

FIRST DIVISION

[G.R. No. 230322, February 19, 2020]

**JESSIE L. JOMADIAO AND WILMA F. PASTOR, PETITIONERS, VS.
MANUEL L. ARBOLEDA, RESPONDENT.**

DECISION

PERALTA, C.J.:

On appeal is the July 21, 2016 Decision^[1] and March 1, 2017 Resolution^[2] of the Court of Appeals in CA-G.R. SP No. 142029, which affirmed the November 14, 2014 Decision^[3] of the Office of the Ombudsman in OMB-LA-09-0513-I, finding Jessie L. Jomadiao (*Jomadiao*) and Wilma F. Pastor (*Pastor*) (collectively referred to as petitioners), guilty of grave misconduct for violation of certain provisions of Republic Act No. 9184^[4] (RA 9184), or otherwise known as the *Government Procurement Reform Act*.

Factual Antecedents

The Bureau of Soils and Water Management (*BSWM*) of the Department of Agriculture (*DA*) implemented a Small Water Impounding Project (*SWIP*) which fully funded constructions or rehabilitations of water structures within certain provinces. The Municipality of Looc in Romblon was one of the grantees of *SWIP*, and Nine Million Pesos (P9,000,000.00) were allotted for the rehabilitation of several of its canals and dams.

On September 24, 2007, the Bids and Awards Committee (*BAC*) of Looc Province - which comprised of Solomon Gregorio as Chairman, Renato Saludaga (*Saludaga*) as Vice-Chairman, and Rolando Gregorio, Virginia Morales, Pastor and Jomadiao as provisional members - and then Mayor Juliet Ngo-Fiel (*Fiel*), as head of the procuring entity, convened in a regular meeting, the minutes^[5] of which is hereby reproduced, to wit:

BIDS AND AWARDS COMMITTEE

MINUTES OF THE REGULAR MEETING OF THE 2007 BIDS AND AWARDS COMMITTEE OF LOOC PROVINCE OF ROMBLON HELD AT THE MUNICIPAL SESSION HALL ON SEPTEMBER 24, 2007.

PRESENT:

Mr. Solomon Gregorio	- MPDC- BAC Chairman
Engr. Renato Saludaga	- Municipal Engineer- Vice Chairman
Mr. Rolando Gregorio	- Municipal Assessor -Member
Mrs. Wilma Pastor	- Municipal Registrar - Member
Mrs. Virginia Morales	- Municipal Budget Officer-Member
	- Municipal Agriculturist- Member
	- Administrative Aide IV -Designated

Mrs. Jessie Jomadio - Administrative Aide IV - BAC
Jacinto Marcelo, II
Supply Officer
Catherine Madrid
Secretary

ABSENT:
NONE

Presided over by Mr. Solomon Gregorio the BAC Chairman, Bids and Awards Committee (BAC) convened at 1:30 p.m., purposely to deliberate the construction of Small Water Impounding Projects (SWIP) in six (6) barangays of Looc, Romblon (Brgy. Balatucan, Punta, Buenavista, Pili, Limon Norte, and Manhac). The Bureau of Soils & Water Management (BSWM) was the funding agency of these projects amounting to Nine Million Pesos (P9,000,000.00).

To fastrack the development of its implementation, we need to publish the invitation to apply for eligibility and to bid in a newspaper of national circulation as the funding is above Five (5) Million. However, the amount of Nine (9) Million was subdivided into seven (7) projects located in six (6) barangays, namely:

1. Balatucan	xxx	P2,169,285.59
Diversion Dam	xxx	1,350,863.52
Project	xxx	493,527.96
2. Torril	xxx	2,553,510.07
Irrigation Canal	xxx	793,358.06
Improvement	xxx	1,091,828.83
Project	xxx	<u>547,598.97</u>
3. Punta		
Irrigation		
Project		
4. Talaba		
Diversion Dam		
Project		
5. Pili Irrigation		
Canal		
Improvement		
Project		
6. Lumbia Falls		
Irrigation Canal		
Improvement		
Project		
7. [Limon Norte		
and] Check		
Dam Project		

TOTAL P9,000,000.00

With the above details/breakdown per project, it is justifiable to publish in local newspaper.

