



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**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,

G.R. No. 251940

Present:

PERLAS-BERNABE, *S.A.J.*, Chairperson,
LAZARO-JAVIER,
M. LOPEZ,
ROSARIO,
J. LOPEZ,* *JJ.*

- versus -

**PUBLIC ASSISTANCE AND
CORRUPTION PREVENTION
OFFICE and AGUSTIN SONZA,
JR.,**

Promulgated:

JUL 12 2021

Respondents.

X-----X

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 Appeals¹ 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:

* Designated additional member per Special Order No. 2822 dated 7 April 2021.

¹ Penned by Associate Justice Emily R. Aliño-Geluz and concurred in by Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap.

- a) Decision² dated September 27, 2018 affirming the liability of petitioners Noel T. Jaspe (Jaspe) and Ma. Negenia V. Araneta (Araneta) for grave misconduct; and
- b) Resolution³ 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 letter⁶ inside the technical envelope of TDMC informing that it was not bidding for the Asphalt Overlay of Sodusta Street and Asphalting of Arroyo Street because its estimated costs for these projects exceeded the approved budget of the contracts (ABC).⁷ The BAC also found a letter⁸ 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

² *Rollo*, pp. 34-51.

³ *Id.* at 61-62.

⁴ BAC Minutes of the Opening of Bids, *id.* at 171-173.

⁵ *Id.*

⁶ *Id.* at 169.

⁷ BAC Minutes of Opening of Bids, *id.* at 171-173.

⁸ *Id.* at 170.

⁹ BAC Minutes of Opening of Bids, *id.* at 171-173.

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 Asphaltting 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).

¹⁰ *Id.*

¹¹ *Id.* at 172-173.

¹² *Id.* at 179-180.

¹³ *Id.* at 72.

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/BAC 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 Decision¹⁶ dated April 4, 2014, the OMB-Visayas¹⁷ 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.

¹⁴ *Id.* at 37-39.

¹⁵ *Id.* at 63-70.

¹⁶ *Id.* at 81-92.

¹⁷ Approved on May 14, 2014 by Deputy Ombudsman for the Visayas Pelagio S. Apostol.

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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 Order¹⁹ dated February 3, 2015, the OMB-Visayas²⁰ 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 Decision²¹ dated September 27, 2018, the Court of Appeals affirmed. Petitioners' motion for reconsideration was denied under Resolution²² 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.

¹⁸ *Rollo*, pp. 94-107.

¹⁹ *Id.* at 160-166.

²⁰ Approved on March 17, 2015 by Deputy Ombudsman for the Visayas Paul Elmer M. Clemente.

²¹ *Rollo*, pp. 34-51.

²² *Id.* at 61-62.

In its Comment²³ dated February 3, 2021, the OMB-Visayas²⁴ 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 the bidding and served its formal notice only later. As for TDMC and FGCI, they submitted their respective letters of withdrawal during the bidding itself and not prior to the scheduled bidding. Since the BAC members sanctioned this irregularity, they were deemed to have conspired with the bidders to ensure that TDMC and FGCI get the contracts they appeared to have already partitioned early on. Since this resulted in the absence of competing bidders, the government was deprived of the benefits of a true competitive bidding.

²³ *Id.* at 231-242.

²⁴ Ombudsman-Office of Legal Affairs through Assistant Ombudsman Asryman T. Rafanan and Graft Investigation and Prosecution Officer Anna Marie B. Amayun.

²⁵ *Gimalay v. Court of Appeals*, G.R. Nos. 240123 & 240125, June 17, 2020.

²⁶ *Trans-Global Maritime Agency, Inc. v. Utanes*, G.R. No. 236498, September 16, 2020.

Section 26 of RA 9184 provides:

SEC. 26. Modification and Withdrawal of Bids. – A bidder may modify his bid, provided that this is done before the deadline for the receipt of bids. The modification shall be submitted in a sealed envelope duly identified as a modification of the original bid and stamped received by the BAC.

A bidder may, through a letter, withdraw his bid or express his intention not to participate in the bidding before the deadline for the receipt of bids. In such case, he shall no longer be allowed to submit another Bid for the same contract either directly or indirectly.

To begin with, the application here of Sec. 26 is patently erroneous, if not totally misplaced. For there is no modification or withdrawal of bids to speak of in this case. As borne by the Minutes of Opening of Bids and Abstracts of Bid as Read, AFG did not bid for any of the five projects, TDMC bid for three projects while FGCI bid for two. In their respective letters, they gave the reason why they were not bidding for the other projects they had identified.²⁷ TDMC and FGCI each explained that the estimated costs for the projects exceeded the ABC while AFG failed to complete the bidding documents in time. From these undisputed facts, it is plainly illogical to infer an act of illegality or immorality against AFG, TDMC, and FGCI.

At any rate, since there is no modification or withdrawal of bids to speak of here, Sec. 26 is not relevant to the resolution of this case, specifically in determining whether the BAC members committed grave misconduct in the performance of their duty. In other words, the adverse findings of the OMB-Visayas and the Court of Appeals against Jaspe, et al., derived as they were from a forced or misplaced application of Sec. 26, should be struck down.

Specifically, we reject the baseless, nay, illogical finding that since the BAC members supposedly deviated from Sec. 26, they were deemed to have colluded with the winning bidders to manipulate the bidding process in order to give undue advantage to the latter and consequently deprive the government of the benefit of the bidding process.

Nor can we accept the inference that since the BAC members purportedly ignored the interlocking directorship and close connection between TDMC and FGCI and their obvious scheme to partition the contracts, the BAC members were deemed once again to have colluded with the bidders to manipulate their bids, to the serious prejudice of the government. This is *non sequitur*. In any case, the so called interlocking directorship claimed by OMB-Visayas does not appear on any of the documents submitted by the two companies to the BAC pertinent to the bidding. For this purpose, only their respective Articles of Incorporation were required and submitted to

²⁷ *Rollo*, pp. 168-170.

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the BAC. Notably, there is no dispute that these documents in fact showed that TDMC and FGCI have different sets of directors and different corporate addresses. While perhaps there were other documents the OMB-Visayas gathered from other sources, the same for sure, could not have possibly found their way early on into the possession or knowledge of the BAC during the bidding itself. In any event, mere interlocking directorship or close connection between two corporations does not *per se* equate to fraud, machination, bad faith, or collusion.

On this score, *Desierto v. Ocampo*²⁸ pronounced that the complainant charging collusion must prove it by clear and convincing evidence, thus:

Collusion implies a secret understanding whereby one party plays into another's hands for fraudulent purposes. It may take place between and every contractor resulting in no competition, in which case, the government may declare a failure of bidding. Collusion may also ensue between contractors and the chairman and members of the PBAC to simulate or rig the bidding process, thus insuring the award to a favored bidder, to the prejudice of the government agency and public service. For such acts of the chairman and the members of the PBAC, they may be held administratively liable for conduct grossly prejudicial to the best interest of the government service. **Collusion by and among the members of the PBAC and/or contractors submitting their bids may be determined from their collective acts or omissions before, during and after the bidding process.** The complainants are burdened to prove such collusion by clear and convincing evidence because if so proved, the responsible officials may be dismissed from the government service or meted severe administrative sanctions for dishonesty and conduct prejudicial to the government service.²⁹ (Emphasis ours)

Further, *Desierto* ordained that mere declaration of a lone winning bidder does not necessarily mean there was collusion, absent a showing that the BAC members were closely associated with the bidders, thus:

We believe that in this case, the complainants failed to prove that there was collusion by and among the contractors and the chairman and members of the PBAC. The PBAC may have erred in waiving the defects in the bids of Carwin Construction and Ed-Mar's Construction on the belief that the defects were minor, but it does not follow that its members, including the respondent, conspired with the contractors to rig the bid process. Carwin Construction and Ed-Mar's Construction may have, likewise, submitted defective bid documents but, absent any other evidence, it cannot thereby be concluded that there was conspiracy to rig the bid process to insure that PRT Construction would emerge the lone and winning bidder. **The chairman and members of the PBAC may have, likewise, erred in the performance of their duties, but it does not necessarily mean that they did so in bad faith or with dishonesty.** (Emphasis supplied)

²⁸ 493 Phil 140 (2005).

²⁹ *Id.* at 160.

Moreover, there is no evidence on record that the three contractors and the chairman and members of the PBAC knew each other, or had close business or personal relationships before the bidding process took place. The chairman and the members of the PBAC and the contractors knew or should have known that if they conspired to rig the bid process to favor PRT Construction, they may be held liable for violation of Section 3(e) of Rep. Act No. 3019, and that the chairman and members of the PBAC may be meted the severest of administrative sanctions, that of dismissal from the government service for dishonesty and conduct prejudicial to the government service. x x x³⁰ (Emphases supplied)

Grave misconduct is defined as the “wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose.” It is not mere failure to comply with the law. Failure to comply must be deliberate and must be done in order to secure benefits for the offender or for some other person.³¹

For a charge of grave misconduct or any grave offense to prosper, therefore, the evidence against the respondent should be competent and must be derived from direct knowledge. Reliance on mere allegations, conjectures and suppositions, as in this case, warrants the dismissal of the charge.³² So must it be.

Notably, only petitioners Jaspe and Araneta actively sought the reversal of the finding of grave misconduct in connection with the discharge of their function as BAC members. Nonetheless, the dismissal of the charge against petitioners should benefit Apuang, another BAC member, even if he did not join Jaspe and Araneta here, nor appealed on his own.

In *Tropical Homes, Inc. v. Fortun*,³³ the Court held that the reversal of the judgment on appeal is binding only on the parties to the appealed case and does not affect or inure to the benefit of those who did not join or were not parties to the appeal **except** when there is a communality of interests where the rights and liabilities of the parties appealing are so interwoven and dependent on each other as to be inseparable, in which case a reversal as to one operates as a reversal to all. To be sure, there is communality of interests among Jaspe, et al. as their alleged liabilities arose out of their collegial decision in the same proceeding of which they serve as BAC members. Hence, the reversal of petitioners’ liability also operates as a reversal of Apuang’s liability although he did not appeal therefrom.

All told, the Court of Appeals erred in finding petitioners Jaspe, et al. liable for grave misconduct.

³⁰ *Id.* at 160-161

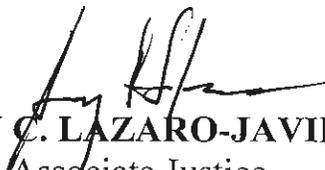
³¹ *Office of the Ombudsman v. De Guzman*, 819 Phil. 282, 304 (2017).

³² *Office of the Ombudsman v. Tanco*, G.R. No. 233596, September 14, 2020.

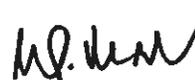
³³ See 251 Phil. 83, 93 (1989).

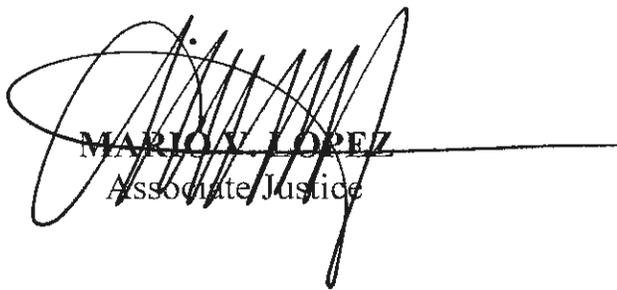
WHEREFORE, the petition is **GRANTED**. The Decision dated September 27, 2018 and the Resolution dated January 14, 2020 of the Court of Appeals in CA-G.R. CEB-SP No. 09323 are **REVERSED** and **SET ASIDE**. The charge against Noel T. Jaspe, Ma. Negenia V. Araneta and Sanny Apuang for Grave Misconduct in OMB-V-A-13-0170 is **DISMISSED**.

SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

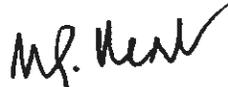

MARIO V. LOPEZ
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP V. LOPEZ
Associate Justice

ATTESTATION

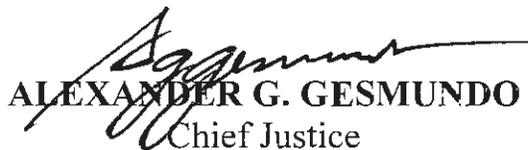
I attest that the conclusions in the above Decision has been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ESTELA M. PERLAS-BERNABE**

Senior Associate Justice
Chairperson – Second Division

CERTIFICATION

Pursuant to Section 13, Article VII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice

