should have declared a failure of the bidding process as there was only one bidder. Instead, the contract was immediately awarded to the lone bidder.¹⁹

On June 15, 2015, the COA issued a Notice of Disallowance²⁰ of the transaction due to the following violations: *first*, only PHP 3,950,000.00 was appropriated for equipment outlay under SSC's corporate operating budget (COB) for calendar year 2011; *second*, no appropriation was made for capital outlay in the "General Appropriations Act for 2011;" *third*, there was no certification of availability of funds, as required under Sections 46 and 47 of Executive Order No. (EO) 292,²¹ or the "Administrative Code of 1987;" *fourth*, Section 48 of Presidential Decree No. (PD) 1445,²² or the "Government Auditing Code of the Philippines," sanctions officials who enter into a void contract; and *finally*, the change of the installment term from two years to three years and the

¹⁴ *Id.* at 42, 71, 192.

¹⁵ *Id.*

¹⁶ *Id.* at 71.

¹⁷ *Id.* at 42.

¹⁸ Approved on January 10, 2003.

¹⁹ *Rollo*, p. 42.

²⁰ *Id.* at 223-224.

²¹ Approved on July 25, 1987.

²² Approved on June 11, 1978.

increase of the amount to PHP 22,000,000.00 required a BOT resolution.²³

Subsequently, the Field Investigation Unit of the OMB-Mindanao, respondent herein, filed administrative charges of Grave Misconduct against petitioners and Pescadera.²⁴

The Ruling of the OMB

The OMB ruled as follows in its Decision²⁵ dated February 5, 2018:

WHEREFORE, respondents Hja Ferwina J. Amilhamja, Anang A. Hawang, Nenita P. Aguil, Audie S. Janea, and Abdurasa S. Arasid are found liable for Grave Misconduct and are meted with the penalty of Dismissal from Service along with its inherent disabilities. The case is dismissed as to Joseph Pescadera.

In the event that the penalty of Dismissal can no longer be enforced upon the respondents due to their separation from service, the same shall be converted into a Fine equivalent to their one-year salary payable to the Office of the Ombudsman, and may be deductible from any receivable from their office. It shall be understood that the accessory penalties attached to the principal penalty of Dismissal shall continue to be imposed.

This Decision shall be executed as a matter of course and an appeal or motion for reconsideration shall not stop it from being executory. The refusal or failure to comply, without just cause, of the officer directed to implement this Decision shall be a ground for disciplinary action against said officer.

Accordingly, the Chairperson of the Commission on Higher Education, Higher Education Development Center Building, C.P. Garcia Avenue, UP Diliman, Quezon City is hereby directed to cause the implementation of the aforesated penalty imposed against the respondents within ten (10) days from receipt hereof, and to submit to this Office within the same period, a Compliance Report indicating the Docket Number of this case.

SO ORDERED.²⁶

The OMB dismissed the charge against Pescadera because he was no longer a government employee when the complaint was filed on March 31, 2017, having retired from service on June 1, 2016.²⁷

²³ *Rollo*, pp. 42-43.

²⁴ *Id.* at 43.

²⁵ *Id.* at 72-81.

²⁶ *Id.* at 79-80. Citations omitted.

²⁷ *Id.* at 76-77.

The OMB found petitioners liable for Grave Misconduct. The OMB held that the purchase of the subject items was in violation of RA 9184 and its Implementing Rules and Regulations (IRR), specifically: *first*, the documents to prove the conduct of the bidding, such as the Bidding Documents, the Bid Security, and the Abstract of Bids, are missing; *second*, petitioners did not show compliance with the posting requirements of the IAEB as it was not published in a newspaper of general circulation, and they also failed to show that a pre-bid conference was conducted; *third*, the BAC recommended the award of the contract worth PHP 22,000,000.00 which exceeded the approved budget of PHP 20,000,000.00; *fourth*, SAEI did not submit a bid but a proposal three days before the publication of the IAEB; and *finally*, the BAC increased the period of installment from two years to three years without prior approval of the BOT.²⁸

As for Arasid, the OMB faulted him for entering into an agreement in excess of the amount approved by the BOT. Additional items were purchased even though these were not included in the IAEB. Hence, there was no bidding at all for these additional items. Further, the BOT only approved a two-year installment and not three years. Furthermore, the OMB stressed that there was no appropriation of PHP 22,000,000.00 for capital outlay, in violation of EO 292, PD 1445, and COA Circular No. 2000-02.²⁹

The OMB dismissed the charge of neglect of duty against Hawang for his alleged failure to present the delivered equipment to the Audit Team for proper auditorial and visual inspections. This was due to the lack of evidence that there was an inspection and that Hawang failed to notify the Auditor about the delivery within 24 hours. In any event, these are not acts of carelessness indicating neglect of duty but are connected to and in pursuance of the flawed bidding process which Hawang participated in.³⁰

On the one hand, Amilhamja and Pescadera, and on the other hand, Arasid, respectively filed their motions for reconsideration. Amilhamja and her co-petitioners filed a supplemental motion for reconsideration. The OMB denied Arasid's motion for reconsideration in its Joint Order³¹ dated June 1, 2018. It likewise denied Amilhamja and Pescadera's motion

²⁸ *Id.* at 77-78.

²⁹ *Id.* at 78.

³⁰ *Id.* at 78-79.

³¹ *Id.* at 86-88. Penned by Graft Investigation and Prosecution Officer II Jay M. Visto, reviewed by Graft Investigation and Prosecution Officer III, Officer-in-Charge, Evaluation and Investigation Bureau-A Hilde C. Dela Cruz-Likit, recommended by Deputy Ombudsman for Mindanao Rodolfo M. Elman, and approved by Ombudsman Conchita Carpio Morales.

for reconsideration and petitioners' supplemental motion for reconsideration in its Joint Order³² dated July 12, 2018. Petitioners then filed a Petition for Review with the CA.

The Ruling of the CA

The CA affirmed the OMB in its Decision³³ dated September 2, 2020, viz.:

WHEREFORE, the instant petition is hereby DENIED. The assailed decision is hereby AFFIRMED in all respect save the modification that instead of GRAVE MISCONDUCT, petitioner Arasid is hereby adjudged guilty of gross neglect of duty and is meted the penalty of dismissal from service.

SO ORDERED.³⁴

First, the CA found that petitioners did not show proof that competitive bidding was conducted before the subject items were purchased. *Second*, the CA ruled that they did not show that they complied with the posting requirements of the IAEB and that they conducted a pre-bid conference. The publication with the Zamboanga Star is not satisfactory compliance because petitioners themselves admitted that it is a local newspaper with a wide base in Region IX and its neighboring provinces. The publication should have been done in a newspaper of general circulation. *Third*, the CA held that petitioners similarly failed to present evidence that SAEI is the only distributor of the subject items nationwide. Even if that were the case, RA 9184 still prescribes requirements for alternative modes of procurement. *Finally*, the CA ruled that Arasid should be held liable for Gross Neglect of Duty instead of Grave Misconduct. He was aware that the approved budget was only PHP 20,000,000.00 and yet he signed the contract that exceeded this amount. The CA faulted Arasid for signing the contract despite his lack of authority and the numerous violations of RA 9184.³⁵

Petitioners filed a motion for reconsideration which the CA denied.³⁶

Thereafter, they filed the present petition before the Court.

³² *Id.* at 82-85. Penned by Assistant Special Prosecutor I Gian Carla V. Hernal and approved by Ombudsman Conchita Carpio Morales.

³³ *Id.* at 40-56.

³⁴ *Id.* at 55.

³⁵ *Id.* at 46-55.

³⁶ *Id.* at 57-59.

Respondent filed a Comment³⁷ as required by the Court.³⁸ Petitioners filed a Reply³⁹ in turn.

The Arguments of Petitioners

First, petitioners resorted to the proper remedy to assail the ruling of the CA. *Second*, they performed their duties in good faith, guided by existing laws and rules of procedure. The BOT authorized them to purchase the subject items. They conducted a public bidding. The transaction was duly recorded and audited based on the IAEB, among others. The contract with SAEI was entered into for the benefit and convenience of the students and employees of SSC. This was proven upon the delivery of the subject items. *Third*, they substantially complied with the publication requirement as the IAEB was published in the Zamboanga Star; they all attended the public bidding together with representatives from different sectors on May 23, 2011; and post-qualification proceedings were held. *Fourth*, the 26-day period for the procurement process under the IRR of RA 9184 is recommendatory. The conduct of the procurement process for the subject items in eight days is logical as there was only one bidder. *Finally*, respondent did not present clear and convincing evidence to overturn the presumption of regularity in petitioners' favor. Even assuming that they were negligent, they can only be held liable for Simple Neglect of Duty because there is no evidence of malice on their part. In any case, the penalty of dismissal is harsh and unjust.⁴⁰

The Arguments of Respondent

Respondent argues that it presented substantial evidence to prove that petitioners are guilty of Grave Misconduct. *First*, petitioners did not prepare the bidding documents following the standard forms and manuals prescribed by the Government Procurement Policy Board. They did not submit any of these documents to the OMB. *Second*, there was no COA representative and two observers in all stages of the procurement process, as required by RA 9184. *Third*, petitioners did not publish the IAEB in a newspaper of general circulation. Petitioners admitted that the Zamboanga Star is not a newspaper of general circulation. *Fourth*, petitioners did not show that they issued the required Notice of Award and Notice to Proceed to the bidder with the lowest calculated responsive bid or highest rated responsive bid. *Fifth*, the total contract price in the Contract of Agreement

³⁷ *Id.* at 158-187.

³⁸ *Id.* at 150.

³⁹ *Id.* at 360-367.

⁴⁰ *Id.* at 19-30, 361-366.

with SAEI exceeded the budget approved by the SSC-BOT. The subsequent resolution issued by the BOT approving the increase was a mere afterthought or a calculated cover-up. *Sixth*, the procurement process here took only eight days when, under the IRR of RA 9184, the recommended period for the procurement process is 26 days. Respondent posits that petitioners may not have actually conducted a public bidding. *Finally*, the SSC-BOT issued its Resolution authorizing Arasid to enter into the contract two days after he already signed the Contract of Agreement.⁴¹

Respondent is firm that the foregoing lapses of petitioners do not constitute Simple Neglect of Duty. The circumstances point out to a deliberate intent to disregard established procurement processes. In addition, petitioners violated EO 292, PD 1445, and COA Circular No. 2000-02 by purchasing the subject items even though only PHP 3,950,000.00 was appropriated for equipment outlay under SSC's COB for 2011. There was no appropriation for capital outlay. The Certification of Availability of Funds pertained to the amount of PHP 6,160,000.00 for the purchase of laboratory equipment. Respondent refutes petitioners' claim of good faith as they, with the exception of Arasid, admitted having second thoughts about the execution of the bidding. Parents and students of SSC also complained about the purchase of the subject items before the COA. Respondent maintains that the penalty imposed by the CA on petitioners should be upheld.⁴²

The Issue

The issue before the Court is whether the CA erred in affirming that Amilhamja, Hawang, Aguil, and Janea are guilty of Grave Misconduct and in holding that Arasid is guilty of Gross Neglect of Duty.

The Ruling of the Court

The Court modifies the ruling of the CA.

Misconduct is the "transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer."⁴³ It is grave if the elements of corruption, willful intent to violate the law, or flagrant disregard of

⁴¹ *Id.* at 169–176.

⁴² *Id.* at 177–185.

⁴³ *Ubalde v. Morales*, G.R. No. 216771, March 28, 2022, citing *Office of the Ombudsman-Mindanao v. Martel*, 806 Phil. 649, 662 (2017).

established rules are present.⁴⁴ Corruption consists in the act of an official who unlawfully or wrongfully uses his or her station or character to procure some benefit for himself or herself, contrary to the rights of others.⁴⁵ Flagrant disregard of established rules, as analogous to willful intent to violate the law, is when the public official or employee concerned, through culpable acts or omission, clearly manifests a pernicious tendency to ignore the law or rules.⁴⁶ Flagrant disregard of established rules may also be characterized by the employees' propensity to ignore the rules as clearly manifested by their actions.⁴⁷

The Court agrees with the CA that Amilhamja, Hawang, Aguil, and Janea did not comply with several requirements under RA 9184. *First*, they neither mentioned nor submitted evidence that they prepared the bidding documents required under Article VI, Section 17⁴⁸ of RA 9184. *Second*, they similarly failed to state or prove that they conducted a pre-procurement conference required under Article VII, Section 20⁴⁹ of RA 9184. *Third*, they also did not prove that there was a representative from the COA and two observers during all stages of the procurement process, as mandated by Article V, Section 13⁵⁰ of RA 9184. *Fourth*, the IAEB was

⁴⁴ *Id.*, citing *Office of the Ombudsman v. Celiz*, 855 Phil. 309, 398 (2019).

⁴⁵ *Civil Service Commission v. Nierras*, 569 Phil. 37, 42 (2008).

⁴⁶ *Office of the Ombudsman v. Rojas*, 857 Phil. 482, 493–494 (2019).

⁴⁷ *See Field Investigation Office of the Office of the Ombudsman v. Castillo*, 794 Phil. 53, 62–63 (2016), citing *Imperial, Jr. v. Government Service Insurance System*, 674 Phil. 286, 297 (2011).

⁴⁸ SECTION 17. *Form and Contents of Bidding Documents*. — The Bidding Documents shall be prepared by the Procuring Entity following the standard forms and manuals prescribed by the GPPB. The Bidding Documents shall include the following:

- (a) Approved Budget for the Contract;
- (b) Instructions to Bidders, including criteria for eligibility, bid evaluation and post-qualification, as well as the date, time and place of the pre-bid Conference (where applicable), submission of bids and opening of bids;
- (c) Terms of Reference;
- (d) Eligibility Requirements;
- (e) Plans and Technical Specifications;
- (f) Form of Bid, Price Form, and List of Goods or Bill of Quantities;
- (g) Delivery Time or Completion Schedule;
- (h) Form and Amount of Bid Security;
- (i) Form and Amount of Performance Security and Warranty; and,
- (j) Form of Contract, and General and Special Conditions of Contract.

The Procuring Entity may require additional document requirements or specifications necessary to complete the information required for the bidders to prepare and submit their respective bids.

⁴⁹ SECTION 20. *Pre-Procurement Conference*. — Prior to the issuance of the Invitation to Bid, the BAC is mandated to hold a pre-procurement conference on each and every procurement, except those contracts below a certain level or amount specified in the IRR, in which case, the holding of the same is optional.

The pre-procurement conference shall assess the readiness of the procurement in terms of confirming the certification of availability of funds, as well as reviewing all relevant documents in relation to their adherence to law. This shall be attended by the BAC, the unit or officials who prepared the bidding documents and the draft Invitation to Bid, as well as consultants hired by the agency concerned and the representative of the end-user.

⁵⁰ SECTION 13. *Observers*. — To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the Commission on Audit, at least two (2) observers to sit in its proceedings, one (1) from a duly recognized private group in a sector or discipline relevant to the procurement at hand, and the other from a non-government organization: *Provided, however*, That they do not have any direct or indirect interest

published in the Zamboanga Star, which is not a newspaper of general nationwide circulation.⁵⁰ Finally, petitioners recommended that SSC should negotiate with SAEI even though the purchase of the subject items does not qualify for negotiated procurement under Article XVI, Section 53⁵¹ of RA 9184. Notably, Article X, Section 36 of RA 9184 allows a single calculated/rated and responsive bid submission “[i]f after advertisement, only one prospective bidder submits a Letter of Intent and/or applies for eligibility check, and meets the eligibility requirements or criteria, after which it submits a bid, which is found to be responsive to the bidding requirements.” As such, petitioners need not have recommended negotiation with SAEI if it complied with the eligibility requirements and submitted a responsive bid.

The foregoing lapses of Amilhamja, Hawang, Aguil, and Janea, constitute misconduct as they clearly failed to satisfactorily perform their obligations as members of the BAC. Petitioners cannot feign ignorance of the requirements under RA 9184 for it is a time-honored principle that

in the contract to be bid out. The observers should be duly registered with the Securities and Exchange Commission and should meet the criteria for observers as set forth in the IRR.

⁵⁰ Section 21.2.1 (a) of the 2009 Amended IRR provides:

21.2.1. Except as otherwise provided in Sections 21.2.2 and 54.2 of this IRR and for the procurement of common-use goods and supplies, the Invitation to Bid/Request for Expression of Interest shall be:

- a) Advertised at least once in one (1) newspaper of general nationwide circulation which has been regularly published for at least two (2) years before the date of issue of the advertisement;
- b) Posted continuously in the PhilGEPS website, the website of the procuring entity concerned, if available, and the website prescribed by the foreign government/foreign or international financing institution, if applicable, for seven (7) calendar days starting on date of advertisement; and
- c) Posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned for seven (7) calendar days, if applicable, as certified by the head of the BAC Secretariat of the procuring entity concerned.

⁵¹ SECTION 53. *Negotiated Procurement.* — Negotiated Procurement shall be allowed only in the following instances:

- (a) In cases 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.

ignorance of the law excuses no one from compliance therewith.⁵³ As members of the BAC, their knowledge of RA 9184 was imperative.

Nonetheless, the Court is not convinced that the elements of corruption, willful intent to violate the law, or flagrant disregard of established rules were established to qualify petitioners' misconduct as grave in nature. There is no proof that petitioners acted for their benefit or for some other persons. Likewise, it was not established that petitioners intentionally disregarded the requirements under RA 9184. While there were lapses in the procurement process that they undertook, it cannot be said that they completely disregarded their obligations under the law. Their failure to comply with the law is not tantamount to Grave Misconduct.⁵⁴ Accordingly, Amilhamja, Hawang, Aguil, and Janea are only liable for Simple Misconduct.

Notably, the OMB dismissed the criminal charge for violation of Section 3(e) of RA 3019⁵⁵ against petitioners and Pescadera for lack of merit in its Review Order.⁵⁶ The OMB found the elements of manifest partiality, bad faith, and gross inexcusable negligence, as well as undue injury or unwarranted benefits, wanting in the case.⁵⁷

As for Arasid, the Court agrees with the CA that he is guilty of Gross Neglect of Duty. Gross Neglect of Duty is "negligence characterized by the want of even slight care, 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 consequences, insofar as other persons may be affected."⁵⁸ Arasid, as the head of the procuring entity, failed to issue a Notice of Award to SAEI in line with Article XI, Section 37⁵⁹ of RA 9184. Further, Arasid signed a contract with SAEI on behalf of SSC without being authorized by the SSC-BOT to do so. The authorization was issued two days after he had already signed the Contract of Agreement. Being a member of the BOT himself, Arasid knew that the

⁵³ *Office of the Deputy Ombudsman for Luzon v. Dionisio*, 813 Phil. 474, 490 (2017).

⁵⁴ *Paita v. Task Force Abono Field Investigation Office, Office of the Ombudsman*, G.R. No. 235595, December 7, 2022.

