

SPECIAL THIRD DIVISION

[G.R. No. 236383, June 14, 2021]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. MARILYN H. CELIZ AND LUVISMINDA H. NARCISO, RESPONDENTS.

RESOLUTION

INTING, J.:

For the Court's resolution is a Motion for Reconsideration^[1] filed by Luvisminda H. Marciso (Luvisminda) and Marilyn H. Celiz (Marilyn) (collectively, respondents) seeking to set aside the Court Decision^[2] dated June 26, 2019, The assailed Decision found respondents guilty of Grave Misconduct and accordingly dismissed them from the government service with all the accessory penalties of cancellation of eligibility, forfeiture of leave credits, and retirement benefits, and disqualification for reemployment in the government service.^[3]

The facts are as follows:

On November 20, 2007, Director Rolando M. Asis (Director Asis) of the Department of Public Works and Highways (DPWH) Region VI submitted to DPWH Secretary Hermogenes E. Ebdane, Jr. (Secretary Ebdane) the approved program of works and estimates for the proposed asphalt overlay project in Iloilo City. The estimated cost of the project is P54,500,000.00 allotted for repair of about 2.4 kilometers of the Iloilo-Jaro Diversion Road.

On November 23, 2007, former Iloilo City Mayor Jerry P. Treñas requested Director Asis to immediately implement the project in time for the upcoming Dinagyang Festival. Thus, Director Asis made a request to Secretary Ebdane for clearance to implement the project through negotiated procurement. He justified that the project was urgent because it was the primary route for the Dinagyang Festival and there was a need to further promote tourism in the region. On November 29, 2007, Secretary Ebdane approved the request.^[4]

At that time, Luvisminda was the Vice-Chairman of the DPWH Region VI Bids and Awards Committee (BAC), while Marilyn was one of the Provisional Members.^[5]

On January 2, 2008, the BAC unanimously approved an unnumbered Resolution recommending the direct negotiation of the contract for the asphalt overlay project to International Builders' Corporation (IBC). Director Asis approved the Resolution. The BAC Chairman Berna C. Coca (BAC Chairman) sent an invitation to the President of IBC Helen Edith Lee Tan (IBC President) requesting them to submit a quotation for the project. Subsequently, IBC's bid offer was opened and negotiated at the DPW11 Regional Office.^[6] On January 8, 2008, the BAC unanimously approved another unnumbered Resolution endorsing the award of the project to IBC

with an approved budget for the Contract (ABC) in the amount of P54,308,803.44.
[7]

Thereafter, Director Asis informed IBC of the BAC recommendation with the caveat that the Notice to Proceed cannot be issued until the funds to cover the contract cost are released. In light of the unavailability of funds, Director Asis asked the IBC President if they are willing to take the risk of proceeding with the project pending the release of an appropriation. In response, the IBC President agreed and committed to immediately proceed with the implementation of the asphalt overlay project.^[8]

On March 5, 2008, the Assistant Ombudsman for Visayas, Virginia Palanca-Santiago (Assistant Ombudsman) sent a letter to Zyril D. Arroyo, Regional Cluster Director of the Commission on Audit (COA) Region VI requesting the conduct of a special audit examination on the asphalt overlay project.^[9]

In the Letter^[10] dated March 17, 2008, the BAC, including Luvisminda and Marilyn, explained to the Assistant Ombudsman that the asphalt overlay project was implemented through negotiated procurement because of its urgency and the immediate need to repair a national road in time for the Dinagyang Festival celebration from January 24 to 26, 2008. The BAC likewise reasoned that IBC's offer complied with the requirements of the project. Considering its previous performances, the asphalt overlay project was awarded to IBC.^[11]

On May 13, 2008, Aurora S. Tingzon, Accountant IV of the DPWH Region VI, certified that there were no available funds, no Sub-Allotment Release Order (SARO), and no Sub-Allotment Advice (SAA) issued for the asphalt overlay project.
[12]

On December 24, 2008, DPWH Undersecretary Bashir D. Rasuman. approved the SARO for the project, authorizing the expenditure of P53,595,000.00. Thereafter, an unnumbered BAC Resolution was issued on January 26, 2009, recommending the award of the contract to the IBC in the amount of P52,110,000.00, The BAC also resolved to pay the remaining balance to the IBC upon availability of funds.^[13]

On January 28, 2009, the Notice of Award^[14] was issued to the IBC President. Soon after, the DPWH Region VI and the IBC executed a contract for the asphalt overlay project.^[15]

Subsequently, the Office of the Ombudsman (Ombudsman) Region VI Field Investigation Office (FIO) filed their Complaint-Affidavit^[16] dated March 20, 2014 charging respondents and several officials and employees of the DPWH Region VI of violating Republic Act No. (RA) 9184^[17] and RA 3019^[18] and holding them liable for Grave Misconduct.^[19]

In their joint counter-affidavit, respondents and several DPWH Region VI officials justified the conduct of negotiated procurement by reiterating the urgency of the project.^[20]

On October 6, 2015, the Ombudsman issued a Joint Resolution finding probable cause to charge respondents with violation of Section 3(e)^[21] of RA 3019. It held that respondents are guilty of Grave Misconduct and meted out the penalty of dismissal from the service.^[22]

Aggrieved, respondents moved for reconsideration. However, the Ombudsman denied it in its Order dated March 21, 2016.^[23]

On respondents' administrative liability, they filed a petition for review under Rule 43 of the Rules of Court before the Court of Appeals (CA). They argued that as mere subordinates, they had no power to question the decision of their superiors to negotiate the procurement of the asphalt overlay project. They also argued that their participation was limited to signing the BAC resolutions, and as such, there was no corrupt motive on their part.^[24]

Ruling of the CA

In the Decision^[25] dated September 15, 2017, the CA found respondents' appeal partly meritorious, viz.:

WHEREFORE, the Petition For Review under Rule 43 filed by petitioners Marilyn H. Celiz and Luvisminda H. Narciso is PARTIALLY GRANTED. The Office of the Ombudsman's 6 October 2015 Joint Resolution in OMB-V-C-14-0182 and OMB-V-A-14-0174 is MODIFIED. We find petitioners Marilyn H. Celiz and Luvisminda H. Narciso guilty of SIMPLE MISCONDUCT and are hereby meted the penalty of SUSPENSION for ONE (1) MONTH and ONE (1) DAY.

Petitioners who have not retired shall be REINSTATED after serving their suspension. They shall be entitled to payment of backwages and all benefits from the time that they served the foregoing suspension up to the time of their actual reinstatement.

SO ORDERED.^[26]

The CA held that respondents should be held liable for Simple Misconduct only because there was no evidence of corrupt motives on their part.

On December 11, 2017, the CA issued a Resolution^[27] denying petitioner's motion for partial reconsideration for failure to assert new matters that would warrant die reversal of the decision.

Undaunted, petitioner filed a Petition for Review on *Certiorari*^[28] before the Court.

The Court Decision dated June 26, 2019

In the Decision^[29] dated June 26, 2019, the Court reversed the CA Decision and found respondents liable for Grave Misconduct, to wit: