

FIRST DIVISION

[G.R. No. 156286, August 13, 2008]

**MARITA C. BERNALDO, PETITIONER, VS. THE OMBUDSMAN, AND
THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS
RESPONDENTS.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

At bar is a *Petition for Review on Certiorari* under Rule 45 of the Rules of Court, wherein petitioner Marita C. Bernaldo assailed the *Resolution*^[1] dated November, 13 2002 and the *Decision*^[2] dated January 31, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 65440 (the Assailed Rulings). The Assailed Rulings affirmed the *Orders*^[3] dated June 7, 2001 and December 26, 2000 of the Office of the Ombudsman in OMB-ADM-0-93-0411, finding petitioner Bernaldo administratively liable for “conduct grossly prejudicial to the best interest of the service” and ordering her suspension for a period of nine (9) months without pay and other benefits. The respondents, through the Office of the Solicitor General, filed their *Comment*^[4] dated June 23, 2003. The petitioner responded with a *Reply*^[5] dated November 6, 2003. The parties likewise filed their respective memoranda.

The facts are culled from the records of the case.

The Department of Public Works and Highways (DPWH) had nine (9) river dredging projects in Bataan sometime in 1987 to 1988 which were awarded to various private contractors. Among these projects were the Channel Improvement of Calaguiman River in Samal, Bataan (the Calaguiman River Project); the Channel Improvement of Almacen River I in Hermosa, Bataan (the Almacen River I Project); and the Channel Improvement of Almacen River II also in Hermosa, Bataan (the Almacen River II Project).

The Almacen River II Project was awarded to L.J. Cruz Construction and contract price of the said project was P3,316,231.12. The contractor was allowed to commence work on December 22, 1987 and it reported the project’s completion on August 31, 1988. At the time of the reported completion, petitioner Bernaldo was the DPWH Region III Project Engineer for the Almacen River II Project. In a *Statement of Work Accomplished*^[6] dated August 31, 1988 and a *Certificate of Final Inspection and Certificate of Final Acceptance*^[7] dated September 1, 1988, the Almacen River II Pproject was certified 100% completed “in accordance with the approved plans and specifications” by the contractor and the DPWH Region III Engineers, namely, Project Engineer - Marita C. Bernaldo, District Engineer - Adolfo M. Flores, Chief of Construction Division - Celestino R. Contreras, Chief of Maintenance Division - Angelito M. Twaño, Chief of Planning and Design Division - Augusto A. Mendoza; Chief of Materials and Quality Control Division - Andrelito P.

Tagorda, Assistant Regional Director - Regulo V. Fernandez, and Regional Director - Jose C. Pendoza (collectively, the "DPWH Region III Engineers"). The contractor was eventually paid 93.58% of the contract price.

However, a contrary finding as to the accomplishment of works involving all three projects was reported by a Survey and Investigation Team of the Bureau of Design of the DPWH (the "Survey Team") composed of Felix V. Camaya, Eustacio Y. Cano, and Rogelio A. Hernandez. In its *Field Survey and Investigation Report*^[8] dated November 7, 1988, the Survey Team indicated, among others, that the amount of work accomplished by L.J. Cruz Construction on the Almacen River II Project was only about 21% completed. Moreover, in a *Letter-Report*^[9] dated May 16, 1989 of DPWH Senior Civil Engineer Stephen L. David addressed to Special Investigator III Rafael R. Cabigao of the Office of the Ombudsman, the equipment utilized on the Almacen River II Project was evaluated and it was stated therein that the same could not possibly accomplish the reported full completion of the said project.

Based on the foregoing reports, the DPWH Region III Engineers connected with the Calaguiman River, Almacen River I, and Almacen River II Pprojects were all administratively charged for Falsification, Dishonesty, and Conduct Prejudicial to the Best Interest of the Service before the Administrative Adjudication Bureau (AAB) of the Office of the Ombudsman in OMB-ADM-0-93-0411. The *Memorandum*,^[10] dated May 5, 1993 of Graft Investigation Officer J. Celrin M. Macavinta of the OMB Task Force on Public Works and Highways, contained the following findings:

xxx xxx xxx

The report of the survey team and the analysis of Engr. David clearly established a clear case of overpayment. **The same also show conspiracy between and among the contractors and the concerned government engineers who allowed the overpayment by issuing certifications indicating that the contractors had completed the project 100%, when in truth and in fact, the contractors had barely accomplished anything.**