⁵⁵ Anti-Graft and Corrupt Practices Act, approved on August 17, 1960.

⁵⁶ *Rollo*, pp. 376-384, Review Order dated July 4, 2023.

⁵⁷ *Id.* at 379-381.

⁵⁸ *Purísima v. Ricafranca*, G.R. No. 237530, November 29, 2021, citing *Golangco v. Atty. Fung*, 535 Phil. 331, 341 (2006).

⁵⁹ SECTION 37. *Notice and Execution of Award.* — Within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation. In case of approval, the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

BOT had not yet approved a contract with SAEI, but he still proceeded to enter into the Contract of Agreement.

To worsen matters, Arasid was cognizant that the SSC-BOT approved the amount of PHP 20,000,000.00 for the purchase of the subject items; and yet the purchase price in the Contract of Agreement was PHP 22,000,000.00. The subsequent resolution of the SSC-BOT confirming Arasid's authority to enter into the contract for a higher amount does not alter the fact that he had no authority to purchase the subject items for a higher amount when he executed it. In addition, the SSC-BAC's Resolution No. 4, series of 2011, did not recommend the payment of a higher fee to SAEI but to negotiate with it "for the payments thereof subject to Government Accounting, Auditing and Budgeting procedures."⁶⁰ Hence, it cannot be said that Arasid was merely acting on the recommendation of the BAC when he approved a higher payment to SAEI.

Arasid's actions evince a clear disregard of his duties as the President of SSC. It was not a simple oversight but a deliberate refusal to ensure compliance with the requirements of the law. Therefore, the CA correctly held Arasid liable for Gross Neglect of Duty.

The dismissal of the criminal case against Arasid cannot be the basis of the dismissal of the administrative case against him. In *Pahkiat v. Office of the Ombudsman-Mindanao*,⁶¹ the Court held that "[w]ell-settled is the rule that a person acquitted of a criminal charge is not necessarily civilly free because the quantum of proof required in criminal prosecution (proof beyond reasonable doubt) is greater than that required for civil liability (mere preponderance of evidence)."⁶² The evidence presented by the OMB-Field Investigation Unit satisfied the quantum of proof required to hold Arasid liable for Gross Neglect of Duty.

Under the Uniform Rules on Administrative Cases in the Civil Service (URACCS),⁶³ the applicable rules at the time of the commission of the offenses in the case, the penalty for Gross Neglect of Duty is dismissal for the first offense. As for Simple Misconduct, it is suspension for one (1) month and one (1) day to six (6) months for the first offense. Thus, the penalty of dismissal from service imposed by the CA on Arasid is apt. In addition, he shall suffer the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual

⁶⁰ *Rollo*, p. 69.

⁶¹ 888 Phil. 611, 641 (2020).

⁶² *Id.* at 641.

⁶³ CSC Resolution No. 991936, approved on August 31, 1999.

disqualification from reemployment in the government service pursuant to Section 58(a) of the URACCS. As for Amilhamja, Hawang, Aguil, and Janea, they are suspended from service for six (6) months.

WHEREFORE, the petition is **DENIED**. The Decision dated September 2, 2020 and Resolution dated October 26, 2021 of the Court of Appeals in CA-G.R. SP No. 157038 are **AFFIRMED** with **MODIFICATION** in that:

- a) Petitioners Hja Ferwina Jikiri Amilhamja, Anang Agang Hawang, Nenita Pino Aguil, and Audie Sinco Janea are found **GUILTY** of Simple Misconduct and are **SUSPENDED** from service for a period of six (6) months; and
- b) Petitioner Abdurasa Sariol Arasid is found **GUILTY** of Gross Neglect of Duty and is **DISMISSED** from service. He shall likewise suffer the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in the government service.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice



WE CONCUR:



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



JAPAR B. DIMAAMPAO
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
Chairperson, Third Division

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.



ALEXANDER G. GESMUNDO
Chief Justice

