



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MEHOL K. SADAIN,
Petitioner,

G.R. Nos. 253688

Present:

- versus -

CAGUIOA, J., *Chairperson,*
 INTING,
 DIMAAMPAO,
 KHO, JR.,* and
 SINGH, JJ.

OFFICE OF THE
OMBUDSMAN,

Respondent.

Promulgated:

February 8, 2023

X-----~~Ms-1068-11~~-----X

DECISION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court¹ assailing the Decision² dated February 5, 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 151184. The CA denied the petition for review filed by Mehol K. Sadain (petitioner) against the Office of the Ombudsman (Ombudsman). In the Decision³ dated August 9, 2016 in OMB-C-A-15-0199, the Ombudsman found petitioner guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service for having given unwarranted benefits to a non-governmental organization (NGO) by awarding a government contract and releasing 90% of the funds thereof in advance without the conduct of a public bidding.

* Designated as additional Member per Raffle dated September 6, 2022.

¹ *Rollo*, pp. 9-31.

² Id. at 71-77. Penned by Associate Justice Germano Francisco D. Legaspi and concurred in by Associate Justices Franchito N. Diamante and Tita Marilyn B. Payoyo-Villordon.

³ Id. at 32-51. Penned by Graft Investigation & Prosecution Officer III Renato A. Peralta, Jr., and approved by Ombudsman Conchita Carpio Morales on November 21, 2016.

Likewise assailed is the CA Resolution⁴ dated September 23, 2020 denying petitioner's motion for reconsideration.

The Antecedents

The case stemmed from the utilization of the Priority Development Assistance Fund (PDAF) allocated to the office of then Senator Gregorio B. Honasan II (Sen. Honasan) channeled through the National Commission on Muslim Filipinos (NCMF) as the implementing agency.

Records show that on April 23, 2012, the Department of Budget and Management (DBM) issued Special Allotment Release Order (SARO) No. BMB-G-12-T000000851⁵ covering the amount of ₱30 Million chargeable against the PDAF of Sen. Honasan in favor of the NCMF for the financing of livelihood projects for the benefit of Muslim Filipinos in various Muslim communities in the National Capital Region and Zambales.⁶

On June 6, 2012, the NCMF received a Letter⁷ dated June 5, 2012 from Sen. Honasan. He requested that Focus on Development Goals Foundation, Inc. (Focus) be designated as the partner NGO in the implementation of the livelihood projects indicated in SARO No. BMB-G-12-T000000851. Thereafter, petitioner, *then Secretary of the NCMF*, Giovanni Manuel C. Gaerlan, *President of Focus*, and the Office of Sen. Honasan, *represented by Michael L. Benjamin* (Benjamin), executed an undated Memorandum of Agreement (MOA) in relation thereto.⁸ Pursuant to the MOA, the NCMF released ₱29.1 Million out of the ₱30 Million PDAF allotment to Focus.⁹

⁴ Id. at 78-79.

⁵ Id. at 86.

⁶ Id. at 33-34.

⁷ Id. at 125.

⁸ Id. at 127-131.

⁹ Id. at 129.

ARTICLE III
FUNDS

x x x x

3.1.3. Pursuant to sub par. 2.1.1, par 2.1 of the Article II, and sub par. 3.1.2, par. 3.1 of Art. III, the National Commission on Muslim Filipinos [(NCMF)] shall release the funds in the following manner:

- i. Ninety percent (90%) of the fund shall be released to [Focus] within a reasonable time after receipt of the [NCMF] of a written authorization [from] the [Office of Senator Gregorio B. Honasan (OSGBH)];

The Commission on Audit (COA) audited the transaction and noted that Focus was handpicked by Sen. Honasan. It concluded that the NCMF's selection of Focus as its partner NGO was in violation of Item 4.5.2 of COA Circular No. 2007-001¹⁰ dated October 25, 2007; thus:

4.5. Procedure for the Availment, Release and Utilization of Funds

x x x x

- 4.5.2 For each project proposal, the [Government Organizations] shall accredit the NGO/PO project partners through the Bids and Awards Committee (BAC), or a committee created for the purpose, which shall formulate the selection criteria. The Committee shall perform the selection process, including the screening of the qualification documents, ocular inspection of the NGOs/POs business site, and evaluation of the technical and financial capability of the NGO/PO.

The COA likewise noted that the NCMF did not conduct any competitive public bidding for the project in violation of Item 4.1 of Government Procurement Policy Board (GPPB) Resolution No. 12-2007;¹¹ thus:

4. GENERAL GUIDELINES

- 4.1 When an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs, the procuring entity may select an NGO through competitive public bidding or negotiated procurement under Section 53 (j) of the IRR-A.

On March 31, 2015, the Field Investigation Office of the Office of

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- ii. Three percent (3%) of the fund shall be withheld by the [NCMF] to cover the [NCMF]'s monitoring and administrative expenses (management fee) in the performance of its tasks in the project implementation[; and]
 - iii. The remaining seven percent (7%) shall only be released to [Focus] upon submission of the Terminal Report and Liquidation Report duly audited, and approved and accepted by the [NCMF] and the [OSGBH].

¹⁰ With the subject, "Revised Guidelines in the Granting, Utilization, Accounting and Auditing of the Funds Released to Non-Governmental Organizations/People's Organizations (NGOs/POs)," dated on October 25, 2007.

¹¹ Entitled, "Amendment of Section 53 of the Implementing Rules and Regulations Part A of Republic Act 9184 and Prescribing Guidelines on Participation of Non-Governmental Organizations in Public Procurement," dated June 29, 2007.

the Ombudsman (FIO) filed a complaint against petitioner, Benjamin and other NCMF officials, namely: Fedelina D. Aldanese, Galay M. Makalinggan (Makalinggan), Sania P. Busran (Busran), Aurora O. Aragon-Mabang (Aragon-Mabang), and Olga S. Galido (Galido), for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service in connection with the utilization of Sen. Honasan's PDAF allotment for the year 2012.¹² The FIO alleged that petitioner and his co-respondents violated COA Circular No. 2007-001, other pertinent COA rules and regulations, and GPPB Resolution No. 12-2007 when they gave unwarranted benefits to Focus by awarding the contract and releasing 90% of the funds in advance without the conduct of a public bidding. The FIO likewise noted that the General Appropriations Act (GAA) of 2012¹³ did not specifically appropriate or earmark the subject funds for Focus.¹⁴

In his counter-affidavit dated November 24, 2015, petitioner asserted that the NCMF gave weight to, but did not rely solely on, the endorsement of lawmakers in awarding government contracts. He stated that the NCMF, in fact, disqualified some implementing NGOs that were endorsed by certain lawmakers. He maintained that in the exercise of due diligence, the NCMF conducted its own evaluation and accreditation of NGOs. By reason thereof, he and his co-respondents therein assumed that there was no need to bid out the NGO selection for PDAF projects. He insisted that the PDAF project in the case was awarded to a legitimate and qualified implementing NGO with authority¹⁵ from the Commission *En Banc* of the NCMF.¹⁶

The Ruling of the Ombudsman

In the Decision¹⁷ dated August 9, 2016, the Ombudsman found petitioner and his co-respondents therein guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and meted out against them the penalty of dismissal from the service, *viz.*:

WHEREFORE, respondents Mehol K. Sadain, Michael L. Benjamin, Fedelina D. Aldanese, Sania P. Busran, Galay M.

¹² *Rollo*, pp. 32-33.

¹³ Republic Act No. (RA) 10155, approved on December 15, 2011.

¹⁴ *Rollo*, p. 36.

¹⁵ See NCMF Resolution No. 18, Series of 2012, *id.* at 122-123.

¹⁶ *Id.* at 38-39.

¹⁷ *Id.* at 32-51.

Makalinggan, Aurora O. Aragon-Mabang and Olga S. Galido are found guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and are meted the penalty of Dismissal from the service together with its accessory penalties. In the event that the penalty of Dismissal can no longer be enforced due to respondents' separation from the service, the same shall be converted into Fine in the amount equivalent to his salary for one (1) year, payable to the Office of the Ombudsman, and may be deductible from the retirement benefits, accrued leave credits or any receivables by respondents from their office. It shall be understood that the accessory penalties attached to the principal penalty of Dismissal shall continue to be imposed.

SO ORDERED.¹⁸ (Emphases omitted.)

The Ombudsman found that petitioner and his co-respondents in the Ombudsman case had intentionally favored Focus for the PDAF project in the case as the NCMF accepted *in toto* Sen. Honasan's endorsement of the NGO with unusual accommodation and haste.¹⁹ The Ombudsman further noted that the undated Disbursement Voucher (DV) and the check dated May 30, 2012 were prepared prior to June 4, 2012, the day Focus was informed that it was qualified to undertake the project.²⁰

More, the Ombudsman rejected the argument of petitioner and his co-respondents in the Ombudsman case that Focus underwent a rigorous accreditation process, considering that the NCMF did not choose or select Focus from a group of NGOs. Anent the COA's withdrawal of its Notice of Disallowance, the Ombudsman ruled that this did not exonerate petitioner and his co-respondents in the Ombudsman case from the charges against them.²¹

In conclusion, the Ombudsman held that petitioner and his co-respondents in the Ombudsman case displayed manifest partiality and evident bad faith when they gave unwarranted advantage in the total amount of ₱29.1 Million to Focus.²²

Aggrieved, petitioners and his co-respondents filed separate

¹⁸ Id. at 48-49.

¹⁹ Id. at 44-45.

²⁰ Id. at 46.

²¹ Id. at 45.

²² Id. at 46-47.

motions for reconsideration and/or reinvestigation praying, respectively, for the reversal of the Decision dated August 9, 2016.²³ In the Order²⁴ dated April 12, 2017, the Ombudsman dismissed the administrative charge against Busran but denied the rest of the motions for reconsideration.

As a consequence, petitioner elevated the case to the CA *via* a petition for review.

The Ruling of the CA

In the Decision²⁵ dated February 5, 2020, the CA affirmed the Ombudsman's Decision; thus:

WHEREFORE, premises considered, the instant petition is DENIED. Accordingly, the Decision of the Office of the Ombudsman dated August 9, 2016 and its Order dated April 12, 2017 in OMB-C-A-15-0199 are AFFIRMED. With the denial of the petition, the prayer for the issuance of a status quo ante order is rendered MOOT AND ACADEMIC.

SO ORDERED.²⁶ (Emphases omitted.)

The CA held that petitioner disregarded GPPB Resolution No. 12-2007 and Section 53(j)²⁷ of the 2009²⁸ Implementing Rules and Regulations (IRR) of Republic Act No. 9184 (2009 IRR), otherwise known as the Government Procurement Reform Act, when he authorized the release of funds to Focus despite the absence of the legal requirement of a public bidding. According to the CA, such clear intent to violate the law and disregard of an established rule constitutes Grave Misconduct.²⁹

²³ Id. at 52-53.

²⁴ Id. at 52-70. Penned by Graft Investigation & Prosecution Officer III Renato A. Peralta, Jr., and approved by Ombudsman Conchita Carpio Morales on April 25, 2017.

²⁵ Id. at 71-77.

²⁶ Id. at 77.

²⁷ Section 53(j) of the Implementing Rules and Regulations (IRR) of RA 9184 provides:

Section 53. x x x x

j) When an appropriation law or ordinance earmarks an amount to be specifically contracted out to Non-Governmental Organizations (NGOs), the procuring entity may enter into a Memorandum of Agreement with an NGO, subject to guidelines to be issued by the GPPB.

(As culled from the CA Decision; *rollo*, p. 76).

²⁸ The CA aptly ruled that the applicable IRR is the 2009 IRR of RA 9184; however, the cited provision, Section 53(j), was from the 2003 IRR.

²⁹ *Rollo*, pp. 75-76.

Anent the NCMF's accreditation process, the CA ruled that the lack of open competition gave Focus unwarranted benefits:

Petitioner's argument that the intensive accreditation process adopted by the NCMF, in lieu of public bidding, sufficiently complies with the requirements for choosing an implementing NGO under 4.5.2 of COA Circular No. 2007-001 deserves scant consideration. While the said circular allows the creation of a committee for the accreditation of an implementing NGO, it is clear from the records that no selection process was conducted in this case. That [the] NCMF found Focus to be "legitimate and capable of undertaking projects" does not give the same guarantee as that of a public bidding that the public is given the best possible advantages through open competition. Such lack of a selection process or open competition gave Focus unwarranted benefits.³⁰

The CA then concluded that petitioner's failure to fulfill his duties with diligence, which ultimately resulted in the illegal disbursement of public funds, had tarnished the image and integrity of his public office. Thus, it deemed petitioner's actions to be tantamount to Conduct Prejudicial to the Best Interest of the Service.³¹

Petitioner moved for reconsideration, but the CA denied the motion in the Resolution³² dated September 23, 2020.

Hence, the petition.

The Parties' Arguments

At the outset, petitioner cited the following developments in the separate appeals filed by his co-respondents: (1) in the Decision dated September 28, 2018, the CA reversed and exculpated Galido in CA-G.R. SP No. 151264; and (2) in the Decision dated August 20, 2019, the CA likewise reversed the Ombudsman's finding of guilt as to Makalinggan and Aragon-Mabang in CA-G.R. SP No. 151185.³³

³⁰ Id. at 76.

³¹ Id.

³² Id. at 78-79.

³³ Id. at 19-20.

In CA-G.R. SP No. 151185, the CA held that the release of the funds to Focus was in accordance with the guidelines and established rules; thus, Makalinggan and Aragon-Mabang, who signed the DV, were not guilty of Grave Misconduct or Conduct Prejudicial to the Best Interest of the Service. Meanwhile, the CA held in CA-G.R. SP No. 151264 that Galido performed her duty in good faith by verifying the completeness of the signatures in the DV, reviewing the amount of the checks, and ultimately signing the checks. In the same manner, petitioner argues that he merely performed his duty as Head of Office when he signed the check after all the required documents were verified by his subordinates.³⁴

Petitioner avers that when the NCMF received Sen. Honasan's PDAF allotment on April 16, 2012, he took an accreditation review of the legal existence and capability of Focus to implement the project, submitted Focus' project proposal to the NCMF Commission *En Banc* for approval, established a monitoring group for project implementation, had the project monitored by the NCMF in six project areas, and enforced the liquidation of the projects implemented by Focus in these areas. He submits that this was the first time that rigorous safeguards were undertaken by the NCMF to ensure the proper implementation of a PDAF project.³⁵

Due to reports that the past PDAF projects of the NCMF were not properly approved and implemented, petitioner maintains that he formed the PDAF Accreditation Committee by issuing Office Order No. (PDAF)-1205-001, Series of 2012³⁶ dated May 9, 2012.³⁷

Petitioner also points to the NCMF Resolution No. 14, Series of 2012,³⁸ wherein it requested the COA to audit and examine the PDAF projects and MOAs it had previously entered into with various foundations and members of the House of Representatives; however, the COA resident auditor did not do any such audit and instead began demanding additional documents of the PDAF projects implemented during petitioner's term.³⁹ Petitioner argues that his request for audit and examination to the COA only shows that he had no intention to engage

³⁴ Id.

³⁵ Id. at 10.

³⁶ Id. at 87.

³⁷ Id. at 15.

³⁸ Id. at 88-89.

³⁹ Id. at 15.

in corruption and other shenanigans in connection with the PDAF projects.⁴⁰

Petitioner does not dispute the Ombudsman's findings that the NCMF did not conduct a competitive public bidding for Sen. Honasan's PDAF project; however, he denies that the NCMF accepted Sen. Honasan's endorsement of Focus *in toto*. He maintains that: (1) the evaluation of Focus' accreditation papers began sometime in early May 2012, as soon as it started submitting the requirements;⁴¹ (2) by May 24, 2012, the PDAF Accreditation Committee had finished evaluating the documents⁴² submitted by Focus and the only documents pending from it were Sen. Honasan's written endorsement and a certificate of non-dissolution from the Securities and Exchange Commission (SEC);⁴³ and (3) based on the report by the PDAF Accreditation Committee and Focus' commitment to submit the remaining documents, the NCMF *En Banc* approved Resolution No. 18, Series of 2012,⁴⁴ on May 24, 2012 authorizing petitioner as Secretary-CEO to sign the MOA with Focus.⁴⁵

Anent the Ombudsman's finding that the NCMF accepted Sen. Honasan's endorsement with undue haste, petitioner explains that he allowed the processing of the check on May 30, 2012, or before Focus was informed that it was qualified to undertake the project, so that the Notice of Cash Allocation (NCA) would already be obligated and would no longer expire.⁴⁶ He mentions that the previous NCA dated April 23, 2012 for Sen. Honasan's PDAF allotment lapsed at the end of April 2012; hence, the NCMF had to request a new NCA from the DBM so that it can continue evaluating Focus' project proposal. Petitioner emphasizes, however, that although the check was processed on May 30, 2012, he gave an instruction that it will not be issued to Focus until the submission of the remaining requirements, *i.e.*, Sen. Honasan's endorsement and the SEC certificate of non-dissolution.⁴⁷ To bolster his defense, he presents his note dated May 30, 2012 addressed to the Financial and Management Service of the NCMF which reads: "*OK to*

⁴⁰ Id. at 26.

⁴¹ Id. at 16.

⁴² These documents consist of Focus' Certificate of Incorporation, Articles of Incorporation and By-Laws, General Information Sheet for 2011, Audited Financial Statements for 2010-2011 with Independent Auditor's Report, Statement of Management's Responsibility for Financial Statements, Mayor's Permit, and Project Proposal. Id. at 15-16, 90-115.

⁴³ Id. at 16.

⁴⁴ Id. at 122-123.

⁴⁵ Id. at 16.

⁴⁶ Id. at 17.

⁴⁷ Id.

