

FIRST DIVISION

[G.R. No. 169005, January 28, 2013]

**WINSTON F. GARCIA, IN HIS CAPACITY AS PRESIDENT AND
GENERAL MANAGER OF THE GOVERNMENT SERVICE INSURANCE
SYSTEM (GSIS), PETITIONER, VS. COURT OF APPEALS AND
RUDY C. TESORO, RESPONDENTS.**

D E C I S I O N

VILLARAMA, JR., J.:

Assailed in this petition for certiorari under Rule 65 are the Decision^[1] dated April 11, 2005 and Resolution^[2] dated July 20, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 82751.

In February and March, 2003, the Government Service Insurance System (GSIS) published an Invitation to Pre-Qualify to Bid for the construction of the GSIS Iloilo City Field Office (GSIS-ICFO) Building with an approved budget cost of P57,000,000.00.^[3] Out of the eight (8) pre-qualified contractors, only four submitted their financial bids, as follows:

Embrol Builders, Inc.	- P 55,350,000.00
Nelson S. Lee Construction	- 55,125,000.00
F. Gurrea Construction	- 53,503,013.33
H .S. Oaminal Construction	-51,307,146.30 ^[4]

After evaluation of the bids and post-qualification, the Bids and Awards Committee (BAC) declared the bid of Embrol Builders, Inc. (Embrol) as the "Lowest Calculated and Responsive Bid." Subsequently, Atty. Henry S. Oaminal requested that they be awarded the contract for having submitted the lowest responsive bid, while Mr. Felix Gurrea sought clarification of certain bid instructions. Said bidders were informed of their disqualification only on December 10, 2003 through a letter signed by GSIS Iloilo Field Office Manager, Jesusa Ruby A. Teruel.^[5]

In its Resolution No. 01-03 dated November 4, 2003, the BAC recommended to the Senior Vice-President of the Field Operations Group (SVP-FOG), herein private respondent Rudy C. Tesoro, that the proposed construction of the GSIS-ICFO building be awarded to Embrol in the amount of P55,350,000.00 for a contract period of 300 days to be reckoned 15 days from the date of Notice to Proceed. The Notice of Award date November 4, 2003 was signed by Manager Teruel, Mateo E. Basa, Jr., VP Area II-FOG and private respondent. On even date, the Contract for the Construction of the GSIS-Iloilo Office Building was executed between GSIS

represented by private respondent and Embrocal represented by its President Edgardo M. Brocal. In his letter dated November 20, 2003, Mr. Brocal requested for the release of the 15% mobilization fee pursuant to the terms of the contract.^[6]

On November 24, 2003, petitioner Winston F. Garcia, then GSIS President and General Manager, issued Office Order No. 104-03 reassigning private respondent and designating him as SVP, Corporate Services Group (SVP-CSG), while SVP-CSG Enriqueta P. Disuanco was designated/reassigned to his post. The said reassignment order, received by the Office of the SVP-FOG on November 27, 2003, was to take effect immediately. Meanwhile, private respondent had approved and signed the Disbursement Voucher for the amount of P7,430,737.50 as mobilization fee (net of taxes) for the GSIS-ICFO building construction contract. Embrocal received the check payment and issued the corresponding receipt on November 27, 2003. However, due to several letters from losing bidders and the protest filed by F. Gurrea Construction, Inc. questioning the conduct of the bidding, SVP Disuanco investigated the matter.^[7]

The Report^[8] dated January 26, 2004 prepared by SVP-FOG Disuanco and Alfredo B. Pineda II of the OSVP-FOG concluded that the bidding process conducted by the BAC was flawed for non-compliance with the strict provisions of Republic Act (R.A.) No. 9184. It was further observed that the field office committed oversights such as the presence of unofficial BAC members with no defined roles and the BAC's failure to comply with the requirement of promptly replying to formal queries in consonance with the provisions of R.A. No. 6713.

On January 28, 2004, Ma. Josefina V. Rivas, Regional Cluster Director, Commission on Audit (COA), GSIS-Iloilo City, submitted her observations to Manager Teruel recommending that her office explain the reason for the release of mobilization fee to Embrocal despite non-issuance of the Notice to Proceed, contrary to Section IB 10.10 (1) of Presidential Decree (P.D.) No. 1594. Rivas also noted that per their ocular inspection conducted in late December 2003 at the project site, there was no discernible major construction activity nor deliveries of construction materials or presence of construction crew except for two security guards.^[9]

Under Memorandum dated February 6, 2004, private respondent along with other branch officers were directed by the GSIS Investigation Unit to submit within three days from receipt their Counter-Affidavit/Comment explaining why no administrative sanctions shall be imposed upon them, pursuant to Section 11 of the Uniform Rules on Administrative Cases in the Civil Service (URACCS). Private respondent and Mateo E. Basa, Jr. submitted their written explanation under oath on February 11, 2004.^[10]

On February 16, 2004, the GSIS Investigation Unit submitted its Preliminary Investigation Report^[11] recommending that administrative charges be filed against the following branch officials and employees: private respondent, Basa, Jr., Teruel, Branch Attorney Catherine Portia P. Corteza, Finance Division Chief Adelaida J. Jamantoc, Senior General Insurance Specialist Jose Ma. C. Capalla and Administrative Division Chief Lita L. Sonalan. It was further recommended that said officials be placed under preventive suspension.

On February 19, 2004, private respondent was formally charged with Gross Neglect

of Duty, Grave Misconduct and/or Violation of Reasonable Office Rules and Regulations as provided under Section 46, paragraphs (3), (4) and (12), Chapter 6, Book V, Title I, Subtitle A of Executive Order No. 292, otherwise known as the "Administrative Code of 1987," in relation to Section 52 (A), paragraphs (2) and (3), and (C), paragraph (3), Rule IV of the Civil Service Commission Resolution No. 99-1936 (URACCS). The Formal Charge^[12] reads as follows:

That on or about November 4, 2003, you approved the award for the construction of the Government Service Insurance System (GSIS) Iloilo City Field Office (ICFO) building to Embrocal Builders, Inc. and thereafter entered into contract with the same to the disadvantage of GSIS in view of the fact that Embrocal Builders, Inc. had submitted the **HIGHEST BID** during the bid opening conducted at the ICFO on September 19, 2003;

That on November 27, 2003 you approved the payment of 15% mobilization fee in the amount of Eight Million Three Hundred Two Thousand Five Hundred Pesos (P8,302,500) to Embrocal Builders, Inc. in excess and/or without authority and contrary to the Manual on Signing Authorities for Disbursement Voucher and Check approved by the Board of Trustees of GSIS per Resolution No. 383 dated December 18, 2002. The records show that effective November 24, 2003 you were already effectively reassigned to the Office of Corporate Services pursuant to Office Order No. 104-03 dated November 24, 2003;

That you approved the payment of 15% mobilization fee to Embrocal Builders, Inc. prior to the issuance of the Notice to Proceed in violation of Section 30.5 of the Implementing Rules and Regulations of E.O. 40; and

That you approved the payment of 15% mobilization fee to Embrocal Builders, Inc. contrary to Section 91 of P.D. 1445, otherwise known as the "Government Auditing Code of the Philippines." It was shown that on November 27, 2003 you were not anymore authorized to approve the payment in behalf of the GSIS Field Operations Group.

Private respondent was also placed on preventive suspension for a period of ninety (90) days. On February 23, 2004, he filed his Answer to the charges, in addition to the previous joint explanation dated February 9, 2004 submitted to the Investigation Unit.

However, on March 15, 2004 during the pendency of formal investigation being conducted by GSIS, private respondent filed before the CA a Petition With Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction (CA-G.R. SP No. 82751).^[13] In his petition, private respondent questioned the legality of the formal charge which he claimed was issued without going through the process of preliminary investigation. He thus prayed that petitioner be permanently enjoined from "enforcing and implementing the said illegally issued Formal Charge with the order of preventive suspension."^[14]

On May 24, 2004, petitioner rendered his Decision^[15] finding private respondent

administratively liable, as follows:

WHEREFORE, premises considered, respondent RUDY C. TESORO, is hereby found GUILTY OF GROSS NEGLIGENCE OF DUTY and GRAVE MISCONDUCT pursuant to Section 46 (b) (3) and (4), Chapter 7, Book V, Title I, Subtitle A of Executive Order No. 292, otherwise known as the "Administrative Code of 1987", in relation to Section 52 (A)(2) and (3), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (URACCS). Consequently, respondent is hereby meted the penalty of DISMISSAL FROM THE SERVICE, WITH PERPETUAL PROHIBITION FROM REEMPLOYMENT IN THE GOVERNMENT SERVICE, FORFEITURE OF RETIREMENT BENEFITS AND CANCELLATION OF HIS ELIGIBILITY.

SO ORDERED.^[16]

The Board of Trustees of GSIS through Resolution No. 118 dated May 26, 2004, approved the draft decision. Copy of the decision was served on private respondent on June 2, 2004 but was returned to the Investigation Unit because private respondent has not reported for work since June 1, 2004.^[17]

On June 28, 2004, private respondent filed a motion for reconsideration from the May 24, 2004 Decision but it was denied by petitioner in his Resolution dated July 5, 2004.^[18]

In his Comment^[19] filed before the CA on June 11, 2004, petitioner contended that private respondent's petition for certiorari is already moot and academic with the rendition of the decision in the administrative case. Petitioner also pointed out that private respondent is misleading the appellate court when the petition alleged that the Formal Charge was issued without any preliminary investigation. Further, petitioner asserted that private respondent violated the principle of exhaustion of administrative remedies when he filed the petition for certiorari despite the availability of appeal.

Private respondent filed his Reply to which a Rejoinder was filed by the petitioner.

Aside from the petition filed in the CA, private respondent also appealed the order of preventive suspension, as well as the Decision dated May 24, 2004 finding him administratively liable for gross neglect of duty and grave misconduct and imposing the penalty of dismissal from service, to the Civil Service Commission (CSC).^[20]

In the meantime, upon reevaluation the GSIS Physical Resources Bids and Awards Committee (PRBAC) declared a "failure of bidding" pursuant to Section 41 of the Implementing Rules and Regulations (IRR) of R.A. 9184. Embrocal and its counsel were advised that the contract for the construction of the GSIS-ICFO building entered into with private respondent was null and void *ab initio*, and hence Embrocal should return the amount of mobilization fees illegally released to it.^[21] The COA Regional Legal and Adjudication Office later issued a Notice of Disallowance of the amount released to Embrocal as mobilization fee. Private respondent along with

Teruel, Jamantoc, Corteza, Sonalan, Capalla and Basa, Jr. were all found liable for the disallowed sum. Private respondent has not filed any motion for reconsideration of the said disallowance.^[22]

On April 11, 2005, the CA rendered the assailed Decision^[23] which decreed, as follows:

WHEREFORE, in view of the foregoing premises, the assailed Formal Charge dated 19 February 2004 of the respondent, and his Decision dated 24 May 2004, are hereby *MODIFIED* as follows:

- (a) The administrative offense of gross neglect of duty and grave misconduct and/or violation of reasonable office rules and regulations for which petitioner is charged is hereby set aside, and modified to the lower administrative offense of SIMPLE NEGLIGENCE OF DUTY.
- (b) The Decision dated 24 May 2004 of herein respondent, the dispositive portion of which reads:
X X X X

is hereby set aside, and a new one is hereby rendered, finding the petitioner *RUDY C. TESORO, GUILTY OF SIMPLE NEGLIGENCE OF DUTY* pursuant to Section 52 (B) (I), Rule IV, Uniform Rules on Administrative Cases in the Civil Service (URACCS). Consequently, petitioner is hereby meted the penalty of suspension for six (6) months, without pay, the period for which he was preventively suspended and subsequently dismissed shall be credited for the purpose of serving the penalty hereof. Accordingly, the respondent is directed to immediately reinstate the petitioner to his last position, without loss of seniority rights and other privileges with payment of backwages inclusive of allowances and other benefits from the time of his suspension and dismissal exceeding six (6) months until actual reinstatement. The petitioner is further sternly warned that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.^[24]

Petitioner received a copy of the above decision on April 22, 2005, and thus had only until May 7, 2005 within which to file a motion for reconsideration. However, on May 4, 2005, it filed a Motion for Extension of Time to File the Motion for Reconsideration alleging that the lawyer in charge of the case, Atty. Violeta C.F. Quintos of the Investigation Unit, had to immediately take a flight to Cebu City on April 24, 2005 because her father died; she is expected to report for work on May 5, 2005. The motion for reconsideration was filed on May 16, 2005.^[25]

Private respondent filed a Motion for Entry of Judgment and Writ of Execution asserting that the decision had attained finality for failure of petitioner to file a timely motion for reconsideration or appeal.^[26] He likewise filed a Manifestation and