

EN BANC

[G.R. Nos. 219771 & 219773, September 18, 2018]

PHILIPPINE NATIONAL POLICE-CRIMINAL INVESTIGATION AND DETECTION GROUP (PNP-CIDG), PETITIONER, VS. P/SUPT.* ERMILANDO VILLAFUERTE, RESPONDENT.

DECISION

CAGUIOA, J:

The Case

Before the Court is an appeal by *certiorari* under Rule 45 of the Rules of Court (Petition) questioning the Decision^[1] dated January 28, 2015 and Resolution^[2] dated August 3, 2015 of the Court of Appeals (CA) in CA-G.R. SP. Nos. 127757 and 127801. The CA Decision reversed and set aside the Joint Resolution^[3] dated May 30, 2012 (OMB Resolution) of the Office of the Ombudsman (OMB), which found herein respondent P/Supt. Ermilando O. Villafuerte (respondent Villafuerte) administratively liable with several others for Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service.

This case arose from the infamous "chopper scam" that involved the procurement of second-hand light police operational helicopters (LPOHs) for use of the Philippine National Police (PNP). During the procurement process, respondent Villafuerte was the Legal Officer of the National Headquarters Bids and Awards Committee (NHQ-BAC), Secretariat Division (BAC Secretariat).

The Facts

The events precipitating the instant controversy were summarized in the CA Decision, as follows:

Sometime in 2009, the Philippine National Police programed (*sic*) to purchase three (3) fully equipped helicopters with an approved budget of Php105,000,000.00. After two (2) scheduled public bidding (*sic*) failed, another bidding was conducted with two proponents participated (*sic*) namely: MAPTRA and BEELINE. The third bidding was again declared a failure since the proponents failed to meet the requirements. Later on, the requirement was modified from three (3) fully equipped helicopters to One (1) fully equipped and two (2) standard helicopters.

On 15 June 2009, the negotiation committee convened and again,

MAPTRA and BEELINE participated. BEELINE submitted price quotation of Php104,987,000.00 for the requirement but manifested that the helicopters do not have xenon light, down link transmission and aircondition with only 2-3 sitting (*sic*) capacity as the inclusion of said accessories cost Php12,000,000.00. On the other hand, MAPTRA quoted Php104,985,000.00 for the requirement but all helicopters are 4-sitter (*sic*).

The Bids and Awards Committee of the PNP resolved to award the contract to MAPTRA. The head of BAC Secretariat PSSUPT Detran instructed petitioner Villafuerte to prepare the necessary documents pertaining to the award of the contract to the winning bidder MAPTRA. Hence, petitioner Villafuerte prepared the Supply Contract and the Notice to Proceed was signed by then PNP Chief Jesus Versoza.

After securing a performance bond from the AFP General Insurance Corporation in favor of the PNP, two light operational helicopters were delivered on 24 September 2009 at the PNP Air Unit Hangar, Domestic Airport in Pasay City. After inspection, the PNP released 50% of the contract price to MAPTRA.

On 10 February 2010, a fully equipped Robinson R44 Helicopter was delivered to PNP. A certification of inspection was issued on 22 February 2010. Thus, the PNP released to MAPTRA the remaining 50% balance.

Later on, an investigation was conducted regarding the procurement of the said helicopters and the investigating body allegedly found that the helicopters that were subject of the procurement were not brand new contrary to the requirement of the PNP procurement. x x x^[4]

As a result of the investigation, a Complaint dated November 25, 2011^[5] (Complaint) was filed by the OMB-Field Investigation Office, charging several public and private respondents,^[6] including respondent Villafuerte, with various criminal and administrative offenses, which included *inter alia*: (i) violation of paragraphs (e) and (g), Section 3,^[7] Republic Act No. (RA) 3019,^[8] in relation to RA 9184,^[9] and (ii) Dishonesty, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service under paragraphs 1, 2 and 20, Section 52(A), Uniform Rules on Administrative Cases in the Civil Service^[10].

In his Counter-Affidavit dated January 12, 2012, respondent Villafuerte claimed that his only participation in the procurement process was the drafting of several documents under the instruction of P/SSupt. Lurimer B. Detran, Head of the BAC Secretariat, to wit:

- (i) Negotiation Committee Resolution No. 2009-04, entitled "Recommending the Award of Contract and Purchase Order to Manila Aerospace Products Trading (MAPTRA^[11]) for the delivery of One (1) Fully Equipped and Two (2) Standard Light

Police Operational Helicopter All Brand New Worth One Hundred Four Million Nine Hundred Eight-five Thousand Pesos (P104,985,000.00) Inclusive of All Taxes, Import Duties and Charges;"

(ii) BAC Resolution No. 2009-36, entitled "Affirming the Recommendation of the Negotiation Committee to Award the Supply Contract and Purchase Order to Manila Aerospace Products Trading (MAPTRA) for the Delivery of One (1) Fully-Equipped and Two (2) Standard Light Police Operational Helicopter All Brand New Worth One Hundred Four Million Nine Hundred Eighty-five Thousand Pesos (P104,985,000.00) Inclusive of All Taxes, Import Duties and Charges;"

(iii) Supply Contract between the PNP and MAPTRA; and

(iv) Notice to Proceed addressed to Mr. Larry B. De Vera.^[12]

Aside from the foregoing, respondent Villafuerte further alleged that he was also instructed by P/Dir. George Quinto Piano, a member of the PNP Inspection and Acceptance Committee, to draft a demand letter to MAPTRA for the replacement of the LPOHs and a complaint-affidavit for *Estafa* against the officials of MAPTRA.^[13]

Ruling of the OMB

In the OMB Resolution, the OMB concluded that the procurement process was marred with irregularities and found substantial evidence to hold respondent Villafuerte guilty of Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service.^[14] The OMB likewise ordered the filing of a corresponding Information for violation of Section 3(e) of RA 3019 with the Sandiganbayan against respondent Villafuerte for the same acts.^[15]

The OMB found that the requirement in a negotiated procurement under the Implementing Rules and Regulations Part A (IRR-A) of RA 9184,^[16] i.e., that the procuring entity directly negotiate only with a "technically, legally and financially capable supplier, contractor or consultant,"^[17] was not observed as MAPTRA was not so qualified. In particular, considering that potential bidders are required to submit certain documentary requirements to be evaluated by the BAC under the IRR-A, the OMB concluded that respondent Villafuerte and his other co-respondents, given their respective positions, conspired to award the LPOH contract to an unqualified bidder.^[18]

The OMB Resolution held thus:

WHEREFORE, it is hereby resolved as follows:

x x x x

OMB-C-A-11-0758-L {ADMINISTRATIVE CASE}

1) Respondents P/Dir. Leocadio Salva Cruz Santiago, Jr., **P/Supt. Ermilando Villafuerte**, P/Supt. Roman E. Loreto, P/CSupt. Herold G. Ubalde, P/CSupt. Luis Laurca Saligumba, P/SSupt. Job Nolan D. Antonio, P/Dir. George Quinto Piano, P/SSupt. Edgar B. Paatan, P/SSupt. Mansue Nery Lukban, P/Cinsp. Maria Josefina Vidal Recometa, P/SSupt. Claudio DS Gaspar Jr., SPO3 Ma. Linda A. Padojinog, PO3 Avensuel G. Dy and NUP Ruben S. Gongona are hereby found **GUILTY of Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service, and are thus meted the penalty of DISMISSAL FROM THE SERVICE**, including the accessory penalties of **forfeiture of retirement benefits and perpetual disqualification to hold public office**, pursuant to the *Uniform Rules on Administrative Cases in the Civil Service* (CSC Resolution No. 991936, as amended).^[19] (Additional emphasis supplied)

Respondent Villafuerte thereafter questioned the OMB Resolution via a Petition for Review^[20] under Rule 43 with the Court of Appeals (CA), which was docketed as CA-G.R. SP No. 127801. The case was consolidated with an appeal filed by P/Supt. Roman E. Loreto, which similarly assailed the OMB Resolution.^[21]

In his appeal, respondent Villafuerte argued that his duties and functions as a member of the BAC Secretariat are merely administrative and ministerial in nature and that he was merely following the instructions of his superiors.^[22] Respondent Villafuerte claimed that it is the Technical Working Group of the NHQ-BAC that has the duty and responsibility to verify whether a proponent is indeed technically, legally, and financially capable to enter into a contract with the PNP.^[23] Lastly, respondent Villafuerte argued that there was no positive and conclusive evidence to support the OMB's finding of conspiracy against him and his co-respondents.^[24]

Ruling of the CA

In the Decision^[25] dated January 28, 2015, the CA reversed the OMB Resolution and exonerated respondent Villafuerte from the administrative charges:

WHEREFORE, the petition is hereby **GRANTED**. The assailed *Joint Order* dated 30 May 2012 and *Order* dated 05 November 2012 issued by the Office of the Ombudsman are **REVERSED** and **SET ASIDE** with respect to petitioner PSUPT. Roman E. Loreto and PSUPT. Ermilando O. Villafuerte. Accordingly, PSUPT. Roman E. Loreto and PSUPT. Ermilando O. Villafuerte are **EXONERATED** from the administrative charges against them for lack of substantial evidence.

SO ORDERED.^[26]

Herein petitioner, through the Office of the Solicitor General, then filed a motion for

reconsideration, which was subsequently denied by the CA in the Resolution^[27] dated August 3, 2015 for lack of merit. In the same Resolution, the CA granted a Motion for Partial Reconsideration filed by respondent Villafuerte, ordering his reinstatement and entitlement to backwages and other benefits pursuant to the Revised Rules on Administrative Cases in the Civil Service,^[28] to wit:

WHEREFORE, the Motion for Reconsideration filed by respondents is hereby **DENIED** for lack of merit, whereas the Motion for Partial Reconsideration filed by petitioners is hereby **GRANTED**. Petitioners are ordered reinstated to their former positions without loss of seniority rights. Moreover, the Philippine National Police is hereby ordered to pay herein petitioners their backwages and all benefits which would have accrued in their favor as if they have not been illegally dismissed. The said amounts shall be computed from 30 May 2012 until their actual reinstatement.

SO ORDERED.^[29]

Hence, this Petition.

On February 2, 2016, respondent Villafuerte filed a Comment^[30] dated January 29, 2016. Petitioner thereafter filed its Reply^[31] dated February 23, 2017.

Issue

Whether the CA committed reversible error in reversing the OMB Resolution finding respondent Villafuerte liable for Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service.

The Court's Ruling

The Petition is denied.

As culled from the Petition, the principal issue for resolution is whether there is substantial evidence to find respondent Villafuerte administratively liable.^[32] The Court finds in the negative.

Questions of fact cannot be raised in appeals by certiorari under Rule 45; Exceptions

As a rule, questions of fact are proscribed in Rule 45 petitions.^[33] A question of fact exists when doubt or difference arises as to the truth or falsehood of facts or when the resolution of the issue raised requires a calibration of the whole evidence.^[34] As a trier of laws, the Court is not duty-bound to analyze and weigh again the evidence already considered in the proceedings below.^[35] As an exception, however, the