Without the said false certifications, no payments could have been made to the conniving contractors. These falsified documents are:

xxx xxx xxx

ALMACEN RIVER PROJECT II

1. The Statement of Work Accomplished showing that the project was 100% accomplished as of August 31, 1988. The document was certified to and verified correct by:

- a. **MARITA C. BERNALDO – Project Engineer;**
- b. CELESTINO R. CONTRERAS – Chief, Construction Division;
- c. LEONARDO J. CRUZ – Contractor;
- d. ADOLFO M. FLORES – District Engineer;

e. REGULO V. FERNANDEZ – Assistant Regional Director;

f. JOSE C. PENDOZA – Regional Director.

2. **The Certificate of Final Inspection.** This document certifies that the project was inspected on September 1, 1988 and was found 100% completed by:

a. **MARITA C. BERNALDO – Project Engineer;**

b. ANGELITO TWANO – Chief, Maintenance Division;

c. AUGUSTO MENDOZA – Chief, Planning & Design Division;

d. ANDRELITO TAGORDA – Chief, Materials & Quality Control Division;

e. CELESTINO CONTRERAS – Chief, Construction Division; and

f. ADOLFO FLORES – District Engineer.

xxx xxx xxx

Based on the survey, the difference between the actual work accomplished and the total collections of the contractors in the three projects are itemized and computed as follows:

xxx xxx xxx

ALMACEN RIVER PROJECT II

Amount actually Accomplished	Amount Collected by the Contractor	Difference (damage to the government)
21% or P 733,320	93.58% or P 3,267,755.61	72.58% or P 2,534,435.61

xxx xxx xxx

(emphasis supplied)

Adolfo M. Flores, Andrelito P. Tagorda, Angelito M. Twaño, Arsenio R. Flores, Augusto A. Mendoza, and Celestino R. Contreras filed their respective counter-affidavits while petitioner Bernaldo filed a motion to dismiss. Thereafter, the parties presented their evidence.

The complainant DPWH submitted the report of the Survey Team and the letter-report of Engr. David (Exhibits A and submarkings). Engr. Rogelio A. Hernandez^[11] and Engr. Eustacio Y. Cano^[12] of the survey team testified for the complainant. On the other hand, the respondent DPWH Region III Engineers presented the *Counter-Affidavits*^[13] of Angelito M. Twaño, Andrelito P. Tagorda, Augusto A. Mendoza, and Adolfo M. Flores (Exhibits 1 to 5 and submarkings); a *Letter-Receipt*^[14] dated

November 9, 1989 of Aurora G. Banaag (Exhibit 6); a *Status Report*^[15] dated August 15, 1988 for the Almacen River II Project (Exhibit 7); an *Affidavit*^[16] dated December 20, 1987 of Leonardo R. Cruz, Sr. (Exhibit 8); a *Status Report*^[17] dated August 15, 1988 for the Calaguiman River Project (Exhibit 9); and the *1988 Tropical Cyclone Summary*^[18] (Exhibit 10). Angelito M. Twaño, Andrelito P. Tagorda, Augusto A. Mendoza, and Adolfo M. Flores testified for the respondents.

The case was submitted for decision after the reception of evidence of the parties. The AAB recommended the dismissal of the complaint against the DPWH Region III Engineers, including petitioner Bernaldo, for insufficiency of evidence. However, in an *Order* dated December 26, 2000, Ombudsman Aniano A. Desierto disapproved the recommendation of the AAB and, instead, found the DPWH Region III Engineers administratively liable for "conduct grossly prejudicial to the best interest of the service."

