

FIRST DIVISION

[G.R. NO. 152188, August 08, 2005]

**FLORENTINO R. * BRUCAL AND CESAR A. CRUZ, PETITIONERS,
VS. HON. ANIANO A. DESIERTO, OMBUDSMAN, HON. SIMEON A.
DATUMANONG, SECRETARY OF THE DEPARTMENT OF PUBLIC
WORKS AND HIGHWAYS, AND THE COURT OF APPEALS,
RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

This Petition for Review on Certiorari with a prayer for the issuance of a Temporary Restraining Order and Writ of Preliminary Injunction seeks the reversal of the Court of Appeals' Decision,^[1] dated June 22, 2001, and its Resolution,^[2] dated November 20, 2001, in CA-G.R. SP No. 53512. The Court of Appeals affirmed the Ombudsman's Resolution^[3] in OMB-ADM-0-93-0173, dated August 4, 1998, dismissing herein petitioners Florentino R. Brucal and Cesar A. Cruz for dishonesty and gross neglect of duty with respect to the irregularities which allegedly attended the construction of the *barangay* high school building in Inaclagan, Gumaca, Quezon.^[4]

The facts are as follows:

Petitioners Florentino R. Brucal and Cesar A. Cruz were members of the Second Engineering District Prequalification, Bids and Awards Committee (PBAC) of the Department of Public Works and Highways (DPWH).^[5] Brucal was the project engineer while Cruz was the chief of the construction section of the Inaclagan *Barangay* High School Project.

Petitioners were among the respondents in the Administrative Complaint,^[6] docketed as OMB-ADM-0-93-0173, filed on November 18, 1992, by the OMB Task Force on Public Works and Highways following an investigation on the complaint of the spouses Narciso and Heidi Pita of Manex Construction and Supplies. They were charged with Dishonesty, Falsification of Official Documents, Grave Misconduct, Violation of Office Rules and Regulations, and Conduct Prejudicial to the Best Interest of the Service^[7] for irregularities in connection with the bidding, award, and implementation of contracts in the province of Quezon.^[8]

In its investigation, the OMB Task Force found that on February 5, 1990, a construction project worth P281,475.30 for a three-classroom building at the Inaclagan *Barangay* High School, Gumaca, Quezon, was awarded by the PBAC to contractor RAM Builders.^[9] However, during its construction, RAM Builders allegedly committed substantial deviations from the approved plans and specifications of the

DPWH.^[10] An oversight committee^[11] reported that RAM Builders used commercial, substandard-size steel bars instead of standard-size steel bars.^[12]

RAM Builders was permitted to resume construction, but it was required to make additional reinforcements to attain the strength required for the foundation. Instead of having four pieces of steel bars for every column post using standard size, six pieces of steel bars were required. Pouring of mix concrete in the existing foundation and the replacement of the poor lumber used were also required.^[13]

In its claim for payment, RAM Builders requested inspection and verification of the project. A Statement of Work Accomplished,^[14] dated April 4, 1990, was prepared containing the following certifications: (1) As contractor, RAM Builders certified that the amount stated were correct and the materials used in the project were paid; (2) As chief of the construction section, petitioner **Cruz** certified that all work items have been accomplished in accordance with the approved plans, specification and program of work; (3) As chief of the research and standard section, Engr. Gerardo A. Razo certified that the materials used in the project have been tested and have passed all requirements.^[15] Likewise, petitioner **Brucal** signed (1) the request for inspection and verification; (2) the certification dated April 4, 1990, to the effect that he had witnessed the payment of salaries and suppliers in connection with the Inaclagan project, that no claim for unpaid materials had been filed by local suppliers against RAM Builders, and that they had been paid; and (3) the certificate of clearance for equipment rental and other obligations which allowed RAM Builders to claim payment.^[16] **Brucal** also submitted and signed the Statement of Time Elapsed of Work Accomplished.^[17]

However, the OMB Task Force concluded after its investigation that,

... **[T]**here were **major defects** in the construction of the school building as a direct result of the contractor's **improper methods and its use of substandard materials** (reinforcement steel bars and lumber). All these, if left unchecked, would have resulted in the construction of a school building which was far **weaker in strength** than that envisioned by the planners. Considering the degree of deviation from the approved plans and specifications, it could rightfully be concluded that the same had been **deliberate**. It must be added that there could be no truth to the claim that the contractor's employee had not afforded proper attention to the materials delivered for the project because RAM Builders is also a dealer/supplier of construction materials. From available records, RAM Builders has been a regular supplier of construction materials for projects implemented by the DPWH district office in Lucena City. In all probability, the undersize reinforcement steel bars and poor-quality lumber that were used in the Inaclagan school building project had been supplied by RAM builders itself; such that even before the delivery of said articles to the job site, the contractor (which was at the same time the supplier) already knew that they were not in accordance with the approved plans and specifications. Moreover, it must be presumed that the contractor's employees including its project engineer are knowledgeable about construction materials and methods used in the implementation of public works projects. This being the case, there could not have been an honest mistake in regard to the improper

methods utilized and the substandard quality of the basic materials used. Under the circumstances, the contractor should have been compelled to undo what he had unlawfully done by ordering the demolition of what had been constructed so far to ensure strict compliance with the approved plans and specification.^[18] [Emphasis supplied.]

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In a Resolution, dated August 4, 1998, the Administrative Adjudication Bureau of the OMB through Graft Investigation Officer II (GIO) Joselito P. Fangon found the petitioners administratively liable for dishonesty and gross neglect of duty. He recommended the dismissal of the petitioners with forfeiture of leave credits and retirement benefits and disqualification for reemployment in the government service, to wit:

II

As to the charge of Falsification and/or Dishonesty, respondents were denounced for making it appear that the construction of the three (3) classroom buildings at the Inaclagan Barangay High School was in accordance with the plans and specifications, when in truth there were substantial deviations in terms of materials, quality of work and construction methods.