*process, but we hold the check until compliance by Focus with our requirements.”*⁴⁸

Petitioner argues that the CA erred in affirming the Ombudsman’s finding that he is guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service for the following reasons: (1) the GAA and the applicable rules and practice in the implementation of PDAF projects allow the release of funds to NGOs;⁴⁹ (2) the public bidding of PDAF projects coursed through the NCMF was impractical, or even impossible, because the NCA automatically expires one month from its issuance;⁵⁰ and (3) as a result of this time constraint, the NCMF adopted the intensive accreditation process through a PDAF Accreditation Committee out of necessity and in substantial compliance with Items 4.5.1⁵¹ and 4.5.2 of COA Circular No. 2007-001. He adds that the choice of the implementing NGO is not based on price, which was already determined at the approval level in either chambers of Congress and the DBM, but on an NGO’s capability to undertake the project. According to him, success in this selection process is determined by the NGO’s proper implementation and liquidation of the project, which Focus was able to accomplish.⁵²

In fine, petitioner submits that he is not guilty of Grave Misconduct or Conduct Prejudicial to the Best Interest of the Service as there was no manifest intentional wrongdoing, corruption, clear intent to violate the law, or a flagrant disregard of established rules on his part.⁵³

In response, the Ombudsman argues that the Petition should be denied because the issues raised therein involves factual questions which cannot be entertained in a petition for review on *certiorari* under Rule 45

⁴⁸ Id. at 17, 124. In page 17, “request” was used instead of “requirements.”

⁴⁹ Id. at 21.

⁵⁰ Id. at 24.

⁵¹ Item 4.5.1 of COA Circular No. 2007-001 provides:

“4.5 Procedure for the Availment, Release and Utilization of Funds

X X X

4.5.1 The GO shall identify the priority projects under its WFP which may be implemented by the NGO/PO, their purpose/s, specifications and intended beneficiaries as well as the time frame within which the projects are to be undertaken. To ensure transparency, the foregoing information shall be made public via newspapers, agency websites, bulletin boards and the like, at least three months prior to the target date of commencement of the identified projects.”

⁵² *Rollo*, pp. 24-25.

⁵³ Id. at 26.

of the Rules of Court.⁵⁴

In any case, the Ombudsman points out as follows: (1) it is undisputed that Sen. Honasan specifically endorsed Focus to be the partner NGO in the PDAF project in question and no competitive public bidding was ever conducted in relation thereto;⁵⁵ (2) the 2012 GAA, which was in effect at that time, did not authorize the direct release of funds to NGOs;⁵⁶ and (3) even assuming that the 2012 GAA allowed the engagement of NGOs to implement PDAF projects, petitioner still disregarded Item 4.1 of GPPB Resolution No. 12-2007 due to the lack of competitive public bidding.⁵⁷

The Ombudsman then concludes that the CA did not err in affirming petitioner's administrative liability for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service on the basis of substantial evidence.⁵⁸

The Issue

The core issue for the Court's resolution is whether the CA committed a reversible error in upholding the Ombudsman's finding that petitioner is guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.

Our Ruling

The Petition is partly meritorious.

Preliminarily, the Ombudsman aptly argued that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. In several cases, the Court emphasized that it is not a trier of facts⁵⁹ and its jurisdiction in a Rule 45 proceeding is limited to the review and resolution of questions of law.⁶⁰ It must be noted,

⁵⁴ Id. at 174.

⁵⁵ Id. at 177.

⁵⁶ Id. at 178.

⁵⁷ Id.

⁵⁸ Id. at 175.

⁵⁹ See *Perez v. Rasaceña*, 797 Phil. 369, 381-382 (2016), citing *Nuñez v. SLTEAS Phoenix Solutions, Inc.*, 632 Phil. 143, 155 (2010).

⁶⁰ *Microsoft Corporation v. Farajallah*, 742 Phil. 775, 784 (2014). See also *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 769 (2013).

however, that this rule is subject to several exceptions as enumerated in the case of *Medina v. Mayor Asistio, Jr.*:⁶¹

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) [When the] findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) [When the] finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.⁶² (Citations omitted.)

Here, the Court deems it proper to overturn the Ombudsman's factual determination that petitioner had relied solely on Sen. Honasan's endorsement in awarding the subject PDAF project to Focus as such finding is *not* supported by the evidence on record and appears to be based on mistaken inference and a misapprehension of facts.

First, it is apparent from the Resolutions of the NCMF Commission *En Banc* that the PDAF Accreditation Committee's evaluation of Focus' project proposal had already begun even *prior* to the NCMF's receipt of Sen. Honasan's endorsement on June 6, 2012. In fact, NCMF Commission *En Banc* Resolution No. 18, Series of 2012, dated May 24, 2012⁶³—which authorized petitioner to sign the MOA with Focus—*predated* Sen. Honasan's endorsement letter. This lends credence to petitioner's assertion that the evaluation of Focus' accreditation papers by the PDAF Accreditation Committee began sometime in early May 2012 independent of Sen. Honasan's endorsement.

Second, as aptly pointed out by Associate Justice Alfredo Benjamin S. Caguioa, GPPB Resolution No. 12-2007 specifically states that it applies only in case an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to

⁶¹ 269 Phil. 225 (1990).

⁶² *Id.* at 232.

⁶³ *Rollo*, pp. 122-123.

NGOs.⁶⁴

In the case, Sen. Honasan's PDAF was not specifically earmarked to be specifically contracted out to NGOs. Thus, the PDAF project in question is beyond the scope and application of GPPB Resolution No. 12-2007.

Third, the applicable rule in the case at bar is COA Circular No. 2007-001 considering that the PDAF project in question is a livelihood project for the benefit of Muslim Filipinos in various Muslim communities in the National Capital Region and Zambales.

The pertinent provisions of the COA Circular No. 2007-001 read as follows:

3.0 SCOPE

These guidelines shall apply to all funds granted to NGOs/POs for the implementation of projects as enumerated in paragraph 4.1 hereof.

4.0 GUIDELINES

4.1 GO funds granted the NGOs/POs shall retain their character as public funds.

4.2 The flow of the funds shall follow the normal procedures of allotment release by the Department of Budget and Management, and the fund allocation/transfer and disbursement by the GOs. The guidelines that follow shall be strictly observed.

4.3 Types of Projects which may be granted government funds The types of projects that may be granted government funds shall be those that are beyond the capability of the GO, which shall be clearly defined in the Memorandum of Agreement (MOA). These projects shall include, but shall not be limited to the following

⁶⁴ See Item Nos. 2 and 4.1 of the GPPB Resolution No. 12-2007:

2. SCOPE AND APPLICATION

These guidelines prescribe the allowable modes of selecting an NGO *in case an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs.*

x x x x

4. GENERAL GUIDELINES

4.1 *When an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs, the procuring entity may select an NGO through competitive public bidding or negotiated procurement under Section 53 (j) of the IRR-A. (Italics supplied.)*

types:

- 4.3.1 *Livelihood development*
- 4.3.2 Manpower development
- 4.3.3 Sports development
- 4.3.4 Cooperative development
- 4.3.5 Delivery of basic services
- 4.3.6 Environmental protection
- 4.3.7 Agricultural and fisheries diversity
- 4.3.8 Rural industrialization
- 4.3.9 Development of local enterprises
- 4.3.10 Social services in areas that would not be ordinarily undertaken by the private sector
- 4.3.11 Construction, maintenance, operations and management of infrastructure projects, such as, but not limited to, the following:
 - Housing projects for the poorest of the poor
 - School buildings for schools with inadequate classrooms

Verily, NCMF may grant government funds to NGOs for the implementation of a project that is beyond its capability, *i.e.*, livelihood projects, among others, provided that it complies with COA Circular No. 2007-001. Here, the Ombudsman made no categorical finding that the requirements enumerated in COA Circular No. 2007-001 were not complied with. Consequently, mere failure to conduct a public bidding is *not* sufficient to hold petitioner guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service considering that public bidding is not one of the requirements enumerated in COA Circular No. 2007-001.

Respondent did not break any rule with the creation of the PDAF Accreditation Committee. Under Item 4.5.2 of COA Circular No. 2007-001, NCMF is allowed to create a committee which shall perform the screening process of its NGO project partners:

4.5 Procedure for the Availment, Release and Utilization of Funds

x x x x

- 4.5.2 For each project proposal, the [Government Organizations] shall accredit the NGO/PO project partners through the Bids and Awards Committee (BAC), or a committee created for the purpose, which shall formulate the selection criteria. The Committee shall perform the selection process, including the screening of the qualification documents, ocular inspection of the NGOs/POs business site, and evaluation of the technical

and financial capability of the NGO/PO.

Lastly, the PDAF project in question was implemented prior to the promulgation of the Court's Decision in *Belgica v. Hon. Exec. Sec. Ochoa, Jr.*⁶⁵ (*Belgica*). To recall, it was only in *Belgica* that the Court declared as follows: (1) any provision of law allowing legislators to wield any form of post-enactment authority in the implementation or enforcement of the budget, unrelated to congressional oversight, is violative of the separation of powers principle and thus, unconstitutional; and (2) a PDAF Article containing post-enactment measures cannot be properly deemed as a legal appropriation.⁶⁶

Prior to *Belgica*, the intervention of lawmakers in the enforcement of the GAA is sanctioned by the Court's earlier ruling in *Philippine Constitution Association v. Enriquez*⁶⁷ (*Philconsa*). On this point, it must be stressed that the Court's pronouncement in *Belgica* as to the unconstitutionality of PDAF and all other Congressional Pork Barrel provisions applies *prospectively* in view of the operative fact doctrine.⁶⁸ Thus, petitioner cannot be faulted for giving weight to Sen. Honasan's endorsement and awarding the project to a partner NGO notwithstanding the absence of any specific appropriation in the 2012 GAA.

Petitioner is guilty of Simple Misconduct only.

Simple misconduct is defined as "a transgression of some established and definite rule of action, more particularly, *unlawful behavior or gross negligence by a public officer.*"⁶⁹ The offense then becomes Grave Misconduct when the elements of corruption, clear intent to violate the law, and/or flagrant disregard of established rules are present in the case.⁷⁰ In *Sabio v. FIO, Office of the Ombudsman*,⁷¹ the Court held that flagrant disregard of established rule is manifested:

[W]hen there had been open defiance of a customary rule; in the repeated voluntary disregard of established rules in the procurement of supplies; in the practice of illegally collecting fees more than what is

⁶⁵ 721 Phil. 416 (2013).

⁶⁶ *Id.* at 580-582.

⁶⁷ 305 Phil. 546 (1994).

⁶⁸ *Belgica v. Hon. Exec. Sec. Ochoa, Jr.*, *supra* at 579-580.

⁶⁹ *Sabio v. FIO, Office of the Ombudsman*, 825 Phil. 848, 858 (2018).

⁷⁰ *Id.*

⁷¹ 825 Phil. 848 (2018).

prescribed for delayed registration of marriages; when several violations or disregard of regulations governing the collection of government funds were committed; and when the employee arrogated unto [himself or] herself responsibilities that were clearly beyond [his or] her given duties.⁷²

To reiterate, at the time the PDAF project was implemented, the prevailing jurisprudence was the pronouncement in *Philconsa* in which the Court “validated the post-enactment identification authority of Members of Congress on the guise that the same was merely recommendatory.”⁷³ It was only in *Belgica* that the Court clarified that a PDAF Article cannot be considered a legal appropriation under Section 29(1),⁷⁴ Article VI of the Constitution:

[I]t is apropos to note that the 2013 PDAF Article cannot be properly deemed as a legal appropriation under the said constitutional provision precisely because, as earlier stated, it contains post-enactment measures which effectively create a system of intermediate appropriations. These intermediate appropriations are the actual appropriations meant for enforcement and since they are made by individual legislators after the GAA is passed, they occur outside the law. As such, the Court observes that the real appropriation made under the 2013 PDAF Article is not the P24.79 Billion allocated for the entire PDAF, but rather the post-enactment determinations made by the individual legislators which are, to repeat, occurrences outside of the law. Irrefragably, the 2013 PDAF Article does not constitute an “appropriation made by law” since it, in its truest sense, only authorizes individual legislators to appropriate in violation of the non-delegability principle as afore-discussed.⁷⁵

More, the following are undisputed: (1) the PDAF Accreditation Committee was formed due to petitioner’s initiative; (2) petitioner actively sought the audit and examination of prior PDAF projects by the COA; (3) Focus submitted the required accomplishment and liquidation reports for Sen. Honasan’s PDAF project; and (4) the NCMF, through Resolution No. 18, Series of 2012, authorized petitioner to sign the MOA with the Office of Sen. Honasan and Focus. There is also no evidence, not even an allegation, that Focus did not have the qualifications and the technical capability to implement Sen. Honasan’s PDAF project at the time it was awarded, or that Focus misappropriated

⁷² Id. at 862.

⁷³ See *Belgica v. Hon. Exec. Sec. Ochoa, Jr.*, supra note 65 at 531.

⁷⁴ Section 29(1) of Article VI of the Constitution provides:

SECTION 29. (1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

⁷⁵ *Belgica v. Hon. Exec. Sec. Ochoa, Jr.*, supra note 65 at 567

the PDAF amounts it received.

As such, the Court finds that the elements of corruption, willful intent to violate the law, and flagrant disregard of established rules are *lacking* in the case. It is settled that a respondent *cannot* be disciplined for any grave offense, such as Grave Misconduct, based on mere conjectures.⁷⁶ Verily, the evidence presented herein does not satisfy the standard of substantial evidence⁷⁷ sufficient to hold petitioner guilty of Grave Misconduct.

In contrast, petitioner presented proof that he did his best to safeguard the interests of the NCMF and the government in procuring NGO participation for PDAF projects by creating the PDAF Accreditation Committee. Thus, the Ombudsman's findings that petitioner is guilty of Conduct Prejudicial to the Best Interest of the Service, as affirmed by the CA, is likewise unwarranted.

Notwithstanding the discussion above, the Court agrees with the CA and the Ombudsman that petitioner should be held administratively liable for approving the processing of the check dated May 30, 2012 even before the project was awarded to Focus. The Court noted however, that he satisfactorily explained the reason for his actions and proved that it was not prompted by any corrupt motive but by necessity. This is bolstered by his written instruction of even date to the NCMF's Financial and Management Service to hold the check in question pending Focus' submission of its pending documentary requirements.⁷⁸ Thus, petitioner's liability under the given facts is Simple Misconduct only.

In *Office of the Ombudsman v. Apolonio*,⁷⁹ the Court found respondent therein guilty of Simple Misconduct—not Grave Misconduct or Conduct Prejudicial to the Best Interest of the Service—for purchasing gift cheques in lieu of the approved allowance:

Thus, we hold that Dr. Apolonio is guilty of simple misconduct. Although her actions do not amount to technical

⁷⁶ See *Office of the Ombudsman v. Tanco*, G.R. No. 233596, September 14, 2020, citing *Office of the Ombudsman v. Caberoy*, 746 Phi. 111, 123 (2014)

⁷⁷ *Id.*

⁷⁸ *Rollo*, p. 124.

⁷⁹ 683 Phil. 553 (2012).

malversation, she did violate Section 89 of PD 1445 when she approved the cash advance that was not authorized by the NBDB's Governing Board. Further, since the approval of the cash advance was an act done pursuant to her functions as executive officer, she is not merely guilty of conduct prejudicial to the best interest of the service.

WHEREFORE, we PARTIALLY GRANT the Office of the Ombudsman's petition for review on *certiorari*, and MODIFY the decision of the Court of Appeals in CA-G.R. SP No. 73357. We find Dr. Nellie R. Apolonio GUILTY of SIMPLE MISCONDUCT. In the absence of any showing that this is her second offense for simple misconduct, we impose the penalty of SUSPENSION for SIX MONTHS against Dr. Apolonio, but due to her retirement from the service, we order the amount corresponding to her six-month salary to be deducted from her retirement benefits.⁸⁰ (Emphasis omitted)

Accordingly, the Court finds petitioner guilty of Simple Misconduct and imposes upon him the penalty of suspension from office for a period of six months without pay. It must be clarified, however, that petitioner is *not* entitled to back salaries because his administrative liability for Simple Misconduct stands despite the reduced penalty imposed by the Court.⁸¹ Moreover, it is settled that "public officers are entitled to payment of salaries only if they render service."⁸²

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated February 5, 2020 and the Resolution dated September 23, 2020 of the Court of Appeals in CA-G.R. SP No. 151184 are **SET ASIDE**.

Petitioner Mehol K. Sadain is found **GUILTY** of Simple Misconduct and is **SUSPENDED FROM OFFICE** for six (6) months without pay reckoned from the time the Decision dated August 9, 2016 of the Office of the Ombudsman was implemented, with a warning that a repetition of the same or similar acts will be dealt with more severely. The period within which petitioner Mehol K. Sadain was dismissed from service pending appeal is creditable in the implementation of the penalty of six (6) months suspension herein imposed. All of his rights, emoluments, benefits, and privileges removed by, and forfeited in, the assailed Decision of the Office of the Ombudsman are hereby **RESTORED**.

⁸⁰ Id. at 576.

⁸¹ See *Yamson v. Castro*, 790 Phil. 667, 713-714 (2016).

⁸² *Office of the Ombudsman v. Delos Reyes*, 781 Phil. 297, 317 (2016).

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

*See Separate
Concurring
Opinion*



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice



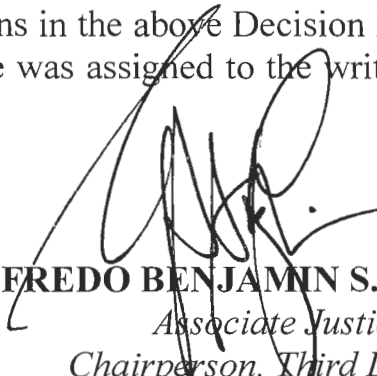
ANTONIO T. KHO, JR.
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest 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.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII 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