The Ombudsman rejected the defenses of the respondents that: (a) the strong magnitude of waves caused the continuous sedimentation of the Calaguiman River, Almacen River I and Almacen River II dredging sites during the months after following between the projects' completion and prior to the Survey Team's inspection; and (b) its completion and that the letter-report of Engr. David merely speculated that there were two (2) cranes used on these projects. In the said Order, The It Ombudsman was also pointed out that there were no serious efforts done to determine the extent of work of the contractors as revealed by the testimonies of Twaño, Tagorda, and Mendoza that since the dredging sites were only visually inspected by respondent engineers; that there were no surveying instruments used to measure the exact quantity of spoils excavated from the rivers; and that the actual volume of dredged materials were based on "wild guess". tThe Ombudsman collectively blamed the respondents engineers for not ascertaining "by simple arithmetical computation the maximum volume of work that can be accomplished within a given period of time and given the number of dredging equipments used" by which they could have to discovered that the contractors bloated the volume of excavated materials. Thus, the respondent DPWH Region III Engineers, including petitioner Bernaldo, were ordered suspended for a period of nine (9) months without pay and other benefits.

In an *Order* dated June 7, 2001, the Ombudsman denied the separate motions for reconsideration of the respondents, stressing their responsibility and the participation of petitioner Bernaldo in the purported bloating of the completion of the projects. To quote from the said Order:

xxx xxx xxx

Substantial evidence exists in the premises to hold respondents ARSENIO FLORES, CELESTINO CONTRERAS, ENGELITO (sic) TWAÑO, ANDRELITO TAGORDA, and MARITA BERNALDO administratively liable for conduct prejudicial to the best interest of the service.

Substantial evidence is only "that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion" (Section 5, Rule 133, 1997 Revised Rules of Court xxx xxx xxx).

Per evaluation and computation of the capability of the equipments used made by DPWH Senior Civil Engr. Stephen David, it was impossible for the contractors to have accomplished the volume of works reported to have been accomplished. Far from being speculative, Engr. David's reports is borne out not only by the Programs of Works (which reflect that two (2) hydraulic cranes were used for the dredging of Almacen River while one (1) dredger and one (1) hydraulic crane were used for the dredging of Calaguiman River) but also by the testimony of respondent Adolfo Flores during the formal hearing held on 16 March 1995 that a total of four (4) cranes were used for the Almacen River Projects I & II while one (1) dredger and one (1) hydraulic crane were used for the Calaguiman River Project (TSN of the 16 March 1995, pp. 61 and 67).

The findings of Engr. David may still be given weight notwithstanding the fact that he was not presented as a witness. In administrative proceedings, technical rules of procedure and evidence are not strictly applied (*Concerned Officials of the MWSS v. Vasquez*, 240 SCRA 502).

xxx xxx xxx

The participation of respondent Bernaldo in the bloating of accomplishment reports for Almacen River Project II and the resultant overpayment to its contractor cannot be overemphasized. She was a signatory to the SWA and the Certificate of Final Inspection. As correctly argued by her co-respondents (although their argument does not excuse their own conduct), respondent Bernaldo had the primary and direct responsibility for the implementation of Almacen River Project II as its Resident/Project Engineer.

xxx xxx xxx

The DPWH Region III Engineers individually elevated for review before the CA the findings of the Office of the Ombudsman. The appeal of Arsenio R. Flores was docketed as CA-G.R. SP No. 65606; the joint appeal of Angelito M. Twaño and Andrelito P. Tagorda was docketed as CA-G.R. SP No. 65544; and the appeal of petitioner Bernaldo was docketed as CA-G.R. SP No. 65440. In a *Decision* dated July 5, 2002 of the CA in the case of involving Arsenio R. Flores, the petition was granted and the assailed orders of the Office of the Ombudsman were annulled and set aside. The same conclusion was reached by the CA in the case of Angelito M. Twaño and Andrelito P. Tagorda in a *Decision* dated August 23, 2002. Both decisions of the CA pointed out that the reports of the Survey Team and Engr. David are were insufficient to hold the engineers administratively liable. However, this ruling of the CA was not heldruled differently in the case of petitioner Bernaldo. In its *Decision* dated January 31, 2002 and *Resolution* dated November 13, 2002 in CA-G.R. SP No. 65440, the CA held that the factual findings of the Office of the Ombudsman were supported by substantial evidence to hold petitioner Bernaldo administratively liable. Hence, the instant petition for *certiorari*.

In the petition, Bernaldo claims that the letter-report of Engr. David is hearsay and self-serving since the complainant DPWH failed to present Engr. David to testify on his purported evaluation on the Almacen River II Pproject. She further argues,