The improper construction and use of substandard materials [were] established by the end user particularly the Principal of Inaclagan High School, Mrs. AUREA D. QUISTO, after having made inquiries as to the materials delivered and the method of construction (p.0375, records). Moreover, it appears that the fact of improper construction and use of substandard materials by the contractor was affirmed by the DPWH Regional Director ALFREDO P. TORRES, as evidenced by his letter dated 26 September 1990 (p. 0318, records) addressed to the DPWH District Engineer, Quezon 2nd Engineering District.

Thus, on the basis of the foregoing, **it is apparent that substantial evidence exist to hold the following respondents administratively liable for Dishonesty, viz:**

- a. CESAR A. CRUZ, Chief, Construction Section who by reason of his duties was bound to ensure that the contractor complied with the proper method of construction, as evidenced by the fact that he signed the statement of work accomplished. Thus, **his act of signing the same, despite the fact that the proper methods of construction [were] not complied with, amounts to dishonesty.**
- b. FLORENTINO R. BRUCAL, Engineer III, who was duty bound to ensure that the contractor complies with the approved plans and specifications. Hence, **his act of signing the statement of time elapsed and statement of work accomplished constitutes**

fraud and dishonesty vis-à-vis the contractor's obligation relative to the plans and specifications.

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III

Respondents have been charged with complicity in the irregular construction of three (3) classroom buildings at Inaclagan Barangay High School. It was alleged that the contractor used substandard materials and employed improper construction methods in the construction of the Barangay High School Building in Inaclagan Gumaca, Quezon.

It appears that with regard to the project in question, respondent PANGANIBAN, as District Engineer; respondent MERCADO, as Chief of the Planning and Design Section; respondent CRUZ, as Chief of the DPWH Construction Section; and respondent BRUCAL, as Project Engineer, [have] established that undersized reinforcement steel bars and poor quality lumber were used by the contractor in the Inaclagan School Building. Thus, it is apparent that respondents PANGANIBAN, **CRUZ, and BRUCAL [cannot] escape administrative liability for Gross Neglect of Duty for their serious lapses and gross negligence relative to their official responsibility in the matter of adherence to the approved plans and specifications and accepted engineering methods.**

It is important to consider herein that the claim of respondents CRUZ and BRUCAL that corrective measures were undertaken vis-à-vis the Inaclagan project does not serve to rebut their clear administrative liability. Verily, their culpability in connection with the Inaclagan project had already arisen before the so-called corrective measures were undertaken.

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WHEREFORE, PREMISES CONSIDERED, this Office finds:

1. Respondents CESAR A. CRUZ, ALFONSO A. CUSTODIO, JR., EDUARDO V. MALLARI, JOSE E. ALMERO and ROLANDO C. ABRIGO, Guilty of Dishonesty;
2. **Respondents CESAR A. CRUZ and FLORENTINO P. BRUCAL, Guilty of Dishonesty;**
3. **Respondents CESAR A. CRUZ and FLORENTINO BRUCAL, Guilty of Gross Neglect of Duty;**
4. Respondents CESAR A. CRUZ, ALFONSO A. CUSTODIO, JR., JOSE E. ALMERO, EDUARDO V. MALLARI and ROLANDO ABRIGO, Guilty of Gross Neglect of Duty; and,

5. Respondents CESAR A. CRUZ, ROLANDO C. ABRIGO, JOSE E. ALMERO and MA. LUISA BRUSILLA, Guilty of Grave Misconduct;

for which the penalty of Dismissal from the Service with Cancellation of Eligibility, Forfeiture of Leave Credits and Retirement Benefits and Disqualification for Reemployment in the Government Service is hereby recommended pursuant to Rule III, Section 10 of Administrative Order No. 07, in relation to Section 25 of Republic Act No. 6770.

It is further recommended that the complaint against ROMEO V. ALGENIO, FE Z. NACORDA, MANUEL BAYANI R. BUKAS, ERNANI C. TAN and UMITA A. LORCA be Dismissed.

SO RESOLVED.^[19] [Emphasis supplied.]

The Resolution was approved by the Ombudsman on November 11, 1998. Separate motions for reconsideration^[20] were filed by petitioners. However, they were denied in the Order^[21] dated March 2, 1999, upon recommendation of GIO Fangon.

On appeal, the Court of Appeals affirmed with modification the Resolution of the Ombudsman, to wit:

IN THE LIGHT OF ALL THE FOREGOING, the herein assailed **Resolution**, dated August 4, 1998, of the Respondent Ombudsman is hereby **AFFIRMED** with respect to the following disposition of the Respondent Ombudsman, respecting the irregularities which attended the construction of the Barangay High School Building in Inaclagan, Gumaca, Quezon, finding:

2. Respondents CESAR A. CRUZ and Florentino Brucal, Guilty of Dishonesty; and

3. Respondents CESAR A. CRUZ and Florentino Brucal, Guilty of Gross Neglect of Duty;

. . .

For which the Penalty of Dismissal from the Service with Cancellation of Eligibility, Forfeiture of Leave Credits and Retirement Benefits and Disqualification for Reemployment in the Government Service is hereby recommended pursuant to Rule III, Section 10 of Administrative Order No. 07, in relation to Section 25 of Republic Act No. 6770.

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but **MODIFIED** in that:

1. The charges of DISHONESTY and GROSS NEGLIGENCE OF DUTY against Petitioners CESAR A. CRUZ, EDUARDO V. MALLARI, JOSE E. ALMERO and ROLANDO ABRIGO, appertaining to the alleged irregularities committed by the Prequalification, Bids and Awards