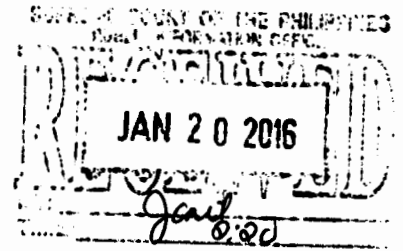




Republic of the Philippines  
**Supreme Court**  
 Manila



FIRST DIVISION

**HON. HERMOGENES E. EBDANE, JR.**, in his official capacity as Acting Secretary of the Department of Public Works and Highways (DPWH), **ATTY. JOEL L. JACOB**, in his official capacity as Officer-in-Charge, Legal Service (DPWH), **ATTY. OLIVER T. RODULFO**, in his official capacity as Head, Internal Affairs Office, (DPWH), and **HON. JAIME A. PACANAN**, in his official capacity as Regional Director, (DPWH), Regional Office No. VIII,

Petitioners,

**G.R. No. 204172**

Present:

SERENO, *C.J.*, Chairperson,  
 LEONARDO-DE CASTRO,  
 BERSAMIN,  
 PEREZ, and  
 PERLAS-BERNABE, *JJ.*

Promulgated:

**DEC 09 2015**

- versus -

**ALVARO Y. APURILLO, ERDA P. GABRIANA, JOCELYN S. JO, IRAIDA R. LASTIMADO, and FRANCISCO B. VINEGAS, JR.**,

Respondents.

X-----X

**DECISION**

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated May 31, 2012 and the Resolution<sup>3</sup> dated September 28, 2012 of the

<sup>1</sup> *Rollo*, pp. 9-36.

<sup>2</sup> *Id.* at 38-52. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Victoria Isabel A. Paredes and Pamela Ann Abella Maxino concurring.

<sup>3</sup> *Id.* at 53-54. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Pamela Ann Abella Maxino and Melchor Q.C. Sadang concurring.

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Court of Appeals (CA) in CA-G.R. SP No. 05432, which affirmed the Resolution<sup>4</sup> dated August 5, 2010 of the Regional Trial Court of Tacloban City (RTC), Branch 34 in Civil Case No. 2006-06-75, setting aside the Formal Charge with Preventive Suspension<sup>5</sup> dated December 22, 2005 (Formal Charge) issued by the Department of Public Works and Highways (DPWH) through petitioner – then Acting Secretary Hermogenes E. Ebdane, Jr. (Acting Sec. Ebdane) – against respondents Alvaro Y. Apurillo, Erda P. Gabriana, Jocelyn S. Jo, Iraida R. Lastimado, and Francisco B. Vinegas, Jr. (respondents), who were then DPWH Officials and Bids and Awards Committee (BAC) Members, on due process considerations.

### The Facts

On October 17, 2005, Juanito R. Alama (Alama), DPWH Assistant Head of the BAC-Technical Working Group (BAC-TWG), received an anonymous complaint<sup>6</sup> from an alleged concerned employee of the DPWH, Tacloban City, claiming that R.M. Padillo Builders (RMPB), a local contractor, won the bidding for the construction of the Lirang Revetment Project (subject project), despite its non-inclusion in the list of Registered Construction Firms (RCF) which were qualified to bid.<sup>7</sup>

On October 26, 2005, Alama sent a 1<sup>st</sup> indorsement letter<sup>8</sup> to petitioner Atty. Oliver T. Rodulfo (Atty. Rodulfo), DPWH Head of Internal Affairs Office, stating that under Department Order No. 2, Series of 2001 (DPWH DO No. 2),<sup>9</sup> only contractors duly registered in the RCF and holding a valid Contractor's Registration Certificate issued by the BAC-TWG shall be allowed to participate in any bidding, per the requirement in the Invitation to Apply for Eligibility and to Bid.<sup>10</sup>

On November 8, 2005, Atty. Rodulfo issued a Subpoena<sup>11</sup> which directed Engr. Gervasio T. Baldos (Engr. Baldos), OIC District Engineer of the DPWH Tacloban City Sub-District Engineering Office (DPWH Sub-District Office), to answer/comment on the anonymous complaint and, accordingly, submit the following documents in relation to the award of the subject project to the allegedly unregistered contractor, namely: (1) Approved BAC Composition for Calendar Year 2005; (2) Invitation to Bid for the Construction of the subject project; (3) Eligibility Screening; (4) Abstract of Bids; (5) Resolution of Award; (6) Contract; (7) Notice of Award;

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<sup>4</sup> Id. at 120-127. Penned by Presiding Judge Frisco T. Lilagan.

<sup>5</sup> Released on January 6, 2006. Id. at 66.

<sup>6</sup> See letter received by the DPWH Office on October 21, 2005; id. at 67.

<sup>7</sup> Id. at 40.

<sup>8</sup> Not attached to the *rollo*.

<sup>9</sup> Entitled "GUIDELINES IN THE ELIGIBILITY PROCESSING OF CONTRACTORS FOR CIVIL WORKS PROJECTS," issued on January 3, 2001.

<sup>10</sup> See Item 2 of DPWH DO No. 2. See also *rollo*, p. 40.

<sup>11</sup> *Rollo*, p. 65.

(8) Notice to Proceed; (9) Disbursement Voucher for the Construction of the subject project, if any; and (10) Statement of Work Accomplished as of November, 2005.<sup>12</sup>

Atty. Rodulfo proceeded to investigate on the matter and, thereafter, forwarded his Investigation Report dated November 21, 2005<sup>13</sup> to Acting Sec. Ebdane, finding that RMPB was indeed not a duly registered contractor at the time of the bidding. Atty. Rodulfo, thus, recommended that the officials of the DPWH Sub-District Office be administratively charged with Gross Misconduct and that they be placed on preventive suspension for a period of ninety (90) days.<sup>14</sup>

On **December 22, 2005**, Acting Sec. Ebdane issued the **Formal Charge** against respondents, who were then DPWH Officials and BAC Members, for **Grave Misconduct**. In the said issuance, respondents were: (a) **directed to file their answer, together with supporting evidence**; (b) **given the option to elect or waive the conduct of a formal investigation**; and (c) placed under preventive suspension for a period of ninety (90) days.<sup>15</sup>

In their **Answer with Motion to Dismiss and to Lift Order of Preventive Suspension**<sup>16</sup> (first Answer) filed on **January 13, 2006**, respondents argued, among others, that they were not in any position to answer the Formal Charge against them due to lack of basis.<sup>17</sup> In this relation, they pointed out that aside from the fact that RMPB had firmly expressed in its duly sworn letter of intent that it was a registered contractor with the DPWH, it was not their duty to determine whether a contractor is a registered contractor with the DPWH Notarial Registry of Civil Works Contractors.<sup>18</sup> As such, respondents prayed for the dismissal of the Formal Charge and the lifting of the preventive suspension order against them. Further, **they expressly waived their rights to a formal hearing, and sought instead, that the case against them be decided based on the records submitted**.<sup>19</sup>

Five (5) months later,<sup>20</sup> respondents were re-issued the same Formal Charge, to which they filed their Answer with Manifestation<sup>21</sup> (second Answer), reiterating their previous statements, and further alleging that the DPWH Sub-District Office never required them to submit a counter-

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<sup>12</sup> Id.

<sup>13</sup> Not attached to the *rollo*.

<sup>14</sup> *Rollo*, p. 41.

<sup>15</sup> Id. at 66.

<sup>16</sup> Dated January 13, 2006. Id. at 68-72.

<sup>17</sup> Id. at 69.

<sup>18</sup> Id. at 69-70.

<sup>19</sup> Id. at 72.

<sup>20</sup> Or on June 7, 2006. See id. at 73.

<sup>21</sup> Filed on June 13, 2006. Id. at 73-74.

affidavit/comment, as in fact, it was only Engr. Baldos who had been issued a Subpoena to submit an answer/explanation regarding the alleged irregularities in the bidding for the subject project.<sup>22</sup> Moreover, respondents averred that the Formal Charge served upon them did not state the nature and substance of the charge/s hurled against them. **For these reasons, respondents demanded that a formal investigation be conducted.**<sup>23</sup>

Without waiting for the DPWH's action, respondents filed on June 27, 2006 a petition for *certiorari* and prohibition<sup>24</sup> (June 27, 2006 petition) before the RTC, docketed as Civil Case No. 2006-06-75, alleging that there was a violation of their right to due process since: (a) they were not made to comment on the anonymous complaint;<sup>25</sup> and (b) no preliminary investigation was conducted prior to the issuance of the Formal Charge.<sup>26</sup>

On June 28, 2006, the RTC-Branch 9 issued a temporary restraining order<sup>27</sup> against the implementation of the preventive suspension order (Formal Charge), which was later converted by the RTC-Branch 34 to a writ of preliminary injunction<sup>28</sup> on July 12, 2006.<sup>29</sup>

On December 18, 2006, petitioners filed a Motion to Dismiss,<sup>30</sup> claiming non-exhaustion of administrative remedies and failure to state a cause of action,<sup>31</sup> but was denied in an Order<sup>32</sup> dated July 28, 2008;<sup>33</sup> hence, they filed their comment<sup>34</sup> dated September 25, 2008.

### The RTC Ruling

In a Resolution<sup>35</sup> dated August 5, 2010, the RTC-Branch 34 set aside the Formal Charge. It held that respondents' rights to administrative due process were violated when they were deprived of the opportunity to file their comment/memorandum prior to, or during the preliminary or fact-finding investigation conducted by Atty. Rodulfo,<sup>36</sup> which violation was deemed to involve a purely legal question, hence, an exception to the rule on

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<sup>22</sup> Id. at 73.

<sup>23</sup> Id. at 74.

<sup>24</sup> With prayer for the issuance of a temporary restraining order and/or preliminary injunction dated June 27, 2006. Id. at 55-62.

<sup>25</sup> See id. at 60-61.

<sup>26</sup> See id. at 58-59.

<sup>27</sup> *Rollo*, pp. 76-77. Penned by Vice-Executive Judge Rogelio C. Sescon.

<sup>28</sup> Id. at 85-86. Penned by Presiding Judge Frisco T. Lilagan.

<sup>29</sup> Erroneously dated as "July 12, 2005" in the CA Decision; see id. at 43.

<sup>30</sup> Dated December 7, 2006. Id. at 78-84.

<sup>31</sup> Id. at 78.

<sup>32</sup> Id. at 89-95.

<sup>33</sup> See id. at 42-45.

<sup>34</sup> With Special and Affirmative Defenses. Id. at 96-110.

<sup>35</sup> Id. at 120-127.

<sup>36</sup> See id. at 126.

exhaustion of administrative remedies.<sup>37</sup> However, the RTC clarified that its ruling was not intended to prevent or avert the DPWH from pursuing any separate administrative action against respondents, pointing out that they have not been absolved from any administrative liability.<sup>38</sup>

Dissatisfied, petitioners appealed to the CA, claiming, among others, that respondents' June 27, 2006 petition before the RTC was filed out of time, as they only had until March 11, 2006, *i.e.*, sixty (60) days from the day they first received the Formal Charge on January 10, 2006, to do so.<sup>39</sup>

### The CA Ruling

In a Decision<sup>40</sup> dated May 31, 2012, the CA affirmed the RTC Resolution. On the procedural error, it held that petitioners were estopped from raising the untimely filing of the June 27, 2006 petition by reason of their silence or failure to object to the same before the RTC.<sup>41</sup> On the merits, it ruled that the issuance of the Formal Charge against respondents, without complying with the mandated preliminary investigation, or at least giving respondents the opportunity to comment or submit their counter-affidavits, violated their due process rights.<sup>42</sup> In this regard, the CA found that Section 11, Rule II of the Uniform Rules on Administrative Cases in the Civil Service<sup>43</sup> (URACCS) requires that respondents be given the opportunity to comment and explain their side during a preliminary investigation conducted prior to the issuance of a Formal Charge and that such comment is different from the Answer that respondents may file thereafter.<sup>44</sup> Moreover, the CA pronounced that a violation of the right to due process is an admitted exception to the rule of exhaustion of administrative remedies.<sup>45</sup>

Aggrieved, petitioners moved for reconsideration,<sup>46</sup> which was denied in a Resolution<sup>47</sup> dated September 28, 2012; hence, this petition.

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<sup>37</sup> Id. at 123.

<sup>38</sup> Id. at 126-127.

<sup>39</sup> Citing Section 4, Rule 65 of the Rules of Court. See *id.* at 46.

<sup>40</sup> Id. at 38-52.

<sup>41</sup> Id. at 46.

<sup>42</sup> Id. at 49.

<sup>43</sup> Civil Service Commission Resolution No. 99-1936 entitled "UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE" (approved on August 31, 1999).

<sup>44</sup> *Rollo*, p. 48.

<sup>45</sup> Id. at 50-51.

<sup>46</sup> Copy of the motion for reconsideration is not attached to the *rollo*.

<sup>47</sup> *Rollo*, pp. 53-54.

### The Issue Before the Court

The linchpin issue in this case is whether or not respondents' due process rights were violated.

### The Court's Ruling

The petition is meritorious.

The essence of procedural due process is embodied in the **basic requirement of notice and a real opportunity to be heard**. In administrative proceedings, as in the case at bar, procedural due process simply **means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of**. "To be heard" does not mean only verbal arguments in court; one may also be heard thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.<sup>48</sup>

In *Vivo v. Philippine Amusement and Gaming Corporation*,<sup>49</sup> the Court ruled that any procedural defect in the proceedings taken against the government employee therein was cured by his filing of a motion for reconsideration and by his appealing the adverse result to the administrative agency (in that case, the Civil Service Commission [CSC]).<sup>50</sup> Also, in *Gonzales v. CSC*,<sup>51</sup> it was held that any defect in the observance of due process is cured by the filing of a motion for reconsideration, and that denial of due process cannot be successfully invoked by a party who was afforded the opportunity to be heard.<sup>52</sup> Similarly, in *Autencio v. Mañara*,<sup>53</sup> the Court observed that defects in procedural due process may be cured when the party has been afforded the opportunity to appeal or to seek reconsideration of the action or ruling complained of.<sup>54</sup>

In this case, the Court finds that while there were missteps in the proceedings conducted before the DPWH, namely: (a) respondents were not made to file their initial comment on the anonymous complaint; and (b) no preliminary investigation was conducted before the filing of the Formal Charge against them, contrary to the sequential procedure under the URACCS,<sup>55</sup> they were, nonetheless, accorded a fair opportunity to be heard

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<sup>48</sup> *Department of Agrarian Reform v. Samson*, 577 Phil. 370, 380 (2008), citing *Casimiro v. Tandog*, 498 Phil. 660, 666 (2005).

<sup>49</sup> G.R. No. 187854, November 12, 2013, 709 SCRA 276.

<sup>50</sup> See *id.* at 285.

<sup>51</sup> 524 Phil. 271 (2006).

<sup>52</sup> *Id.* at 278.

<sup>53</sup> 489 Phil. 752 (2005).

<sup>54</sup> *Id.* at 760-761.

<sup>55</sup> "The [URACCS] lays down the procedure to be observed in issuing a formal charge against an erring employee, to wit:

when the Formal Charge directed them:

Wherefore, you are hereby directed to submit within ten (10) days from receipt hereof your detailed answer to the above stated charge in writing and under oath, together with whatever evidence you may desire to present in support of your defense.

In your answer, you should state whether you elect to have a formal investigation of the charge against you or waive your right to such an investigation.

If you fail to submit your answer within the period aforesaid, you will be deemed in default and the case against you will be decided on the basis of the available records.

x x x x<sup>56</sup>

Accordingly, respondent filed their **first Answer on January 13, 2006**, wherein they **had presented their position before the agency**, and more significantly, **expressly waived their rights to a formal hearing, as they sought instead, that the case against them be decided based on the records submitted:**

#### PRAYER

WHEREFORE, facts and premises, respondents most respectfully pray to the Hon. Secretary that the instant Formal Charge be **DISMISSED**, and pending such dismissal, respondents pray that the Order for the Preventive Suspension be **LIFTED** and **SET ASIDE**. **Herein**

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First, the complaint. A complaint against a civil service official or employee shall not be given due course unless it is in writing and subscribed and sworn to by the complainant. However, in cases initiated by the proper disciplining authority, the complaint need not be under oath. Except when otherwise provided for by law, an administrative complaint may be filed at anytime with the Commission, proper heads of departments, agencies, provinces, cities, municipalities and other instrumentalities.

**Second, the Counter-Affidavit/Comment.** Upon receipt of a complaint which is sufficient in form and substance, the disciplining authority shall require the person complained of to submit Counter-Affidavit/Comment under oath within three days from receipt.

**Third, Preliminary Investigation.** A Preliminary investigation involves the *ex parte* examination of records and documents submitted by the complainant and the person complained of, as well as documents readily available from other government offices. During said investigation, the parties are given the opportunity to submit affidavits and counter-affidavits. Failure of the person complained of to submit his counter-affidavit shall be considered as a waiver thereof.

Fourth, Investigation Report. Within five (5) days from the termination of the preliminary investigation, the investigating officer shall submit the investigation report and the complete records of the case to the disciplining authority.

Fifth, Formal Charge. If a *prima facie* case is established during the investigation, a formal charge shall be issued by the disciplining authority. A formal investigation shall follow. In the absence of a *prima facie* case, the complaint shall be dismissed. (*Garcia v. Molina*, 642 Phil. 6, 19-20 [2010], emphases supplied.)

<sup>56</sup> *Rollo*, p. 66.

**respondents hereby waive their rights to a formal hearing and that the said case be decided based on records submitted.**

MOST RESPECTFULLY SUBMITTED. <sup>57</sup> (Emphasis and underscoring supplied)

Hence, whatever procedural lapses the DPWH had committed, the same had already been cured by the foregoing filing.

It deserves mentioning that while the Court, in *Garcia v. Molina*,<sup>58</sup> had, on due process considerations, previously set aside formal charges for having been issued without the benefit of a prior preliminary investigation under the URACCS, said ruling is inapplicable to this case, since the government employees who were charged therein did not waive their right to such hearing, unlike the present case where respondents themselves filed an express waiver to a formal hearing as above-shown.

Thus, having established that there was no violation of respondents' rights to administrative due process, the CA incorrectly exempted respondents from compliance with the rule on exhaustion of administrative remedies.<sup>59</sup> They are therefore required to go through the full course of the administrative process where they are still left with remedies. As case law states, a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention.<sup>60</sup> If a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought.<sup>61</sup>

**WHEREFORE**, the petition is **GRANTED**. The Decision dated May 31, 2012 and the Resolution dated September 28, 2012 of the Court of Appeals in CA-G.R. SP No. 05432 are hereby **SET ASIDE**. Accordingly, the case is **REMANDED** to the Department of Public Works and Highways Tacloban City Sub-District Office for the continuation of the administrative proceedings against respondents Alvaro Y. Apurillo, Erda P. Gabriana, Jocelyn S. Jo, Iraida R. Lastimado, and Francisco B. Vinegas, Jr.

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<sup>57</sup> Id. at 72.

<sup>58</sup> Supra note 55.


<sup>59</sup> “[T]his Court has allowed certain exceptions to the doctrine of exhaustion of administrative remedies, such as: 1) when there is a violation of due process; x x x.” (*Laguna CATV Network, Inc. v. Maraan*, 440 Phil. 734, 742 (2002)).

<sup>60</sup> *Smart Communications, Inc. v. Aldecoa*, G.R. No. 166330, September 11, 2013, 705 SCRA 392, 413, citation omitted.


<sup>61</sup> *Republic v. Transunion Corporation*, G.R. No. 191590, April 21, 2014, 722 SCRA 273, 280.



**SO ORDERED.**


  
**ESTELA M. PERLAS-BERNABE**  
 Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice


  
**TERESITA J. LEONARDO-DE CASTRO**  
 Associate Justice

  
**LUCAS P. BERSAMIN**  
 Associate Justice

  
**JOSE PORTUGAL PEREZ**  
 Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.

  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice