

THIRD DIVISION

[G.R. No. 180666, February 18, 2009]

**LEODEGARIO R. BASCOS, JR. AND ELEAZAR B. PAGALILAUAN,
PETITIONERS, VS. ENGR. JOSE B. TAGANAHAN AND OFFICE OF
THE OMBUDSMAN, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court challenging the Decision^[2] dated 28 May 2007 and the Resolution^[3] dated 20 November 2007 of the Court of Appeals in CA-G.R. SP No. 92533. In its assailed Decision, the appellate court affirmed the Decision^[4] dated 19 July 2005 and the Order^[5] dated 20 October 2005 of the Office of the Ombudsman in OMB-C-A-02-0379-I, which found herein petitioners Leodegario R. Bascos, Jr. (Bascos) and Eleazar B. Pagalilauan (Pagalilauan) guilty of Dishonesty and sentenced them to a penalty of dismissal from service. The assailed Resolution of the appellate court denied petitioners' Motion for Reconsideration of its earlier Decision.

The antecedents of the case, both factual and procedural, are set forth hereunder.

The Contract

On 14 December 2000, a **Contract for the Supply, Delivery, Installation and Commissioning of Two (2) Units [of] 2.5 Tons Per Hour Rice Mill[s]**^[6] (Contract) was entered into by the National Food Authority (NFA), represented by Acting Administrator Domingo F. Panganiban, as purchaser, and Alheed International Trading Corporation (Alheed Corp.), represented by its President Herculano C. Co, Jr., as supplier.

The Contract provided, *inter alia*, that Alheed Corp. shall supply, deliver, install, test and commission two units of rice mills, including their standard tools, equipment and accessories, for a total contract price of P19,398,042.00. Seventy percent (70%) of the contract price shall be paid by the NFA upon the delivery of the equipment at the site, and the submission of delivery receipt(s)/original invoice(s) and of proof of payment of customs duties; while the remaining thirty percent (30%) shall be paid after the installation, testing, and commissioning of the equipment, and the issuance by the appropriate NFA Field Office of a **Certificate of Final Acceptance** upon the submission by Alheed Corp. of other documents which may be required. The requirements which Alheed Corp. must submit, before the appropriate NFA Field Office shall issue the Certificate of Final Acceptance, were identified as follows:

(1) Certificate of Final Acceptance by the Technical Services Directorate [TSD]^[7];

(2) Certificate of conformity to specifications and inspection report by the TSD Project Engineer at the site;

(3) Guarantee Bond posted by Alheed International Trading Corporation in favor of NFA in the amount equivalent to 10% of the Contract Price with a statement under oath of full payment of premium which shall be effective within a period of one year from the final acceptance.

The payments to be made in favor of Alheed Corp. under the Contract shall be subject to NFA accounting and auditing rules and regulations.

The Contract further provided that the labor materials, equipment, delivery and installation at the site, as well as the testing and commissioning of the rice mills, shall be undertaken by Alheed Corp. at its own account. *Commissioning* was defined therein as the completion of the mechanical and electrical systems of the rice mills, tested with and without load at the appropriate NFA Field Office. The testing with load shall be conducted for at least eight hours of continuous operation for three times.

Special provisions were also incorporated in the Contract. One of these special provisions stated that no substitution of materials or equipment including brand and type shall be made, unless otherwise approved in writing by the purchaser NFA, as represented by its Administrator; and another which provided that the duly authorized representative of the purchaser may, at any time, inspect the basic unit as well as the progress of the installation. Said inspection shall not be interpreted as exempting or diminishing the liability of the supplier Alheed Corp. as provided in the Contract.

Per the Contract, the two rice mills were initially set to be supplied and installed by Alheed Corp. at the NFA grain centers that were being constructed at Talavera, Nueva Ecija and Sablayan, Mindoro Occidental. Instead, the rice mills were eventually installed at San Jose, Occidental Mindoro and Pili, Camarines Sur.

The Complaint-Affidavit

On 23 August 2002, private respondent Jose B. Taganahan (Taganahan), an Engineer-III (with Salary Grade 19) at the TSD of NFA, filed a Complaint-Affidavit^[8] with the Office of the Ombudsman in connection with the allegedly anomalous acceptance and full payment of the two rice mills installed in San Jose, Occidental Mindoro and in Pili, Camarines Sur. The Complaint-Affidavit charged (1) herein petitioner Bascos, in his capacity as Director of the TSD (Salary Grade 26); (2) herein petitioner Pagalilauan, in his capacity as the Chief Grains Operations Officer (Salary Grade 24) of the NFA; (3) Tomas R. Escarez (Escarez), in his capacity as Provincial Manager (Salary Grade 24) of the NFA for the province of Occidental Mindoro; and (4) Alheed Corp., represented by its President Heculano C. Co, Jr., with Falsification of Public Documents, violation of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), violation of Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), and Perjury.

Taganahan related that from 30 June to 6 July 2001, he went on an official travel to San Jose, Occidental Mindoro, to conduct the test-milling of a newly installed 2.5 ton per hour (TPH) rice mill. Upon returning to the NFA Central Office in Quezon City, Taganahan submitted on 9 July 2001 a Travel Accomplishment Report^[9] to petitioner Bascos, then TSD Director, through Acting Facility Installation and Maintenance Division (FIMD) Chief Ramoncito Padilla. Taganahan reported that: (1) the test milling could not be conducted on the newly installed rice mill because the electric generator at the site broke down during the initial hour of the rice mill operation; (2) some rice mill components which should be installed were either undelivered or uninstalled; and (3) some of the installed rice mill components did not conform with the plans and specifications. Based on the foregoing, Taganahan recommended that the payment of the thirty percent (30%) balance of the contract price of the rice mill be deferred until: (1) the supplier, Alheed Corp., shall have completed the delivery and installation of the rice mill components according to plans and specifications; (2) the rice mill commissioning, through proper milling tests, had been successfully completed; and (3) the training of NFA technicians and other contractual obligations of Alheed Corp. had been fully complied with.

The above violations notwithstanding, petitioners Bascos and Pagalilauan still submitted to the NFA Accounting Department on 3 July 2001 the voucher^[10] for the full payment of the rice mill installed at San Jose, Occidental Mindoro. Attached to the voucher were the following allegedly spurious documents, *viz*:

a) Certificate of Inspection^[11] dated June 11, 2001 xxx signed by [herein petitioner] Eleazar B. Pagalilauan (who misrepresented himself as a "TSD Engineer," despite the fact that he never passed any board examination for engineers), falsely certifying to the complete installation of [the] contracted [rice mill];

b) Accomplishment Report^[12] dated 13 June 2001 xxx prepared by [petitioner] Eleazar B. Pagalilauan (who misrepresented himself this time as "Project Manager," despite the fact that such was not his position or designation), and duly noted by [herein petitioner] Leodegario R. Bascos, Jr., falsely certifying to the alleged 100% delivery and installation of the contracted [rice mill];

c) Certificate of Conformity to Specifications^[13] dated June 14, 2001 x x x issued by [petitioner] Leodegario R. Bascos, Jr., falsely attesting to the 100% installation of the [rice mill], and to its conformity with all specifications; and

d) Letter^[14] of [Herculano C. Co, Jr.], dated June 05, 2002 xxx, addressed to then NFA Administrator Edgar S. Asuncion, falsely stating that Alheed Corp. had successfully installed and commissioned the Buivanngo [rice mill] at San Jose, Occidental Mindoro, and requesting payment of the 30% balance of the contract amount.

Attached to the voucher were a Certificate of Complete Installation, Commissioning and Final Acceptance,^[15] dated 20 July 2001, signed by Escarez as NFA Provincial Manager for Occidental Mindoro, falsely certifying the complete installation and commissioning of the rice mill at San Jose, Occidental Mindoro. On the basis of the

aforementioned documents, the check payment for the balance of the contract price of the rice mill was released in favor of Alheed Corp. on 17 August 2001.

Taganahan claimed that the Certification dated 20 July 2001 by Escarez was spurious considering that the latter even sent a radio message^[16] to petitioner Bascos on 4 July 2001, stating that the test milling of the rice mill in San Jose, Occidental Mindoro could not proceed as scheduled because the electric generator malfunctioned during the test run. Subsequently, Escarez sent a fax message, dated 26 September 2001 and addressed to Melvin Co of Alheed Corp., which scheduled the commissioning of the said rice mill on 27 to 29 September 2001, or more than two months after Escarez certified that the rice mill was already duly commissioned.

Taganahan asserted that the findings in his report were bolstered by an audit report **IAS No. H-006**^[17] dated 6 September 2001 of the Internal Audit Services (IAS) Department of the NFA, submitted to the NFA Administrator, which cited many violations of the Contract and the plans and specifications relative to the supply and installation of the rice mills in question. In reply to the audit report, petitioner Bascos sent a Memorandum^[18] dated 22 November 2001 to the NFA Administrator, untruthfully declaring therein that Alheed Corp. had complied with all the requirements of the Contract as certified by TSD Engineers. Taganahan averred, however, that contrary to petitioner Basco's claims, there was actually no issuance from any of the TSD Engineers certifying the completeness of the delivery, installation, and commissioning of the rice mill; hence, petitioner Pagalilauan "unprofessionally and anomalously" signed the needed certifications himself, as "TSD Engineer" in one and as "Project Manager" in another, attesting that the project had been completed.

Insofar as the other rice mill was concerned, Taganahan asseverated that petitioner Pagalilauan inveigled TSD Engineers Bobby Quilit and James Vincent Del Valle to sign the pre-dated certifications of the supposedly complete installation of the rice mill in Pili, Camarines Sur and its conformity to NFA specifications.

Subsequently, the IAS submitted another audit report, IAS No. A-002 dated 7 January 2002, which cited thirteen (13) other violations of the Contract and of the NFA specifications. Taganahan maintained that the second audit report, in effect, confirmed his allegations of the various violations of the Contract committed by Alheed Corp.

On account of the allegations in Taganahan's Complaint-Affidavit, an administrative case for Dishonesty and Grave Misconduct, docketed as OMB-C-A-02-0379-I,^[19] was filed against petitioners Bascos and Pagalilauan, as well as Escarez.

Decision of the Office of the Ombudsman

On 19 July 2005, the Office of the Ombudsman promulgated its Decision^[20] in OMB-C-A-02-0379-I, making the following findings:

Initially, this Office finds the absence of enough proof to hold the herein respondents responsible for the irregularities committed in the installation of the [rice mill] at Pili, Camarines Sur. Worth mentioning herein is the observation that the certificates relative to the completion of

the project thereat were issued by the officials at the NFA Office therein. Hence, the anomaly therein, if any, is the responsibility of the latter.

Viewed therewith, this Office in the instant decision shall deal solely on the alleged irregularities committed in the execution of the project for the installation of [the rice mill] at San Jose, Occidental Mindoro, and in the claimed anomalous full payment of the contract amount to Alheed Corporation.

Significantly, [herein petitioner] Bascos is being held liable herein for the issuance of the Certificate of Conformity to Specifications on June 14, 2001, attesting to the 100% delivery and installation of the [rice mill] as of June 5, 2001, while [herein petitioner] Pagalilauan for his Certificate of Inspection, dated June 11, 2001, certifying to the supply, delivery, installation and commissioning of the [rice mill], and its compliance with the contract specifications, as per the inspection conducted on June 9, 2001, and finally, Escarez for having signed the Certificate of Complete Installation, Commissioning and Final Acceptance, dated July 20, 2001, of Acting Plant Engineer Agosto Quijano in the "Noted" portion thereof.

Ruling on this case, records revealed that [petitioners] Bascos and Pagalilauan in their issuances committed falsification by causing it to appear in their individual certifications that the newly installed [rice mill] at the NFA San Jose Office in issue had been inspected and found in conformity with the NFA approved specifications, knowing fully (sic) well that the supplier, Alheed Corporation, violated certain provisions of the contract and/or committed deviations thereof without the approval of the NFA Administrator.^[21] (Emphasis ours.)

The Office of the Ombudsman noted more specifically the transgressions committed by petitioners Bascos and Pagalilauan:

The deficiencies/defects in the project were made known to [herein petitioner] Bascos prior to the release of the full payment to Alheed Corporation on August 17, 2001. Supporting the same was the observation that FIMD Officer-In-Charge Ramoncito Padilla in a letter, dated June 15, 2001, to [petitioner] Bascos submitted the [Travel/Project Accomplishment Report] of TSD Engineers Carlito Castro and Placido Asprec who supervised the electro-mechanical works and installation of the [rice mill]. Apparently, the undelivered items and some unauthorized deviations from the contract specifications of Alheed Corporation in violation of the contract had been formally reported to [petitioner Bascos]. However, the former instead of preventing further damage to the government still allowed the release of the payment to Alheed Corporation. x x x.

The letter of advise (sic), dated July 16, 2001, of [petitioner] Bascos to Alheed Corporation, informing the latter of the alleged installation of undersized wiring in the [rice mill] subject hereof, and Alheed Corporation's reply-letter thereto of July 17, 2001, explicitly revealed the absence of any correction made therein. Let it be noted that Alheed Corporation in the said letter merely took upon itself the responsibility to