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FIRST DIVISION

**FIELD INVESTIGATION
OFFICE, OFFICE OF THE
OMBUDSMAN,**

G.R. No. 215985

Petitioner,

-versus-

**ENRICO T. YUZON,
GODOFREDO DE GUZMAN,
LUDIVINA BANZON, AND
EMERLINDA TALENTO,**

Respondents.

X-----X

**FIELD INVESTIGATION
OFFICE, OFFICE OF THE
OMBUDSMAN,**

G.R. No. 216001

Petitioner,

-versus-

FRANCISCO T. CAPARAS,
Respondent.

X-----X

**FIELD INVESTIGATION
OFFICE, OFFICE OF THE
OMBUDSMAN,**

Petitioner,

-versus-

RODOLFO H. DE MESA,

Respondent.

GR. No. 216135

Members:

GESMUNDO, C.J., *Chairperson*,
PERLAS-BERNABE,*
CAGUIOA,
LAZARO-JAVIER, and
LOPEZ, J., *JJ.*

Promulgated:

NOV 11 2021

x-----x

DECISION

LAZARO-JAVIER, J.:

THE CASES

These consolidated petitions for review on *certiorari* assail the following dispositions of the Court of Appeals in:

1. CA-G.R. SP No. 127450¹ entitled *Francisco T. Caparas v. Nestor Palomania, Alexander M. Caturao and Field Investigation Office, Office of the Ombudsman, viz.:*
 - a. Decision² dated February 28, 2014, finding Francisco T. Caparas not liable for grave misconduct and dishonesty; and
 - b. Resolution³ dated November 19, 2014, denying the motion for reconsideration of the Field Investigation Office (FIO) of the Office of the Ombudsman (OMB).

* Additional member per Raffle dated October 27, 2021 vice Associate Justice Mario V. Lopez.

¹ Penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao (now a member of the Court) and Melchor Quirino C. Sadang.

² *Rollo* (G.R. No. 216001), pp. 78-89.

³ *Id.* at 92-93.

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2. CA-G.R. SP No. 127451⁴ entitled *Enrico T. Yuzon, Godofredo O. De Guzman, Ludivina G. Banzon and Emerlinda S. Talento v. Nestor B. Palomania, Alexander M. Caturao and Field Investigation Office, represented by Eugenio G. Ferrer, viz.:*
 - a. Decision⁵ dated February 14, 2014, finding Enrico T. Yuzon, Godofredo O. De Guzman, Ludivina G. Banzon and Emerlinda S. Talento not liable for grave misconduct and dishonesty; and
 - b. Resolution⁶ dated November 28, 2014, denying the motion for reconsideration of the FIO of the OMB.

3. CA-G.R. SP No. 127380⁷ entitled *Rodolfo H. De Mesa v. Nestor Palomania, Alexander M. Caturao and Field Investigation Office, viz.:*
 - a. Decision⁸ dated June 26, 2014, finding Rodolfo H. De Mesa not liable for grave misconduct and dishonesty; and
 - b. Resolution⁹ dated December 2, 2014, denying the motion for reconsideration of the FIO of the OMB.

ANTECEDENTS

Under OMB-C-A-08-0659-L, the following individuals were charged with dishonesty, grave misconduct, and abuse of authority, *viz.:*

1. **Enrique T. Garcia, Jr.** (Garcia) – Bataan Governor
2. **Rodolfo H. De Mesa** (De Mesa) – Bataan Provincial Administrator
3. **Imelda D. Inieto** (Inieto) – Bataan Provincial Agriculturist
4. **Alicia R. Magpantay** (Magpantay) – Bataan Provincial Accountant
5. **Emerlinda S. Talento** (Talento) – Bataan Provincial Treasurer and Bids and Awards Committee (BAC) member
6. **Ludivina G. Banzon** (Banzon) – Bataan Provincial Government Assistant Department Head and BAC member

⁴ Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Magdangal M. De Leon and Eduardo B. Peralta, Jr.

⁵ *Rollo* (G.R. No. 215985), pp. 34-59.

⁶ *Id.* at 62-63.

⁷ Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta.

⁸ *Rollo* (G.R. No. 216135), pp. 33-54.

⁹ *Id.* at 56-57.

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7. **Evangeline A. Diaz** (Diaz) – Bataan Provincial Department Head of the Provincial General Services Office (retired) and BAC Chairman
8. **Enrico T. Yuzon** (Yuzon) – Bataan Provincial Department Head of the Provincial General Services Office and BAC Vice Chairman
9. **Godofredo O. De Guzman** (De Guzman) – Bataan Officer-In-Charge (OIC) Department Head of the Environment and Natural Resources and BAC Member
10. **Pedro D. Baluyot** (Baluyot) – Supply Officer III, Provincial Government of Bataan
11. **Angelina M. Villanueva** (Villanueva) – Management and Audit Analyst IV, Provincial Government of Bataan
12. **Francisco T. Caparas** (Caparas) – Local Treasury Operations Officer I, Provincial Government of Bataan
13. **Danilo C. Abrera** (Abrera) – Agriculturist II, Provincial Government of Bataan
14. **Antonio L. Raymundo, Jr.** (Raymundo) – Mayor, Municipal Government of Orion, Bataan
15. **Alfredo B. Hernandez, Jr.** (Hernandez) – Agriculture Technician, Municipal Government of Orion, Bataan¹⁰

Too, the FIO filed against them a supplemental complaint for violation of Section 3(e) and (g) of Republic Act No. 3019 (RA 3019), and dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service.¹¹

The cases involved the alleged anomalous purchase of a patrol boat by the Provincial Government of Bataan.¹²

On June 8, 2005, Provincial Agriculturist Inieto sought to procure under Purchase Request (PR) No. 442 one (1) patrol boat equipped with a 6-cylinder gas engine for the Bataan Provincial Anti-Illegal Fishing Task Force (Task Force). The proposed purchase was part of the approved ₱603,000.00 budget for the Task Force.¹³

¹⁰ *Id.* (G.R. No. 215985), p. 13.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 14.

Consequently, the BAC of Bataan posted an invitation to bid for the supply and delivery of the patrol boat. The bidders were required to be duly registered with the Department of Trade and Industry (DTI) and/or Securities and Exchange Commission. The bid opening was scheduled on July 28, 2005. The BAC also issued a Notice to Bidders specifying the terms and conditions of the project.¹⁴

Under BAC Resolution No. 006-A, s. 2005 dated August 8, 2005,¹⁵ the BAC recommended a failure of bidding since the lone bidder Rosario T. Miranda Enterprises (RTME) failed to pass the post-qualification stage due to lack of experience to undertake the project. In the same Resolution, the BAC scheduled a re-bidding on August 23, 2005. Governor Garcia approved the BAC's recommendation.

As it was though, the scheduled re-bidding also failed because there was no participating bidder. Thus, the BAC issued yet another Resolution No. 009, s. 2005 dated August 26, 2005,¹⁶ recommending the use of Limited Source Bidding (LSB) or Selective Bidding. Again, Governor Garcia approved the BAC recommendation.

Even then, BAC never actually used LSB for the boat purchase. Instead, it resorted to negotiated procurement, starting off with sending out to three (3) identified individuals --- Ernesto R. Asistin, Jr. (Asistin, Jr.), Agrifino M. Otor (Otor) and Marcelo G. Rodriguez (Rodriguez) --- separate invitations to apply for eligibility and to bid for one (1) patrol boat with 6-cylinder engine. In no time, the BAC received the respective bids of these individuals. It was Asistin, Jr. who eventually offered the lowest price, ₱150,000.00.¹⁷

On December 14, 2005, respondent Provincial Administrator De Mesa issued a Notice of Award (NOA) to Asistin, Jr. as the winning bidder.¹⁸

Thereafter, Asistin, Jr. and the Province of Bataan, represented by De Mesa executed a Contract Agreement dated January 4, 2006 for the supply and delivery of one (1) patrol boat with 6-cylinder gas engine.¹⁹

On January 9, 2006, a Notice to Proceed (NTP) signed by De Mesa was issued to Asistin, Jr. where the latter was instructed to deliver seven (7) days after receipt of the said notice.²⁰

¹⁴ *Id.*

¹⁵ *Id.* at 70-71.

¹⁶ *Id.* at 72.

¹⁷ *Id.* at 15; Invitation to Apply for Eligibility and To Bid, *id.* at 77 and 78.

¹⁸ See Annex I, *id.* at 73.

¹⁹ See Annex J, *id.* at 74; *id.* at 15.

²⁰ See Annex K, *id.* at 75; *id.*

On January 17, 2006, Purchase Order (PO) No. 017-A, also signed by De Mesa, was issued to Asistin, Jr. indicating that it was for one (1) patrol boat with a 6-cylinder gas engine.²¹

These NOA, Contract Agreement, and NTP, however, bore handwritten alterations which modified the specification as to the kind of the patrol boat from a 6-cylinder gas engine patrol boat to a 4-cylinder gas engine patrol boat. These alterations came about in view of Inieto's letter dated January 5, 2006 justifying the replacement of the patrol boat from 6-cylinder gas engine to 4-cylinder gas engine, thus:²²

JUSTIFICATION

This is to justify the replacement of the 6[-]cylinder engine for patrol boat to be purchased by the Bataan Provincial Anti-Illegal Fishing Task Force per Purchase Request (PR) # 442 dated June 08, 2005, with 4[-]cylinder or 21 R (Toyota) engine, for reason as follow:

1. the increase in price of the 6[-]cylinder engine can no longer be covered in the PR; and
2. the replacement of 4[-]cylinder engine is said to give the same performance with cheaper fuel consumption.²³

On January 18, 2006, Inieto requested representatives from the offices of Provincial Treasurer, Provincial Accountant, Provincial General Services Officer and Provincial Auditor to verify and confirm the delivery of a patrol boat with a 4-cylinder gas engine.²⁴

On the same day, Inieto accepted the patrol boat per Certificate of Acceptance and Inspection Report No. 06-01-022.²⁵

As payment, Provincial Treasurer Talento issued Check No. 788858 dated February 16, 2006 in the amount of ₱142,500.00, indicating therein that it was for one (1) patrol boat with 4-cylinder gas engine.²⁶ Bidder Asistin, Jr. received the check per Disbursement Voucher (DV) No. 110-06-0-951.²⁷

During the administrative investigation, the three (3) bidders submitted their respective sworn statements, to wit:

²¹ See Annex L, *id.* at 76; *id.*

²² *Id.* at 77.

²³ *Id.* at 57.

²⁴ *Id.* at 16.

²⁵ *Id.*

²⁶ See Annex P, *id.* at 80.

²⁷ See Annex W, *id.* at 132; *id.* at 16.

1. In his Sworn Statements dated July 7, 2006 and September 11, 2007, Asistin, Jr. averred that Agriculturist Technician Hernandez met him on or before February 16, 2006. Together they went to the Provincial Treasurer's Office to pick up the check. After encashing the check, they also met with Mayor Raymundo of Orion, Bataan. After handing the full amount of ₱142,500.00 to Mayor Raymundo, the latter gave him ₱1,000.00. Sometime later though, Mayor Raymundo returned the full amount to him. He used it to purchase materials to build the patrol boat. It took him three (3) to four (4) weeks to finish the boat.
2. In his Sworn Statement dated August 23, 2007, Otor stated that he is a fisherman, although at times he also does boat repairs. He did not sign any document for the Province of Bataan as he can hardly read. He only finished grade 1. He does not have a boat business.
3. In his Sworn Statement dated September 11, 2007, Rodriguez stated that he is a carpenter, although sometimes, he also does boat repairs. He does not have any boat business. He only builds boat when he is commissioned to do the job. It takes him three (3) weeks to finish a 24-foot boat. He denied that he owned the signature affixed to a document coming from the Province of Bataan although his name appeared thereon.

Below is a comparative table of the individual participations of respondents, as charged by the OMB, and their respective comments/defenses:

Respondent	Participation	Respondent's Comment
Enrique T. Garcia – Governor of Bataan	He authorized the Provincial Administrator to sign the PR, PO, DV, BAC Resolutions and other related documents. He should have exercised due diligence in exercising supervision over the Provincial Administrator to prevent the anomalous transaction.	He did not participate in the procurement of and payment for the patrol boat. His own investigation revealed that the subject patrol boat was delivered and used by the Task Force as early January 2006. It is being used in Morong, Bataan since December 2006. He invoked <i>Arias v. Sandiganbayan</i> to negate his liability relative to the transaction.
Antonio L. Raymundo, Jr. – Mayor of Municipality of	He conspired with other public officers and Asistin, Jr. in taking the money allotment for the purchase of the patrol boat	He did not participate in the procurement of the patrol boat and payment therefor

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Respondent	Participation	Respondent's Comment
Orion, Bataan		He only came to know of the acquisition of a patrol boat and use thereof by the Task Force in January 2006 because the Task Force reports to him and he coordinates with the municipality in the operation of the Task Force.
Rodolfo H. De Mesa – Provincial Administrator	He approved the PR, PO, Contract Agreement, NOA, NTP, DV, and check issued to Asistin, Jr.. He also signed the Obligation Slip in the amount of ₱150,000.00 where he certified that the expense was necessary, lawful, and incurred under his direct supervision.	<p>He signed the documents and vouchers as he was authorized to do so and considering the regularity of the transactions and completeness of the supporting documents.</p> <p>He relied on the documents prepared and submitted to him by his subordinates, as well as the signatures on those documents of the other departments.</p> <p>Further, the award of the contract was based on a negotiated procurement adopting the lowest quoted price and only after a canvass was conducted.</p>
Emerlinda S. Talento – Provincial Treasurer	As a BAC member, she was fully aware of the anomalous transaction, yet, she still signed the check to pay Asistin, Jr.. She also signed the canvass summary and BAC Resolution to resort to LSB.	<p>The BAC did not violate the procurement law. She admitted that the BAC issued a resolution resorting to LSB but what was actually followed was Section 53 of Republic Act No. 9184 (RA 9184) on Negotiated Procurement after two (2) failed biddings.</p> <p>She signed the canvass summary as part of her ministerial duty as a BAC member.</p> <p>She signed and approved the necessary documents for the purchase of the boat after a thorough examination of the supporting documents.</p> <p>She signed the check relying on the supporting documents signed by the duly authorized officials.</p>
Imelda D. Inieto – Provincial Agriculturist	She issued the PR for the purchase of the patrol boat. She also justified the change in the type of engine <i>post facto</i> following the award of the contract. She signed the Contract Agreement, Acceptance and Inspection Report, and	<p>She signed the PR because she was the authorized person to do so.</p> <p>She admitted issuing the justification on the modified engine type.</p>

Respondent	Participation	Respondent's Comment
	Memorandum Receipt even though there was no delivery yet.	She explained that the handwritten alterations in the number of cylinder in the contract, NOA, NTP did not amount to falsification as the same were mere corrections to conform with the procurement request.
Alicia R. Magpantay – Provincial Accountant	Despite the serious irregularities in the transaction, she still issued a certification in favor of Asistin, Jr. that the supporting documents were complete and proper.	<p>She certified that the documents were complete and proper based on the representation of Assistant Provincial Accountant that the supporting documents were indeed complete and proper.</p> <p>She did not participate in the procurement process.</p> <p>After the failed bidding and based on the representation of the end-user that there was no duly registered boat builder in Bataan and neighboring provinces, she inquired with the Commission on Audit (COA) as to how the documentary requirements can be complied with. COA advised her to require the boat builders to submit (1) a certification from the barangay chairman where the boat builder resides that he is a legitimate boat builder, and (2) an affidavit that the boat builder builds boats upon order.</p>
Evangeline A. Diaz – Provincial General Services Officer	As a BAC Chairperson, she signed the BAC Resolution to resort to LSB and the bid invitation to unqualified suppliers. She also signed the canvass summary and caused the preparation of Memorandum Receipt, albeit there was no actual delivery yet.	There was no violation of the procurement law for they implemented a Negotiated Procurement per Sec. 53(a) of RA 9184 after two failed biddings although they admitted that the BAC resolution bore LSB as the mode of procurement. They did not actually resort to LSB.
Enrico T. Yuzon – Provincial Government Assistant Department Head	As a BAC member, he signed the canvass summary and BAC Resolution to resort to LSB.	Following the rules on Negotiated Procurement, the award was given to the lowest canvassed price offer by Asistin, Jr. in the amount of ₱150,000.00.
Godofredo O. De Guzman	As a BAC member, he signed the canvass summary and BAC Resolution to resort to LSB.	As a BAC member, she was not involved in the acceptance and inspection of the patrol boat. She later learned though that the patrol boat was delivered to the Task
Ludivina G. Banzon – Bataan Provincial		

Respondent	Participation	Respondent's Comment
Government Assistant Department Head and BAC member		<p>Force sometime in January 2006 and is now being used in Morong, Bataan.</p> <p>As for the alleged forged signatures of Otor and Rodriguez on the price quotations, the BAC has no means to verify them.</p>
Pedro D. Baluyot – Administrative Officer V	He signed the Acceptance and Inventory Receipt even though there was no delivery yet.	<p>They conducted the inspection of the patrol boat, together with Abrera and Raul Atentar of the COA-Bataan Provincial Office at Orion, Bataan.</p>
Francisco T. Caparas – Local Treasurer Operation Officer	He signed the Acceptance and Inventory Receipt even though there was no delivery yet.	
Angelina M. Villanueva – Management and Audit Analyst IV	She signed the Acceptance and Inventory Receipt even though there was no delivery yet.	
Danilo C. Abrera – Agriculturist II	He facilitated the preparation of the falsified documents purportedly signed by Otor and Rodriguez to make it appear that these two participated in the bidding.	<p>He did not participate in the procurement of and payment for the patrol boat.</p> <p>He only coordinated with the local operatives of the Task Force representing the Provincial Agriculturist Office.</p> <p>As a member of the Task Force, he knew that the patrol boat was delivered and used in Orion, Bataan since late January 2006, albeit it was later transferred to Morong, Bataan in December 2006 upon order of PNP Provincial Director Zafra, Vice Chairperson of the Task Force.</p> <p>He did not ask Asistin, Otor, or Rodriguez to sign any document relative to the procurement of the patrol boat or forged their signatures.</p> <p>Nestor Palomania's complaint was malicious, fabricated, and politically motivated. He had ill-will against the Task Force.</p>
Alfredo B. Hernandez, Jr. – Agriculture Technician	He assisted Abrera embezzles the fund for the purchase of the patrol boat. He accompanied Asistin, Jr. in the encashment of the ₱142,500.00 check and in the delivery of the funds to Mayor Raymundo.	<p>He did not participate in the procurement of the patrol boat nor in its payment.</p> <p>He merely acted as coordinator between the local operatives of the Task Force and the Province of</p>

Respondent	Participation	Respondent's Comment
		<p>Bataan through the Provincial Agriculturist Office.</p> <p>The patrol boat was delivered to and used by the Task Force in Orion, Bataan since late January 2006. It was later transferred to Morong, Bataan in December 2006 upon order of PNP Provincial Director Zafra, the Task Force's Vice Chairman.</p> <p>He did not ask Asistin, Jr. or any person to sign any procurement related documents. He did not accompany Asistin, Jr. to the office of Mayor Raymundo after encashment of the check for the purpose of Asistin, Jr. handing over the funds to the mayor.</p>
Ernesto R. Asistin, Jr.	He conspired with the named officials in the embezzlement of ₱142,500.00 allotted for the purchase of the patrol boat.	<p>Employees from the Provincial Agriculturist's Office asked him to submit a design of and costing for a 36 ft. patrol boat. When the employees returned a few days later, he showed them the design and costing in the amount of ₱150,000.00.</p> <p>He was first told to secure a barangay clearance. Then on January 2006, he was also told that he could already start constructing the patrol boat.</p> <p>By the end of January 2006, the patrol boat was already shown to the employees of the Office of the Provincial Agriculturist.</p> <p>The payment for the patrol boat of ₱143,000.00²⁸ was released on February 16, 2006.</p> <p>On July 7, 2006, complainant Nestor Palomania coerced him to execute an affidavit pertaining to the construction of the patrol boat. He only signed the affidavit out of fear.</p>

²⁸ This should be ₱142,500.00; see Annex P, *id.* (G.R. No 216135), p. 80.

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Respondent	Participation	Respondent's Comment
		<p>On September 11, 2009, he was invited to the OMB to give his statements.</p> <p>On both occasions, he was not informed of his right to remain silent and to be assisted by counsel.</p>

RULING OF THE OFFICE OF THE OMBUDSMAN (OMB)

By Decision²⁹ dated May 12, 2011, the OMB³⁰ found De Mesa, Inieto, Magpantay, Talento, Banzon, Yuzon, Diaz, Guzman, Baluyot, Caparas, and Abrera liable for grave misconduct and dishonesty and meted them penalty of dismissal from the service.

On the other hand, the administrative cases against Governor Garcia, Villanueva, Mayor Raymundo and Hernandez were dismissed on different grounds which will be discussed elsewhere in this Decision.

The OMB ruled that the BAC members flagrantly disregarded the procurement rules in the procurement of the patrol boat. First, there was a *post facto* major change in the specification of the project from a 6-cylinder gas engine to a 4-cylinder gas engine patrol boat only after the project was already awarded to Asistin, Jr.. There should have been a new bidding because of the modification with the corresponding reduction in the purchase price. The justification issued was not enough to allow the significant modification made by the BAC. All other procurement related documents starting with the purchase request should have been changed to conform to the modification. But this was not done.

The procurement documents supported these findings: (1) the supposed project was described to be a 6-cylinder gas engine patrol boat, as borne in all the procurement related documents such as the Purchase Request dated June 8, 2005, Invitation to Apply for Eligibility and to Bid, Obligation Slip, Purchase Order dated January 17, 2006; and (2) the project description appearing on the canvass summary, NOA dated December 14, 2005, NTP, DV, and check pertained to a 4-cylinder gas engine patrol boat. These documents were all signed by respondents.

Further, they negotiated with the supposed bidders --- Asistin, Jr., Rodriguez, and Otor --- who were not bonafide suppliers, nay, technically, legally, and financially capacitated to enter into a contract with the government. Records showed they merely relied on fishing, carpentry, and

²⁹ See Annex S, *id.* (G.R. No. 215985), pp. 103-130.

³⁰ Prepared by Graft Investigation and Prosecution Officer 1 Clarisa V. Tejada; Recommending Approval by Director Mary Antonette Yalao; Approved by Acting Ombudsman Orlando C. Casimiro.

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sometimes, building and repair of fishing boats, as attested to by Barangay Chairman Dela Rosa of Barangay, Lusungan, Orion, Bataan. Too, the DTI certified that Otor, Rodriguez, and Asistin, Jr. have no existing business registered under their names.

Except for the name of the supplier, the spaces corresponding to material details such as date of inspection and invoice number were intentionally left blank in the Acceptance and Inspection Report. Hence, it was impossible to determine that the boat delivered and accepted was exactly the one described in the contract.

Notably, respondent De Mesa approved the documents for the payment of a 4-cylinder gas engine patrol boat although the procurement proceedings referred to the purchase of a 6-cylinder gas engine patrol boat.

In sum, the collective actions of the BAC Chairperson and members and the officials of the provincial government clearly constituted grave misconduct.

They also committed dishonesty, together with Asistin, Jr. when they claimed that one (1) unit of patrol boat with a 6-cylinder gas engine was delivered and inspected although there was no such inspection or delivery that actually took place. Asistin, Jr. admitted to have encashed the check in February 2006 to build the patrol boat. It took him three (3) to four (4) weeks to finish it which means the boat could not have possibly been delivered before that date or as claimed by respondents, in January 2006.

As for Governor Garcia, the OMB ruled that he was not exempt from liability as he exercised general supervision and control over all programs, projects, services, and activities of the provincial government. He should have ensured that the procurement was properly done but he failed to do so. In view, however, of his reelection as governor in the May 2010 elections, his administrative case was declared moot.

As for Angelina M. Villanueva, while she, too, is liable for grave misconduct and dishonesty, the OMB ruled that the penalty could no longer be imposed on her because she is no longer in government service.

As for Mayor Raymundo and Agriculturist Technician Hernandez, the OMB opined that there was no substantial evidence showing that they participated in the delivery of, and payment for, the patrol boat.

In their motion for reconsideration, respondents argued that the evidence did show that the patrol boat was actually delivered, the negotiated procurement was regular, and the administrative charge against them had no factual and legal bases.

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Under Memorandum³¹ dated August 13, 2012, the OMB³² denied respondents' motion for reconsideration while the administrative complaint against Provincial Agriculturist Abrera was dismissed for insufficiency of evidence.

Except for BAC Chairperson Diaz, all the other respondents filed their separate petitions with the Court of Appeals, viz.:

1. CA-G.R. SP No. 127380 entitled *Rodolfo H. De Mesa v. Nestor Palomania, Alexander M. Caturao and Field Investigation Office*.
2. CA-G.R. SP No. 127450 entitled *Francisco T. Capanas v. Nestor Palomania, Alexander M. Caturao and Field Investigation Office, Office of the Ombudsman*.
3. CA-G.R. SP No. 127451 entitled *Enrico T. Yuzon, Godofredo O. De Guzman, Ludivina G. Banzon and Emerlinda S. Talento³³ v. Nestor Palomania, Alexander M. Caturao and Field Investigation Office, represented by Eugenio G. Ferrer*.

Rulings of the Court of Appeals

As stated, the Court of Appeals reversed. It decreed the dismissal of the administrative complaints against respondents.

CA-G.R. SP No. 127451

As borne in its Decision³⁴ dated February 14, 2014, the Court of Appeals³⁵ found BAC members Yuzon, De Guzman, Banzon and Talento not liable for grave misconduct and dishonesty. It found nothing irregular when respondent BAC members resorted to a negotiated procurement, which is allegedly allowed under Section 53 of RA 9184 since there was a failure of bidding for the second time. It considered as a mere technical error the reference to "Limited Source Bidding" instead of "Negotiated Procurement" in the BAC resolution.

It also found that the modification of the procurement documents was justified. The fund for the original requirement of 6-cylinder gas engine type was insufficient as reported by Iniето in her letter dated

³¹ See Annex T, *id.* (G.R. No. 215985), pp. 131-139.

³² Prepared by Acting Director Manuel T. Soriano, Jr., Recommending Approval Special Prosecutor Wendell E. Barreras-Sulit, Approved by Ombudsman Conchita Carpio Morales.

³³ There is no information on record that BAC Chairperson Evangeline A. Diaz appealed the verdict of conviction.

³⁴ *Rollo* (215985), pp. 34-59

³⁵ Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Magdangal M. De Leon and Eduardo B. Peralta, Jr.

January 5, 2006. There was no intent to conceal their actions or defraud the government when alterations were made on the documents to correctly reflect this modification.

It also found that the patrol boat was actually delivered, albeit, it was a 4-cylinder, instead of a 6-cylinder gas engine type, as evidenced by the pictures and entry in the book of respondent Local Treasury Officer Caparas stating its details, dimension, and accessories.

Lastly, it ruled that the BAC members did not misuse their official functions for personal gain or benefit. They cannot be faulted for coming up with the simplest solution considering the urgent need for the patrol boat.

By Resolution³⁶ dated November 28, 2014, the Court of Appeals denied FIO's motion for reconsideration.

CA-G.R. SP No. 127450

By Decision³⁷ dated February 28, 2014, the Court of Appeals,³⁸ too, exonerated respondent Caparas, Provincial Local Treasury Operations Officer for alleged lack of substantial evidence. The affidavits of Asistin, Jr. used by the OMB were found to be questionable because (1) there was no proper identification of the affiant in the notarial acknowledgment portion of Asistin, Jr.'s Sinumpaang Salaysay dated July 7, 2006; and (2) there was a discrepancy between the signature of Asistin, Jr. in the procurement documents where he signed his name as Ernesto Asistin, "Jr." on one hand, and his signature in his Sinumpaang Salaysay, where his name was only Ernesto Asistin, sans the "Jr."

It also declared that the documents covering the procurement and inspection of the patrol boat were properly executed. They bore no indication of any irregularity.

By Resolution³⁹ dated November 19, 2014, the Court of Appeals denied FIO's motion for reconsideration.

CA-G.R. SP No. 127380

By Decision⁴⁰ dated June 26, 2014, the Court of Appeals⁴¹ likewise exonerated respondent Provincial Administrator De Mesa. It adopted the findings in the related cases in CA-G.R. SP No. 127450 (Francisco T.

³⁶ *Id.* at 62-63.

³⁷ *Id.* (G.R. No. 216001), pp. 78-89.

³⁸ Penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao (now a member of the Court) and Melchor Quirino C. Sadang.

³⁹ *Rollo* (G.R. No. 216001), pp. 92-93.

⁴⁰ *Id.* (G.R. No. 216135), pp. 33-54.

⁴¹ Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Fernanda Lampas Peralta and Francisco P. Acosta.

Caparas v. Nestor Palomania, et al.), CA-G.R. SP No. 127451 (Enrico T. Yuzon, et al. v. Nestor Palomania, et al.), CA-G.R. SP No. 127452 (Imelda T. Inieto v. Nestor Palomania, et al.), and CA-G.R. SP No. 127453 (Alicia R. Magpantay v. Nestor Palomania, et al.) where De Mesa's co-respondents were already cleared of any administrative liability. It ruled further that there was nothing irregular in the procurement process of the 4-cylinder gas engine patrol boat. The alterations in the documents which carried the counter-signatures of concerned officials were badges of good faith. Too, there was no evidence that De Mesa benefitted from the transaction. There was no ghost delivery because a 4-cylinder gas engine patrol boat was actually delivered to the Province. In all, there was no evidence to conclude that De Mesa was liable for grave misconduct and dishonesty.

By Resolution⁴² dated December 2, 2014, the Court of Appeals denied FIO's motion for reconsideration.

The Present Petitions

In these consolidated petitions, FIO now seeks to reverse and set aside the foregoing verdicts of exoneration.

G.R. No. 215985

FIO argues that respondents Yuzon, De Guzman, Banzon, and Talento failed to discharge their duties as BAC members when (1) they knowingly resorted to a Negotiated Procurement, sans proper documentation, and (2) they allowed: a) the modification of the product specification only *post facto* following the **award** in violation of the rule on **amendment to order** under Annex D of RA 9184, and b) the alteration of the procurement documents to conform to such modification. Additionally, respondent Talento as Provincial Treasurer knowingly issued the check payment to Asistin, Jr. despite serious flaws in the procurement process.

G.R. No. 216001

FIO faults the Court of Appeals when it ruled that the affidavits of Asistin, Jr. were the only evidence used by the OMB to support its finding against respondent Caparas. Records show that the OMB considered other independent evidence on record. In any event, the OMB investigators are presumed to have regularly performed their duties when they allowed Asistin, Jr. to execute his affidavits before them. There are no discrepancies between the two signatures of Asistin, Jr. as their strokes and slants are in fact similar.

⁴² *Rollo* (G.R. No. 216135), pp. 56-57.

Respondent Caparas unlawfully certified that he was part of the team which inspected the patrol boat claimed to have been delivered in January 2006, albeit as of that date, Asistin, Jr. had yet to build the boat. He gave undue benefit to Asistin, Jr. when he allowed the latter to be paid in advance of the actual delivery of the patrol boat.

G.R. No. 216135

Respondent Provincial Administration De Mesa is liable for grave misconduct and dishonesty because he approved the procurement documents and paid Asistin, Jr. despite the material change in the specifications of the project after the award. In doing so, he gave undue advantage to Asistin, Jr. even though he did not personally benefit therefrom. He also committed willful violation of the procurement law.

In their consolidated comment, respondents defend the verdicts of exoneration rendered by the Court of Appeals. They bring to fore the following related cases where the Court, *via* two separate minute Resolutions, dismissed similar petitions initiated by the OMB against Imelda Inieto and Alicia Magpantay, *viz.*:

1. G.R. No. 217015 entitled *The Office of the Ombudsman v. Imelda D. Inieto (Inieto)* was dismissed per Resolution dated July 22, 2015; and
2. G.R. No. 214516 entitled *Field Investigation Office, Office of the Ombudsman v. Alicia R. Magpantay (Magpantay)* was dismissed per Resolution dated January 21, 2015.

By dismissing these twin cases, the Court in effect purportedly affirmed that there was nothing irregular in the procurement of the patrol boat and that the erasures borne in the procurement documents were not suspicious but indicative of good faith to truthfully reflect the actual delivery by the bidder of the patrol boat. Hence, BAC Members Yuzon, De Guzman, Banzon and Talento, Provincial Administrator De Mesa and Local Treasury Operations Officer Caparas cannot be held liable based on these supposed pronouncements of the Court. Too, there was no ghost delivery to speak of because the 4-cylinder gas engine patrol boat was actually delivered to the Province of Bataan. Consequently, Caparas cannot be held liable for certifying that the boat was actually delivered and inspected and that he was one of those who witnessed such delivery and inspection.

In its reply, FIO avers that respondents' unlawful acts are distinct and separate from, and independent of, the respective participations of Magpantay and Inieto insofar as the anomalous transaction was concerned. Therefore,

respondents' individual liabilities should be treated separately from those of Magpantay's and Inieto's.

Issues

I

Are the dispositions of the Court *via* minute Resolutions dated July 22, 2015 and January 21, 2015 binding precedents which respondents here can invoke in their favor?

II

Did the Court of Appeals commit reversible error when it dismissed the administrative complaints for grave misconduct and dishonesty against respondents?

Ruling

As a general rule, only questions of law may be raised in a petition for review on *certiorari* because the Court is not a trier of facts. When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court. One exception, however, is when, as in this case, the findings and conclusions of the OMB are contrary to those of the Court of Appeals. In such a case, the Court may review these factual findings.⁴³

As shown, the OMB and the Court of Appeals differ in their appreciation of the facts pertaining to the purchase of the patrol boat. For the OMB, the failure of respondent BAC members to seek a new approval Prior to its Negotiated Procurement violates RA 9184. In contrast, the Court of Appeals concluded there was nothing irregular when the BAC members did not conduct a new bidding on the modified project specification and simply resorted to Negotiated Procurement.

Too, on the one hand, the OMB found it irregular that a) the project from a 6-cylinder to a 4-cylinder engine gas patrol boat was altered *post facto* or after the contract had already been awarded to Asistin, Jr., and b) the procurement documents were also altered to conform to such project modification. On the other hand, the Court of Appeals considered these alterations to be badges of good faith for they even bore the counter signatures of the concerned officials. It went further to rule that the modification was justified because the fund allotted for the purpose was already insufficient to cover the cost of the original specification.

⁴³ See *Office of the Ombudsman v. Tanco*, G.R. No. 233596, September 14, 2020.

We reverse.

The minute resolutions in *Inieto* and *Magpantay* are not binding precedents that would constitute *res judicata* to the present consolidated petitions.

Respondents claim that with the dismissal of the cases against *Inieto* and *Magpantay* by the Court, albeit *via* minute resolutions only, the Court is deemed to have affirmed the findings of the Court of Appeals that (1) there was nothing irregular in the procurement of the patrol boat, and (2) the erasures in the procurement documents bearing the counter signatures of the concerned officers were not suspicious but indicative of good faith to truthfully reflect the actual delivery of the bidder.

In G.R. No. 217015 entitled *The Office of the Ombudsman v. Imelda D. Inieto*, the minute Resolution dated July 22, 2015 reads:

x x x x

Considering the allegations, issues, and arguments adduced in the petition for review on certiorari of the Decision dated February 7, 2014 and Resolution dated February 13, 2015 of the Court of Appeals, Manila in CA-G.R. SP No. 127452, the Court further resolves to **DENY** the petition for failure of petitioner to sufficiently show that the Court of Appeals committed any reversible error in the assailed judgment to warrant the exercise by this Court of its discretionary appellate jurisdiction in this case.

While in G.R. No. 214156 entitled *Field Investigation Office of the Office of the Ombudsman v. Alicia R. Magpantay*, the minute Resolution dated January 21, 2015 states:

x x x x

Considering the allegations, issues, and arguments adduced in the petition for review on certiorari of the Decision and Resolution dated March 19, 2014 and August 29, 2014, respectively, of the Court of Appeals in CA G.R. SP No. 127453, the Court further resolves to **DENY** the petition for failure of petitioner to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision and resolution as to warrant the exercise of this Court's discretionary appellate jurisdiction.

With these dispositions, respondents conclude there is no anomalous transaction to speak of or which they could be held administratively liable.

We do not agree.

In *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*,⁴⁴ the Court explained how a minute resolution should affect the case and the parties involved, as well as those who, though not parties to the case, invoke it as precedent or *res judicata*, thus:

It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. **When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final.** When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. **But what is its effect on other cases?**

With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. x x x (Emphases supplied; citations omitted.)

Here, respondents are not parties in the cited cases. They held positions and discharged functions different from those held by the respondents in *Inieto and Magpantay*, thus:

Respondents	Position	Participation in the transaction as found by the OMB
Yuzon	Bataan Provincial Department Head of the Provincial General Services Office/BAC Vice Chairman	Their gross negligence in the performance of their duties as BAC members directly led to the purchase of the patrol boat, albeit the purchase did not comply with the specifications of the project.
De Guzman	Bataan Provincial OIC Department Head of the Environment and Natural Resources and BAC Member	
Banzon	Bataan Provincial Government Assistant Department Head/ BAC member	
Talento	Bataan Provincial Treasurer/BAC member	
De Mesa	Bataan Provincial Administrator/ Approving Authority	

⁴⁴ 616 Phil. 387, 420-421 (2009).

Respondents	Position	Participation in the transaction as found by the OMB
		defective bidding and modification of the specifications of the patrol boat.
Caparas	Local Treasury Operations Officer/Member of Inspection and Acceptance Team	As a member of the inspection team, he signed the Acceptance and Inventory Receipt for the delivered patrol boat without indicating the date the delivery was done, the date he inspected and accepted the supposed delivery, invoice number and purchase order number.

On the other hand, the participations of *Inieto* and *Magpantay* are as follows:

Person Involved	Position	Participation in the transaction
Inieto	Bataan Provincial Agriculturist/End-user	She issued and signed the Purchase Request for a 6-cylinder patrol boat. She submitted the change order to a 4-cylinder patrol boat only after the bidding and award of the contract for delivery of a 6-cylinder patrol boat were already accomplished. She also signed the Acceptance and Inspection Report and Memorandum Receipt of the 4-cylinder patrol boat.
Magpantay	Bataan Provincial Accountant/Signatory in the Disbursement Voucher	Certified in the Disbursement Voucher that the supporting documents for payment were complete and proper.

The foregoing tables are self-explanatory. Respondents were not parties in *Inieto* and *Magpantay*. They, too, held positions, discharged functions, and did acts different from those performed by respondents in *Inieto* and *Magpantay*. In fine, the dispositions in the aforesaid cases cannot be properly invoked as precedents or *res judicata* here.

In any event, the Court is only guided and not bound by any prior rulings on the subject transaction, more so when considerations of substantial justice compel a re-examination thereof.

In *ABS-CBN Corp. v. Concepcion*,⁴⁵ the Court reiterated *Abaria v. National Labor Relations Commission*⁴⁶ and decreed anew that it is not obliged to blindly follow a particular decision where it appears that, in the interest of substantial justice, a re-examination and rectification thereof is called for, as in here, thus:

Even assuming that *Jalog* has a binding effect, this Court is not precluded from revisiting doctrines and precedents. *Abaria v. National Labor Relations Commission* expounds on *stare decisis* in this wise:

Under the doctrine of *stare decisis*, once a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.

The doctrine though is not cast in stone for upon a showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, the Court is justified in setting it aside. For the Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification. (Emphasis supplied)

So must it be.

The BAC members are guilty of grave misconduct and serious dishonesty

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct

⁴⁵ G.R. No. 230576, October 5, 2020.

⁴⁶ 678 Phil. 64, 97-98 (2011).

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must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply a wrongful intention and not a mere error of judgment. It must also have a direct relation to the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate **gross misconduct** from simple misconduct, **the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest** in the former.⁴⁷

Meanwhile, dishonesty has been defined as the concealment or **distortion of truth**, which shows lack of integrity or a disposition to defraud, cheat, deceive, or betray, or intent to violate the truth. Dishonesty is considered serious if any of the following circumstances is present:

1. *The dishonest act caused serious damage and grave prejudice to the government;*
2. *The respondent gravely abused his authority in order to commit the dishonest act;*
3. Where the respondent is an accountable officer, the dishonest act directly involves property; accountable forms or money for which [he/she] is directly accountable; and respondent shows intent to commit material gain, graft and corruption;
4. The dishonest act exhibits moral depravity on the part of the respondent;
5. *The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment;*
6. The dishonest act was committed several times or on various occasions;
7. The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets;
8. Other analogous circumstances.⁴⁸ (Emphases supplied)

The OMB correctly found that the procurement of the patrol boat was replete with flagrant and multiple violations of the procurement law and its implementing rules and regulations. Consider:

First. Under Section 12 of RA 9184, the BAC is legally tasked to ensure compliance with the procurement law and its implementing rules and regulations (IRR-A), thus:

SEC. 12. Functions of the BAC. – The BAC shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative:

⁴⁷ See *Office of the Ombudsman v. De Zosa*, 751 Phil. 293, 299-300 (2015).

⁴⁸ *Aragones v. Department of Social Welfare and Development*, G.R. No. 227113, November 9, 2020.

Provided, That in the event the Head of the Procuring Entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.

In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided for in Article XVI hereof.

The BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the GPPB on a semestral basis. The contents and coverage of this report shall be provided in the IRR. (Emphases supplied)

Here, the BAC members, in violation of the procurement law and its implementing rules and regulations, awarded the patrol boat contract to a supplier who was not technically, legally, and financially qualified, to the prejudice of the government.

a) They resorted to Negotiated Procurement without the required authorization from the Head of the Procuring Entity (HOPE).

Section 10 of RA 9184 requires that as a rule, every procurement shall be done through competitive bidding. By way of exception, Sec. 48 of the same law allows the procuring entities to resort to alternative methods to promote economy and efficiency subject to certain conditions, thus:

SEC. 10. Competitive Bidding. – All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

x x x x

SEC. 48. Alternative Methods. – Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

It is not disputed that the Province of Bataan initially conducted a public bidding for the procurement of one 6-cylinder gas engine patrol boat. But when the lone bidder was post-disqualified, BAC Chairperson Diaz

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and members Yuzon, De Guzman, Banzon and Talento, declared a failure of bidding and set the project for another public bidding.

Unfortunately, on the date of the rebidding, no bidder participated. The BAC consequently declared a second failure of bidding and recommended to the Head of the Procuring Entity (HOPE) the adoption of Limited Source Bidding (LSB) under Sec. 49. Governor Garcia approved this recommendation.

But instead of following the process for LSB, the BAC, without any authority from the HOPE, suddenly made a detour and peremptorily, on its own, resorted to Negotiated Procurement-Two Failed Biddings under Section 53(a). This the BAC did by directly inviting three (3) bidders to submit bids for the patrol boat project. They diverted to this method of procurement on the mere pretext that the requisite condition for the use of this alternative method anyway was present, *i.e.*, failure of bidding for the second time. Notably, too, the BAC altogether skipped the requisite approval from the HOPE itself.

The Court of Appeals gravely erred when it opined that there is only a technical difference between LSB and Negotiated Procurement.

For one, requiring the prior approval of the HOPE for the change in the procurement method is not technical. It is a substantial and procedural requisite which cannot be lightly dismissed. The use of the word SUBJECT connotes a command. It is mandatory, not directory. The word "subject" imposes a condition on the use of alternative method of procurement, that is, without the HOPE's approval as a condition, resort to alternative method will not be permitted. In *Diokno v. Rehabilitation Finance Corporation*,⁴⁹ the Court ruled that the use of the word "subject" connotes an imposition of a condition, *viz.*:

The appeal involves the interpretation of Section 2 of Republic Act No. 304, which provides:

. . . *And provided, also*, That investment funds or banks or other financial institutions owned or controlled by the Government shall, **subject to availability of loanable funds, and any provision of their charters, articles of incorporations, by-laws, or rules and regulations to the contrary notwithstanding, accept or discount at not more than two per centum per annum for ten years** such certificate for the following purposes only: (1) the acquisition of real property for use as the applicant's home, or (2) the building or construction or reconstruction of the residential house of the payee of said certificate: . . .

X X X X

⁴⁹ 91 Phil. 608, 609-610, 611-612 (1952).

In the provision subject controversy, it is to be noted that the verb-phrase "shall accept or discount" has two modifiers, namely, "subject to availability of loanable funds" and "at not more than two *per centum per annum* for ten years." As to the second modifier, the interest to be charged, there seems to be no question that the verb phrase is mandatory, because not only does the law use "at not more" but the legislative purpose and intent, to conserve the value of the backpay certificate for the benefit of the holders, for whose benefit the same have been issued, can be carried out by fixing a maximum limit for discounts. But as to when the discounting or acceptance shall be made, the context and the sense demand a contrary interpretation. **The phrase "subject" means "being under the contingency of" (Webster's Int. Dict.) a condition. If the acceptance or discount of the certificates to be "subject" to the condition of the availability of a loanable funds, it is evident that the Legislature intended that the acceptance shall be allowed on the condition that there are "available loanable funds." In other words, acceptance or discount is to be permitted only if there are loanable funds. (Emphases supplied)**

For another, LSB is not synonymous with Negotiated Procurement-Two Failed Biddings. They are differently defined precisely because they are different, not synonymous. On the one hand, LSB is a method of procurement involving direct invitation to bid from a set of pre-selected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract and it is used only for procurement of a) highly specialized types of goods (e.g. sophisticated defense equipment, complex air navigation systems, and coal) and consulting services where only a few suppliers or consultants are known to be available, such that resorting to the public bidding method will not likely result in any additional suppliers or consultants participating in the bidding, or b) major plant components where it is deemed advantageous to limit the bidding to known qualified bidders in order to maintain uniform quality and performance of the plant as a whole. On the other hand, Negotiated Procurement-Two Failed Biddings is the direct negotiation with a technically, legally, and financially capable supplier, contractor or consultant after the BAC's declaration of failure of public bidding for the second time and requires the procuring entity to draw up a list of at least three (3) suppliers or contractors which will be invited to submit bids where the procedures for the conduct of public bidding shall be observed, and the lowest calculated and responsive bid shall be considered for award.

To repeat, the BAC was specifically authorized to conduct LSB for the procurement of the patrol boat, as an alternative mode of procurement following the two failed biddings. It bears emphasis that it was the BAC itself which recommended LSB and the same was approved by the HOPE in the person of then Governor Garcia. But BAC made a sudden turn around, totally disregarded the clear command of the law, and out of

the blue, did a negotiated procurement, instead. The intent to violate the law is clear as day.

In *De Guzman v. Office of the Ombudsman*,⁵⁰ the Court held that the Bids and Awards Committee members committed grave misconduct when they grossly disregarded the law and were manifestly remiss in their duty to strictly comply with the directives of RA 9184. They conducted the bidding process and awarded contracts without compliance with all the other requirements for limited source bidding and negotiated procurement. Such gross disregard of the law is so blatant and palpable that the same amounts to a willful intent to subvert the clear policy of the law for transparency and accountability in government contracts, which is also true in this case.

b) Even assuming that the BAC was authorized to resort to Negotiated Procurement here, they still violated the governing law under RA 9184 and its IRR-A.

Section 53(a) of RA 9184 states:

SEC. 53. Negotiated Procurement. — Negotiated Procurement shall be allowed only in the following instances:

(a) In cases of two [2] failed biddings, as provided in Section 35⁵¹ hereof; x x x

Further, Section 54 provides:

SEC. 54. Terms and Conditions for the use of Alternative Methods. — The specific terms and conditions, including the limitations and restrictions, for the application of each of the alternative methods mentioned in this Article shall be specified in the IRR.

Section 54.2 is the relevant provision under the IRR-A, viz.:

SECTION 54. Terms and Conditions for the use of Alternative Methods. —

...

⁵⁰ 821 Phil. 681, 699-700 (2017).

⁵¹ **SEC. 35. Failure of Bidding.** — There shall be a failure of bidding if:

- (a) No bids are received;
- (b) No bid qualifies as the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid; or,
- (c) Whenever the bidder with the highest rated/lowest calculated responsive bid refuses, without justifiable cause to accept the award of contract, as the case may be.

Under any of the above instances, the contract shall be re-advertised and re-bid. The BAC shall observe the same process and set the new periods according to the same rules followed during the first bidding. After the second failed bidding, however, the BAC may resort to negotiated procurement as provided for in Section 53 of this Act.

54.2. In addition to the specific terms, conditions, limitations and restrictions on the application of each of the alternative methods specified in Sections 48 to 53 of this IRR-A, the following shall also apply:

...

b) For items (a) and (b) of Section 53, in the case of goods and infrastructure projects, the procuring entity shall draw up a list of at least three (3) suppliers or contractors which will be invited to submit bids. The procedures for the conduct of public bidding shall be observed, and the lowest calculated and responsive bid shall be considered for award. Moreover, the provisions of Section 21.2.4 of this IRR-A shall be observed.

In Negotiated Procurement, the BAC is still required to observe the procedures in public bidding, among them, the preliminary examination of bids under Section 30 of RA 9184 and its IRR-A which, as shown, the BAC utterly failed to do.

In preliminary examination of bids, Section 30 of RA 9184 instructs the BAC to use a non-discretionary pass/fail criterion, that is, if the requirement is missing, incomplete, or insufficient *vis-à-vis* the specifications of the project, it will be declared "failed" for being non-compliant and its financial offer will no longer be considered, thus:

SEC. 30. Preliminary Examination of Bids. — Prior to Bid evaluation, the BAC shall examine first the technical components of the bids using "pass/fail" criteria to determine whether all required documents are present. Only bids that are determined to contain all the bid requirements of the technical component shall be considered for opening and evaluation of their financial component.

A detailed procedure in the evaluation of bids is found in Section 30 of IRR-A, *viz.*:

SECTION 30. Preliminary Examination of Bids. —

30.1. The BAC shall open the first bid envelopes (Technical Proposals) of eligible bidders in public to determine each bidder's compliance with the documents required to be submitted for the first component of the bid, as prescribed in this IRR-A. **For this purpose, the BAC shall check the submitted documents of each bidder against a checklist of required documents to ascertain if they are all present in the first bid envelope, using a non-discretionary "pass/fail" criteria, as stated in the Invitation to Apply for Eligibility and to Bid and the Instructions to Bidders. If a bidder submits the required document, it shall be rated "passed" for that particular requirement. In this regard, failure to submit a requirement, or an incomplete or patently insufficient submission, shall be considered "failed" for the particular**

requirement concerned. In case one or more of the above required documents in the first envelope of a particular bid is missing, incomplete, or patently insufficient, the BAC shall rate the bid concerned as "failed" and immediately return to the bidder concerned its second bid envelope unopened. Otherwise, the BAC shall rate the said first bid envelope as "passed."

30.2. Immediately after determining compliance with the requirements in the first envelope, the BAC shall forthwith open the second bid envelope (Financial Proposals) of each remaining eligible bidder whose first bid envelope was rated "passed." The second envelope of each complying bidder shall be opened within the same day, except as provided under Section 33 of this IRR-A. In case one or more of the requirements in the second envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the approved budget for the contract, the BAC shall rate the bid concerned as "failed." Only bids that are determined to contain all the bid requirements for both components shall be rated "passed" and shall immediately be considered for evaluation and comparison.

During the preliminary examination of bids, the BAC first determines whether the submitted bids strictly comply with the technical specifications, and the terms and conditions of the project. If compliant, the BAC shall proceed to open the financial proposal of bidders rated "passed." But when there is non-compliance with any of the technical specifications, terms and conditions, the bid will be rated as "failed" and would no longer be considered for evaluation and its financial proposal shall not be opened.

Here, the BAC failed to strictly observe the procedure for preliminary evaluation of bids. The invitation to submit an offer or bid specifically required a 6-cylinder type patrol boat. Admittedly, Asistin, Jr. offered a 4-cylinder engine patrol boat. His offer should have been declared as "failed," notwithstanding that his offer was the lowest. His offer should not have been considered at all for being non-responsive. Despite this patent defect, the BAC accepted his offer and recommended the award of the contract to him, making it appear that they were awarding for the delivery of a 6-cylinder boat when in fact the offer was for a 4-cylinder engine patrol boat.

c) The BAC disregarded another requirement in Section 53⁵² of IRR-A governing negotiated procurement: to negotiate only with a technically, legally, and financially capable supplier. As found by the OMB, the BAC invited and negotiated with bidders --- Asistin, Jr., Rodriguez, and Otor --- who were neither bonafide suppliers, nor technically, legally and financially capacitated to enter into a contract with the government.

⁵² **Section 53.** Negotiated Procurement is a method of procurement of goods infrastructure projects and consulting services, whereby the procuring entity directly negotiates a contract with a **technically, legally and financially capable supplier, contractor or consultant** only in the following cases: x x x

Records reveal they mainly relied on fishing and carpentry for their livelihood, albeit sometimes, they build or repair fishing boats, as attested to by Barangay Chairman Dela Rosa of Barangay, Lusungan, Orion, Bataan. Too, DTI certified that Otor, Rodriguez, and Asistin, Jr. have no existing business registered under their names.

But the worse part is two of these three (3) supposed bidders denied ever participating in the bidding. Thus, in their respective affidavits, Otor and Rodriguez denied submitting any documents to join the bidding for the patrol boat. Although their main source of livelihood is fishing and there are times they build or repair boats, they are not in the business of boat making. Even then, however, the BAC still invited all three of them, ignoring the fact that they had no capacity at all to bid for the project. The BAC even went to the extent of introducing fake documents into the records to make it appear that Otor and Rodriguez who denied submitting any documents submitted the documentary requirements for Negotiated Procurement and participated therein.

Second. The BAC violated the principles of competition and transparency when they allowed a material alteration of the project from a 6-cylinder patrol boat to a 4 cylinder patrol boat only after the whole bidding process had already been accomplished and the project already awarded to Asistin, Jr..

Under case law, competition requires not only bidding upon a common standard, a common basis, upon the same thing, the same subject matter, and the same undertaking, but also that it be legitimate, fair and honest and not designed to injure or defraud the government. The essence of competition in public bidding is that the bidders are placed on equal footing which means that all qualified bidders have an equal chance of winning the auction through their bids. Another self-evident purpose of competitive bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.⁵³

In cases where the BAC resorts to certain alternative methods of procurement requiring more than one (1) bidder, the element of competition remains essential. Hence, the rules on Negotiated Procurement-Two Failed Biddings require the presence of at least three (3) bidders competing for the project. The bidders should be placed on equal footing and given equal opportunity to bid for the same project. But here, the BAC preemptorily removed the essential element of competition. Thus, after the bidding failed for the second time, the BAC obtained approval from the HOPE for the alternative mode of LSB, only to implement an altogether different mode, that is, Negotiated Procurement which, the BAC also tampered with, by

⁵³ See *Pabillo v. Commission on Elections*, 758 Phil. 806, 841-842 (2015).

putting in ghost participants or offerors in the process. And while all this time, the subject was for a 6-cylinder patrol boat, suddenly it became a 4-cylinder patrol boat. All they did was make a pen alteration crossing out number 6 and inserting number 4.

In *Agan v. Philippine International Air Terminals Co., Inc.*,⁵⁴ we held that an amendment is material if it permits a substantial variance between the terms and conditions under which the bids were invited and the terms and conditions of the contract executed after the bidding.

To be sure, the change of the specifications from 6-cylinder gas engine to 4-cylinder gas engine was a material change that totally altered the requirement of the project. For one, this alteration has a significant effect on the price of the patrol boat. In fact, the issued justification stated that the Approved Budget for the Contract (ABC) was no longer sufficient for a 6-cylinder engine patrol boat, hence, the need to modify. Had the bidders been informed of such change, they would have perhaps made an offer corresponding to a 4-cylinder engine boat which costs less than a 6-cylinder engine boat. But as stated, no notice was ever given them nor the so called invited bidders.

Consequently, when the BAC accepted Asistin, Jr.'s offer of a 4-cylinder engine boat and recommended it for approval by De Mesa (authorized representative of the HOPE) who indeed signified his approval, all three (3) of them violated the rules on competition and transparency to favor Asistin, Jr., to the prejudice of the government.

In *Agan*, the Court declared as void a material amendment to contract when such amendment was made without conducting a new procurement process. It reasoned, thus:

While we concede that a winning bidder is not precluded from modifying or amending certain provisions of the contract bidden upon, such changes *must not constitute substantial or material amendments that would alter the basic parameters of the contract and would constitute a denial to the other bidders of the opportunity to bid on the same terms.* Hence, the determination of whether or not a modification or amendment of a contract bidden out constitutes a substantial amendment rests on whether the contract, when taken as a whole, would contain substantially different terms and conditions that would have the effect of altering the technical and/or financial proposals previously submitted by other bidders. **The alterations and modifications in the contract executed between the government and the winning bidder must be such as to render such executed contract to be an entirely different contract from the one that was bidden upon.**

⁵⁴ See 450 Phil. 744, 824-825 (2003).

In the case of *Caltex (Philippines) Inc. v. Delgado Brothers, Inc.*, this Court quoted with approval the ruling of the trial court that an amendment to a contract awarded through public bidding, when such subsequent amendment was made without a new public bidding, is null and void:

The Court agrees with the contention of counsel for the plaintiffs that the due execution of a contract after public bidding is a limitation upon the right of the contracting parties to alter or amend it without another public bidding, for otherwise *what would a public bidding be good for if after the execution of a contract after public bidding, the contracting parties may alter or amend the contract, or even cancel it, at their will?* Public biddings are held for the protection of the public, and to give the public the best possible advantages by means of open competition between the bidders. *He who bids or offers the best terms is awarded the contract subject of the bid, and it is obvious that such protection and best possible advantages to the public will disappear if the parties to a contract executed after public bidding may alter or amend it without another previous public bidding.*⁵⁵ (Emphasis supplied, citation omitted)

The supposed urgency of the project did not excuse respondents from skipping compliance with the procurement law and the rules.

To repeat, the actions of the BAC in the procurement of the patrol boat reeked of flagrant and gross violations of the procurement law and its implementing rules and regulations. The BAC deliberately favored a non-compliant bidder. They grossly, blatantly, and palpably disregarded the law on transparency and accountability in government contracts.⁵⁶

In *Office of the Ombudsman-Mindanao v. Martel*,⁵⁷ the Court ruled that the BAC was guilty of grave misconduct when they committed glaring violations of the procurement laws which resulted in the government disbursing public funds for illegally procured service vehicles.

The BAC Chairperson and members are also guilty of serious dishonesty when they used fake documents to make it appear that there was a semblance of competition and compliance with the requirements of Negotiated Procurement-Two Failed Biddings. In *Aragones v. Department of Social Welfare and Development*,⁵⁸ the Court found Aragones liable for serious dishonesty when she fabricated documents to make it appear

⁵⁵ *Id.* at 815-816.

⁵⁶ See *Andaya v. Field Investigation Office of the Office of the Ombudsman*, G.R. No. 237837, June 10, 2019.

⁵⁷ 806 Phil. 649, 662 (2017).

⁵⁸ *Supra* note 48.

that there were other bidders who submitted price quotations for lease of venue procurement. Her actions revealed her lack of respect and propensity to simulate procurement processes through fabricated documents. Like in *Aragones*, the BAC too displayed their utter lack of respect in the procurement process when they intentionally distorted the truth by using fake documents to create an illusion that at least three (3) bidders competed for the project.

Respondent De Mesa, as approving authority, is equally liable for grave misconduct and serious dishonesty

As provincial administrator and as representative of the HOPE, respondent De Mesa was authorized to sign the notice of award, the contract with the supplier, the notice to proceed and the purchase order. Notably, these documents all reflected that the item required to be delivered was a 6-cylinder gas engine patrol boat. We emphasize that the BAC evaluated and accepted Asistin, Jr.'s offer of a 4-cylinder engine patrol boat, as shown in the canvass summary signed by the BAC. But despite this patent and substantial incompatibility with the project specification, De Mesa approved the offer and issued the offeror the notice of award, contract, notice to proceed and purchase order, all bearing the description of subject matter to be a 6-cylinder engine patrol boat. He intentionally signed all these documents as if the award was compliant and in conformity with the project borne in the said documents.

At the time he released the payment though, the same documents, except for the purchase order, already bore a patent alteration in the subject matter as the number "6" following the word "cylinder" was crossed out and the number "4" was inserted. Instantly, the documents no longer bore the same subject matter or item, *i.e.*, instead of the original a 6-cylinder gas engine patrol boat, it was now a 4-cylinder gas engine patrol boat. The same original clean documents he signed before were now, on their face, altered to conform to the new delivery. But despite the alterations, he still allowed the payment for the much smaller patrol boat compared to what was originally and actually awarded. The disbursement voucher and check he signed and issued in favor of Asistin, Jr. now already reflected a 4-cylinder engine patrol boat which was incompatible with the original specification and award.

Corruption, as an element of Grave Misconduct, consists in the **act of an official or fiduciary person who unlawfully and wrongfully uses his or her station or character to procure some benefit for himself**

or for another person, contrary to duty and the rights of others. Even if there was absence of corrupt motive, the actuations showing blatant disregard of the procurement process were sufficient to aggravate the offense.⁵⁹

Here, De Mesa's actions showed both corrupt motive and blatant disregard of the law and the rules. Even assuming he did not personally gain from the transaction, De Mesa allowed himself to give unwarranted benefit to the supplier and imperiously ignored the patent violations committed by the BAC. He, too, swallowed hook line and sinker the terse justification to alter and totally turned a blind eye to the manifest, nay, multiple violations of the law and the rules.

De Mesa is equally guilty of serious dishonesty. Dishonesty, like bad faith, is not simply bad judgment or negligence, but a question of intention. In ascertaining the intention of a person charged with dishonesty, consideration must be taken not only of the facts and circumstances giving rise to the act committed by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment.⁶⁰ De Mesa's actions altogether indubitably showed his predisposition to deceive and defraud the government when he tolerated the actions of the BAC to award the contract to a non-compliant bidder which eventually led to the release of payment to the prejudice of the government.

**Respondent Caparas is also liable
for grave misconduct and serious
dishonesty**

Respondent Caparas was charged with grave misconduct and dishonesty because he was part of the inspection team tasked to certify the delivery of the boat. The OMB ruled that it was impossible for Caparas to inspect and accept the patrol boat on January 18, 2006 when the delivery did not actually happen on that day because Asistin, Jr. would have been able to make the delivery only after February 2006 when he received the funds he needed to commence building the boat. Clearly, therefore, the delivery Caparas certified to was just a ghost delivery.

We agree.

It is a matter of record that Asistin, Jr. was only issued a Notice to Proceed on January 9, 2006 and the Purchase Order on January 17, 2006. It would have been humanly impossible for him to have already built and

⁵⁹ *Id.*

⁶⁰ *Sabio v. Field Investigation Office*, 825 Phil. 848, 859 (2018).

delivered the boat in just a matter of one (1)-day. Moreso, since he himself stated under oath that it would take him three (3) to four (4) weeks to build a boat. Even Rodriguez, one of the two "fake bidders," acknowledged that it would take at least three (3) weeks to build a boat. Hence, if it were not a ghost delivery which Caparas certified to have inspected and accepted, what could it be?

We further note that the Acceptance and Inspection Report signed by Caparas lacked in material details as to the date of inspection and invoice number. The blank spaces for these details seem to have been purposely left out to somehow give a leeway for a possible "curing" should the anomaly be eventually discovered.

There is no denying therefore that the dishonest and fraudulent acts committed by Caparas, together with the equally dishonest and fraudulent acts of the BAC Chairperson and members and HOPE representative De Mesa systematically caused payment to a non-compliant bidder, to the serious damage and prejudice of the government which makes him liable. Consequently, Caparas is guilty of serious dishonesty or **distortion of truth** showing lack of integrity or a disposition to violate the truth, causing serious damage and injury to the government.

We now go to the charge of grave misconduct against Caparas.

Section 257 of the Government Accounting Manual for Local Government Units requires the property officer and inspection team to ensure that the item to be accepted conforms with the standards and specifications of the Purchase Order or contract:

Section 257. Receipt, Inspection and Acceptance of PPE. Receipt of items purchased by the LGU shall be accepted by the Property Officer and inspected by the inspection team. **Acceptance shall be made only if the PPE delivered conform to the standards and specifications in the Purchase Order (PO) or contract.** Inspection and acceptance shall be made using the Acceptance and Inspection Report (AIR). (Emphasis supplied)

As stated, Caparas could not have accepted any delivery on January 18, 2006 for the simple reason that there was no delivery to speak of on that day.

But even assuming there was such a delivery on that day, it would have only referred to a 4-cylinder engine patrol boat and not to a 6-cylinder patrol boat subject of the Negotiated Procurement which description was reflected in the Purchase Order required to be in the possession of Caparas as

a member of the Inspection Team. Another vital document he was required to be armed with during the inspection was the contract agreement itself. On its face it bore a material alteration, the number "6" preceding the word cylinder was crossed out and the number "4" was inserted. This alteration should have instantly alerted him that something was seriously wrong considering that the Purchase Order in his possession was for a 6-cylinder, not for a 4-cylinder patrol boat. This discrepancy, a material one at that, was patent on the face of the documents. But he simply ignored it as he preemptory proceeded to accept the wrong delivery. This is pure and simple grave misconduct or a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer imbued with a **clear intent to violate the law**.⁶¹

Penalty

Respondents BAC members, Yuzon, De Guzman, Banzon and Talento, De Mesa and Caparas are found guilty of grave misconduct and serious dishonesty. Both are grave offenses, each of which merits the penalty of dismissal even for the first time offenders under Section 46(A)(1), (3), Rule 10 of the Revised Rules on Administrative Cases. The penalty of dismissal carries with it the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking the civil service examinations.⁶²

When a civil servant is disciplined, the object sought is not the punishment of the officer or employee, but the improvement of public service and the preservation of the public's faith and confidence in the government. Serious offenses, such as grave misconduct, have always been and should remain anathema in the civil service. The rationale is enshrined in Section 1, Article XI of the Constitution — public office is a public trust.⁶³

ACCORDINGLY, the Court **ORDAINS**, as follows:

a) In **G.R. No. 215985** entitled *Field Investigation Office of the Office of the Ombudsman v. Enrico T. Yuzon, Godofredo O. De Guzman, Ludivina G. Banzon and Emerlinda S. Talento*, the petition is **GRANTED**. The Decision dated February 14, 2014 and Resolution dated November 28, 2014 of the Court of Appeals in CA-G.R. SP No. 127451 are **REVERSED** and **SET ASIDE**. Enrico T. Yuzon, Godofredo O. De Guzman, Ludivina G. Banzon and Emerlinda S. Talento are found **GUILTY** of **GRAVE MISCONDUCT** and **SERIOUS DISHONESTY** in OMB-C-A-08-0659-L.

⁶¹ *Office of the Ombudsman v. De Zosa*, supra at 300.

⁶² Section 52, Revised Uniform Rules on Administrative Cases in the Civil Service.

⁶³ *Office of the Ombudsman v. Blor*, G.R. No. 227405, September 5, (2018).

Accordingly, they are **DISMISSED** from government service with all the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking the civil service examinations.

b) In **G.R. No. 216135** entitled *Field Investigation Office of the Office of the Ombudsman v. Rodolfo H. De Mesa*, the petition is **GRANTED**. The Decision dated June 26, 2014 and Resolution dated December 2, 2014 of the Court of Appeals in CA-G.R. SP No. 127380 are **REVERSED** and **SET ASIDE**. Rodolfo H. De Mesa is found **GUILTY** of **GRAVE MISCONDUCT** and **SERIOUS DISHONESTY** in OMB-C-A-08-0659-L. He is **DISMISSED** from government service with all the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking the civil service examinations.


c) In **G.R. No. 216001** entitled *Field Investigation Office of the Office of the Ombudsman v. Francisco T. Caparas*, the petition is **GRANTED**. The Decision dated February 28, 2014 and Resolution dated November 19, 2014 of the Court of Appeals in CA-G.R. SP No. 127450 are **REVERSED** and **SET ASIDE**. Francisco T. Caparas is found **GUILTY** of **GRAVE MISCONDUCT** and **SERIOUS DISHONESTY** in OMB-C-A-08-0659-L. He is **DISMISSED** from government service with all the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking the civil service examinations.

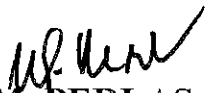
The Division Clerk of Court is ordered to deconsolidate G.R. No. 214156 entitled *Field Investigation Office, Office of the Ombudsman v. Alicia R. Magpantay* in view of the prior issuance therein of Entry of Judgment dated April 8, 2016.

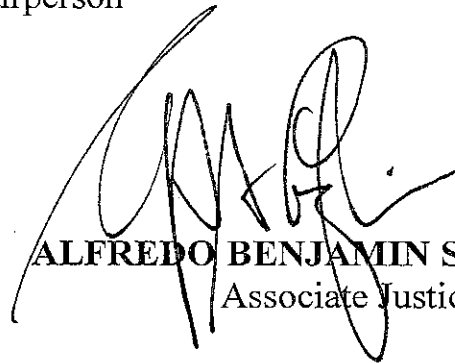
SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice
Chairperson


ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUTOA
Associate Justice


JHOSEP Y. LOPEZ
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 cases were assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice

