

SECOND DIVISION

[G.R. No. 251940, July 12, 2021]

NOEL T. JASPE (SG 24), MUNICIPAL ENGINEER/BAC VICE CHAIRMAN, STA. BARBARA, ILOILO AND MA. NEGENIA V. ARANETA (SG 24), MUNICIPAL BUDGET OFFICER/BAC MEMBER, STA. BARBARA, ILOILO, PETITIONERS, VS. PUBLIC ASSISTANCE AND CORRUPTION PREVENTION OFFICE AND AGUSTIN SONZA, JR., RESPONDENTS.

DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Review on *Certiorari* seeks to reverse and set aside the following dispositions of the Court of Appeals^[1] in CA-G.R. CEB-SP No. 09323 entitled *NOEL T. JASPE (SG 24), Municipal Engineer/BAC Vice Chairman, Sta. Barbara, Iloilo, and MA. NEGENIA V. ARANETA (SG 24), Municipal Budget Officer/BAC Member, Sta. Barbara, Iloilo v. PUBLIC ASSISTANCE AND CORRUPTION PREVENTION OFFICE and AGUSTIN SONZA, JR.*, to wit:

- a) Decision^[2] dated September 27, 2018 affirming the liability of petitioners Noel T. Jaspe (Jaspe) and Ma. Negenia V. Araneta (Araneta) for grave misconduct; and
- b) Resolution^[3] dated January 14, 2020 denying their motion for reconsideration.

Antecedents

In 2006, the Municipality of Sta. Barbara, Iloilo conducted a bidding for its five (5) infrastructure projects, *viz.*:

- a) Concreting of Libertad and Arroyo (Ilawod) Streets;
- b) Asphalt Overlaying of Castilla Street;
- c) Concreting of Sodusta Street;
- d) Asphalting of Arroyo Street;
- e) Construction of Fish Section Building.

Three (3) bidders secured bid documents for the five projects – Topmost Development and Marketing Corporation (TDMC), F. Gurrea Construction, Incorporated (FGCI) and AFG Construction and Construction Supply (AFG).^[4]

The Bids and Awards Committee (BAC) of the Municipality of Sta. Barbara, Iloilo was chaired by Lyndofer V. Beup (Beup) with petitioner Jaspe as Vice Chairman and petitioner Araneta, Genaro Sonza (Sonza), and Sanny Apuang (Apuang) as

members. At the start of the scheduled opening of bids on July 31, 2006, AFG verbally notified the BAC that it was not bidding for all the five infrastructure projects. AFG also manifested that its formal notice would follow.^[5] After noting the same, the BAC proceeded with the opening of the bids. In the process, the BAC found a letter^[6] inside the technical envelope of TDMC informing that it was not bidding for the Asphalt Overlay of Sodusta Street and Asphalt of Arroyo Street because its estimated costs for these projects exceeded the approved budget of the contracts (ABC).^[7] The BAC also found a letter^[8] inside the technical envelope of FGCI informing that it was not bidding for the Concreting of Libertad and Arroyo Streets, Concreting of Sodusta Street, and Construction of Fish Section Building, also citing that its estimated costs for these projects exceeded the ABC.^[9]

BAC member Sonza questioned what he called the "withdrawal" of TDMC and FGCI who both did not manifest it early on prior to the submission of bids. He asserted that these bidders should have submitted their respective letters to the BAC, instead of simply enclosing these letters in their bid envelopes. He also alluded that the "withdrawal" was part of the bidders' internal sharing scheme on the projects. He, thus, recommended that the BAC declare a failure of bidding.

To this, BAC Chairperson Beup pointed out that Sec. 36(c) of Republic Act No. 9184 (RA 9184) actually allows a single calculated bidder. Although a bidder may have submitted its letter of intent and even passed the eligibility stage, it is still possible that the bidder, on the day of the bidding itself, may decide to bid only for certain projects or not to bid at all.

After considering the respective views of BAC member Sonza and BAC Chairperson Beup, Vice Chairperson Jaspe (herein petitioner) moved to continue with the opening of bids and to deal with all the issues during the post-qualification stage. BAC member Apuang seconded the motion. The BAC Chairperson thus announced the opening of the financial envelopes.^[10] Based on the collated results, the BAC declared TDMC as the lone bidder for Concreting of Libertad and Arroyo (Ilawod) Sts., Concreting of Sodusta Street and Construction of Fish Section Building; and FGCI as the lone bidder for Asphalt Overlay of Castilla Street and Asphalt of Arroyo Street (in front of the Public Market).^[11] During the post-qualification stage, the BAC eventually declared TDMC and FGCI, respectively, the lowest calculated and responsive bidders for each of aforesaid projects and consequently recommended the award of the contracts to them.^[12]

On August 16, 2006, respondent Agustin Sonza, Jr. filed before the Office of the Ombudsman (OMB) a letter-complaint,^[13] citing the alleged irregularities in the bidding of the aforesaid construction projects. He charged that Sta. Barbara Mayor Isabelo Maquino (Mayor Maquino) and BAC Chairperson Beup conspired with TDMC and FGCI to ensure the award of the contracts to these companies.

On February 23, 2007, the OMB referred the matter to the Commission on Audit (COA) for a special audit examination of the questioned award.

In its Fact-Finding Investigation Report dated October 22, 2009, COA concluded that the BAC allowed the belated "withdrawal" of bids after the deadline for submission and receipt of bids in violation of Section 26 of RA 9184 or the Government Procurement Reform Act and Section 26.2 of its Implementing Rules and Regulations (IRR).

COA also pointed out a seeming connection or interlocking directorship between TDMC and FGCI, as allegedly shown by the following circumstances, viz.: Ivy Longno was an incorporator of TDMC who at the time of the bidding was a board member of FGCI; Sally Tampos was a board member of both TDMC and FGCI; Henry Longno was a board member of TDMC who was also connected with FGCI; some of the engineers of TDMC were former employees of FGCI and vice versa; and TDMC and FGCI have the same office addresses and Manila telephone lines.^[14]

Based on this Report, Graft Investigation and Prosecution Officer Theodore P. Banderado (GIPO Banderado) filed a complaint for grave misconduct against the following BAC members:^[15]

Name	Position
Sanny Apuang	Municipal Agriculturist
Noel T. Jaspe	Municipal Engineer
Ma. Negenia V. Araneta	Municipal Budget Officer

GIPO Banderado asserted that the "withdrawal" of bids by AFG, TDMC, and FGCI was void because it deviated from the prescribed procedure under Sec. 26 of RA 9184. But despite this patent irregularity, the aforementioned BAC members proceeded to open the bids which eventually led to the award of the contracts to TDMC and FGCI. In so doing, the BAC members were deemed to have conspired with and given unwarranted benefits to these two companies.

As for Mayor Maquino, he was not charged since according to GIPO Banderado, the former's liability already got mooted when he did not run for re-election. With respect to Municipal Administrator/SAC Chairperson Beup, he, too, was not charged based on the finding of GIPO Banderado that Beup's co-terminous appointment already expired.

Decision of the OMB -Visayas

By Decision^[16] dated April 4, 2014, the OMB-Visayas^[17] found Jaspe, Araneta, and Apuang (Jaspe, et al.) liable for grave misconduct and imposed on them the penalty of dismissal from the service, with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office and from taking the civil service examination.

The OMB-Visayas ruled that Jaspe, et al. violated the procurement rules when they allowed the bidders to withdraw their bids in violation of the prescribed procedure under RA 9184. For intentionally disregarding the procurement rules, they were deemed to have conspired with the winning bidders to ensure that the latter get the projects in accordance with their sharing scheme. As a result, the government was deprived of the benefits of a competitive bidding.

In their motion for reconsideration,^[18] Jaspe and Araneta posited that there was no withdrawal of bids to speak of as the bidders simply did not bid for certain identified projects. Even then, the bidders substantially complied with the rules when they submitted their letters not to bid. The BAC arrived at a collegial decision to allow the bidding to proceed which was done in good faith. On the finding of alleged interlocking directors, the BAC absolutely had no knowledge about it, if at all, it is true. For it merely relied on the documents submitted by the bidders in compliance

with the bidding rules. The Articles of Incorporation on record showed that the composition of the incorporators and the registered office addresses of the two winning bidders are in fact not the same.

By Order^[19] dated February 3, 2015, the OMB-Visayas^[20] denied the motion for reconsideration.

Ruling of the Court of Appeals

Aggrieved, petitioners Jaspe and Araneta appealed to the Court of Appeals *via* a petition for review. By Decision^[21] dated September 27, 2018, the Court of Appeals affirmed. Petitioners' motion for reconsideration was denied under Resolution^[22] dated January 14, 2020.

The Present Petition

Petitioners now pray anew for the dismissal of the complaint against them for grave misconduct. They fault the Court of Appeals for overlooking certain material facts attendant to the bidding showing that they complied with the prescribed rules on bidding. They reiterate that there was no withdrawal of bids to speak of, for the two participating companies simply opted not to bid for certain projects they had identified. Hence, there was nothing to withdraw. They also deny favoring or colluding with the bidders in the award of the projects.

In its Comment^[23] dated February 3, 2021, the OMB-Visayas^[24] once again charges petitioners with blatant disregard of established procurement rules on withdrawal of bids, demonstrating their alleged corrupt intention to favor the bidders.

Issue

Did petitioners commit grave misconduct when they voted to proceed with the bidding even after one of the supposed participants served notice that it was not bidding for all the five projects, while the two others served separate notices that they were not bidding for certain projects they had identified?

Ruling

As a rule, the Court is not a trier of facts. It is not the Court's function to analyze or weigh evidence all over again in light of the corollary legal precept that findings of fact of the Court of Appeals are conclusive and binding on this Court.^[25] A recognized exception, however, is where there is manifest mistake in the inference made from the findings of fact and judgment Is based on such misapprehension of facts,^[26] as in this case. The Court here is therefore constrained to review the factual findings of the OMB-Visayas and the Court of Appeals, as well as the inferences drawn therefrom in order to prevent grave miscarriage of justice.

As stated, the OMB-Visayas found BAC Members Jaspe, Araneta, and Apuang liable for grave misconduct for allegedly allowing the bidders to "withdraw their bids" during the bidding itself and not before the scheduled date of bidding in violation of Section 26 of RA 9184 and its Implementing Rules and Regulations (IRR).

It maintained that the withdrawal of bids was improperly made by the bidders – in the case of AFG, it merely served a verbal notice of withdrawal on the same date of