After the public bidding, it is necessary to facilitate on time the required documents particularly the Program of Works and the contract so as the

full amount of funding will be released to the LGU before the end of December 2007.

We need projects that would enhance, increase production of our farmers in countryside.

The body hereby agreed that these projects should undergo a public bidding, and recommend to the Head of the Procuring Entity, the Municipal Mayor.

Meeting adjourned at 2:30p.m.

(SGD.)
CATHERINE E. MADRID
BAC Secretary

Recommending Approval:

(SGD.) SOLOMON T. GREGORIO Chairman
(SGD.) ENGR. RENATO S. SALUDAGA Vice Chairman
(SGD.) ROLANDO C. GREGORIO, SR. Member
(SGD.) MA. WILMA F. PASTOR Member
(SGD.) VIRGINIA C. MORALES Member
(SGD.) JESSIE L. JOMADIAO Member

Approved:

(SGD.)
JULIET NGO FIEL Municipal Mayor

Thereafter, an Invitation to Apply for Eligibility and to Bid (*IAEB*) was published twice in *Romblon Sun*,^[6] a local newspaper, on September 25 to October 1, 2007, and on October 2 to 8, 2007. Another *IAEB* was posted on Looc's Municipal Bulletin Board^[7] from October 15, 2007 to November 20, 2007.

The opening of bids was conducted on November 12, 2007 and R.G. Florentino Construction and Trading (*R.G. Florentino*) was the lone bidder with the bid amount of Eight Million Nine Hundred Ninety-Nine Thousand Five Hundred Pesos (P8,999,500.00). The BAC accepted and recommended R.G. Florentino's bid after determining that it was compliant with the eligibility, technical and financial requirements.

On November 20, 2007, a Notice of Award^[8] was published in favor of R.G. Florentino, followed by the issuance of the SWIP contract^[9] on November 29, 2007, and a Notice to Proceed^[10] on December 4, 2007.

On September 2, 2008, a Certificate of Acceptance and Turn Over was issued by the Municipality of Looc in favor of R.G. Florentino, indicating therein that the SWIP was completed in accordance with the guidelines and specifications under the contract agreement.^[11]

On May 4, 2009, Regional Office No. IV of the Commission on Audit (COA) forwarded an Annual Audit^[12] Report on the Municipality of Looc for the Year Ended December 31, 2008 to Fiel. The COA observed that pertinent provisions of RA 9184

and its Implementing Rules and Regulations – A^[13] (IRR-A) were violated when the BAC awarded the SWIP to R.G. Florentino, to the detriment of Looc.

On August 26, 2009, Manuel Arboleda (Respondent) filed a Complaint^[14] before the Office of the Ombudsman against Fiel and the BAC members for the following irregularities:

- (a) *Non-submission of pre-procurement conference, making it appear that the Bids and Awards Committee (BAC) did not convene to determine the readiness of the procuring entity in terms of legal, technical, and financial requirements, **to ensure the availability of funds for the contract**, and to review all relevant documents in relation to their adherence to the law, considering that the amount involved is more than P5 Million. This is a clear violation of Section 20 of RA 9184, Section 20.1 of its IRR-A.*
- (b) *Violation of Sections 21.2.1 (a), 21.2.1(b), 21.2.1(c), 21.1.3, 21.1.5, 41, 13.1 of RA 9184 relative to the publication of the Invitation to Apply for Eligibility to Bid. Likewise, it is noteworthy that per the certification issued by the Local Newspaper, Romblon Sun, hereto appended as ANNEX "B", paragraph two (2) clearly says that: **"That the said publication was paid by Engineer Romeo Florentino of RG Florentino Construction"**.*
- (c) *The BAC appears to have shown negligence or bias in favor of the lone prospective bidder, R.G. Florentino and Trading, when it failed to determine that the said bidder was "ineligible", contrary to Sections 23.2, 23.6 and 23.11.2 of RA 9184 IRR-A, thus it was allowed to participate in the bidding.*
- (d) *The Bidding conducted on 12 November 2007 was prior to the receipt of funds on 13 and 27 December 2007.*
- (e) *The BAC was not able to rate the bid as "failed" due to the incompleteness and insufficiency of the bid security, contrary to Section 30.1 of RA 9184 IRR-A.*
- (f) *Excess advance payment of P126,525.00 was given to the contractor, contrary to Item 4.1 of the Contract Implementation Guidelines for the Procurement of Infrastructure Projects of RA 9184 IRR-A. The law only allows the payment of 15% advance payment.*

(Italicized items are direct quotations from the **REPORT**)^[15]

Arboleda prayed that the following be imposed upon the BAC members and Fiel: dismissal from service, cancellation of eligibility, forfeiture of their retirement benefits and perpetual disqualification for reemployment in the government service.

On November 14, 2014, the Office of the Ombudsman rendered a Decision^[16] charging the BAC members and Fiel with grave misconduct on findings that they conspired in awarding the SWIP project to R.G. Florentino, and imposed the penalty of dismissal as punished under Section 46, Rule 10 of the Revised Rule on Administrative Cases in the Civil Service (RRACCS). The Ombudsman disposed, thus:

WHEREFORE, respondents JULIET NGO-FIEL, Municipal Mayor, SOLOMON R. GREGORIO Municipal Planning and Development Coordinator (MPDC), RENATO S. SALUDAGA, Municipal Engineer, JESSIE L. JOMADIAO, Municipal Agricultural Officer, VIRGINIA C. MORALES, Budget Officer, WILMA F. PASTOR, Municipal Civil Registrar, and ROLANDO C. GREGORIO, Municipal Assessor, all of the Municipal Local Government of Looc, Province of Romblon, are hereby found **GUILTY** of *Grave Misconduct* and are meted with the penalty of DISMISSAL from the service with the cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office, as well as in government-owned and -controlled corporations, pursuant to the Revised Rule on Administrative Cases in the Civil Service.

In the event that the penalty of Dismissal can no longer be enforced, the penalty shall be converted into a FINE in an amount equivalent to respondents' respective salary for one (1) year, payable to the Office of the Ombudsman, and may be deductible from their respective retirement benefits, accrued leave credits, or any receivable from their respective office.

x x x x

SO ORDERED.

The Ombudsman found untoward bias towards R.G. Florentino when: (1) the BAC allowed Romeo Florentino of R.G. Florentino to pay for the publication of the IAEB in Romblon Sun; (2) the BAC declared R.G. Florentino's bid as "eligible" even if the bid security was not present at the opening of bids; and (3) the SWIP was not posted on the Philippine Government Electronic Procurement System (*PhilGeps*) website.

On April 28, 2015, herein petitioners, Jomadiao and Pastor filed a Motion for Reconsideration,^[17] by themselves, and submitted therein that they never underwent any training and were never informed of the procedures, duties, and responsibilities of the BAC. Their participation, as BAC members, only included attending the public bidding on November 12, 2007 and they alleged that they were no longer privy to any transaction that occurred thereafter. They also averred that the publication of the IAEB in the Romblon Sun was made without their knowledge nor consensus and that the non-posting of the SWIP project on the PhilGeps website was not their direct duty. The Order^[18] dated May 15, 2015 of the Office of the Ombudsman however upheld the November 14, 2014 Decision.

Aggrieved, petitioners elevated the case to the Court of Appeals (CA) through a petition for review under Rule 43.

On July 21, 2016, the CA rendered the assailed Decision affirming the findings of the Ombudsman, and disposed: