Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

WILLIAM DADEZ NICOLAS, SR.,
Petitioner,

- versus -

TASK FORCE ABONO-FIELD INVESTIGATION OFFICE,
Respondent.

G.R. No. 246114

Present:

LEONEN, *S.A.J., Chairperson*,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

Promulgated:

JUL 26 2023

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DECISION

KHO, JR., *J.*:

Before the Court is the Petition for Review on *Certiorari*[1] assailing the Decision[2] dated October 2, 2018 and the Resolution[3] dated March 19, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 153302. The CA Decision affirmed the Decision[4] dated July 14, 2017 of the Office of the Ombudsman (Ombudsman) in OMB-C-A-13-0031, which found petitioner William Dadez Nicolas, Sr. (Nicolas), former provincial treasurer of Isabela, guilty of

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1 *Rollo*, pp. 11-45.
2 *Id.* at 47-65. Penned by Associate Justice Pedro B. Corales with Associate Justices Edwin D. Sorongon and Ronaldo Roberto B. Martin, concurring.
3 *Id.* at 67-68.
4 *Id.* at 52-54. Copy not attached to the *rollo* but see CA Decision dated October 2, 2018.

dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service.

The Facts

In line with the Department of Agriculture's (DA) *Ginintuang Masaganang Ani* (GMA) Program under Republic Act No. 8435, or the "Agriculture and Fisheries Modernization Act of 1997," the Department of Budget and Management issued on February 3, 2004 Special Allotment Release Order (SARO) No. E-04-00164 for PHP 728,000,000.00. After certain deductions, the DA transferred PHP 723,000,000.00 to its Regional Field Units (RFUs) for the implementation of the **Farm Inputs and Farm Implements Program (FIFIP)**. Pursuant thereto, the Provincial Government of Isabela (LGU-Isabela) received PHP 23,000,000.00.[5]

Upon the request of several mayors[6] and with the approval of the DA,[7] LGU-Isabela, represented by Governor Faustino S. Dy, Jr. (Governor Dy), entered into a Memorandum of Agreement (MOA) with the DA-RFU II on March 18, 2004 for the implementation of the FIFIP in their respective municipalities. The MOA, which was notarized on March 19, 2004, provided for the transfer of the PHP 23,000,000.00 sub-allotment funds to LGU-Isabela for the latter to procure farm inputs or implements amounting to the same value. For its part, LGU-Isabela undertook to procure the farm inputs or implements following government rules and regulations and submit, upon delivery, the corresponding Certificate of Acceptance to the DA-RFU II.[8]

In the meantime, on March 18, 2004, the DA[9] approved Advice Sub-Allotment No. 101-2004-129 for DA-RFU II. By virtue of a March 23, 2004 Disbursement Voucher (DV), DA-RFU II transferred to LGU-Isabela the amount of PHP 14,950,000.00 or 65% of the total sub-allotment funds. As proof of receipt of this first tranche, LGU-Isabela issued Official Receipt No. 1805951 on March 26, 2004. Thereafter, on May 7, 2004, DA-RFU II released the second tranche of PHP 8,050,000.00 to LGU-Isabela supported by DV No. 2005-05-370.[10]

Meanwhile, in an undated Purchase Request No. (PR) 121-04-03-008, LGU-Isabela Provincial Agriculturist Danilo B. Tumamao requested six units of 4wd 90HP Massey Ferguson MF445 Farm Tractor (farm tractor) and six units of ACT 20x24.2 gang Trailing Harrow (trailing harrow; collectively,

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5 *Id.* at 48.

6 *Id.* These include the Mayors of Alicia, Echague, Ganu, Maconacon, San Mateo, and Tumauini.

7 *Id.* The request was approved and the DA-RFU II was authorized to enter into the MOA in a Memorandum dated March 17, 2004 by Undersecretary Jocelyn L. Bolante. The DA-RFU II was represented by Regional Executive Director Gunersindo D. Lasam.

8 *Id.* at 48–49.

9 *Id.* at 49. Through Assistant Secretary Belinda A. Gonzales.

10 *Id.*

farm machineries) "for the **Grains Highway Project of the Province of Isabela**" **(Isabela Grains Project)** at an estimated total cost of PHP 12,468,000.00. Nicolas certified cash availability for this project which Governor Dy approved.[11]

On March 30, 2004, the Isabela Provincial Bids and Awards Committee (PBAC) issued a Certification,[12] approved by Governor Dy, that the purchase of the requested 12 units of farm machineries had been subjected to public bidding on March 18, 2004 and awarded to Equity Machineries, Inc. (EMI). An undated Purchase Order No. 04-03-008 for the total cost of PHP 12,468,000.00 was subsequently issued. However, EMI delivered to LGU-Isabela only eight units out of the 12 requested farm machineries covered by an undated Sales Invoice No. 66455 for PHP 8,312,000.00.[13]

Thereafter, Nicolas, among others, as members of the Provincial Inspectorate Team, signed an undated Certificate of Inspection stating that they thoroughly inspected the 8 units of farm machineries delivered by EMI and found them in conformity with the technical specifications submitted during the public bidding. On April 28, 2004, Governor Dy signed a Certificate of Acceptance of the farm machineries, as witnessed by Nicolas and Provincial Vice Governor Santiago P. Respicio. On May 7, 2004, LGU-Isabela issued DV No. 302-04-05-00187, indicating the final price of PHP 8,009,745.45 for the farm machineries wherein Nicolas, among others certified the cash availability. LGU-Isabela then released the sub-allotment funds from the FIFIP including the May 7, 2004 check for PHP 8,009,745.45 in favor of EMI. On even date, EMI issued to LGU-Isabela Official Receipt No. 182268.[14]

On October 12, 2004, the Commission on Audit (COA) issued an Audit Observation Memorandum (AOM)[15] stating, among others, that the training harrows had been distributed to certain *punong barangays* for no purpose or reason. Another AOM was issued on October 28, 2004 noting several apparent irregularities in the use and disbursement of the FIFIP funds by several local government units, including the Province of Isabela.[16] Later, in a November 14, 2005 letter,[17] GMA Program National Coordinator Frisco M.

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11 *Id.*

12 *Id.* at 49–50. The Certification was signed by Provincial Administrator and PBAC Chairman Dionisio E. Bala, Jr., as well as Provincial Agriculturist Danilo B. Tumamao and his fellow PBAC members, namely: Provincial General Services Officer Alfredo B. Mendoza, Provincial Engineer Medardo B. Aggari, Provincial Budget Officer Leticia Q. Mabbayad, and Provincial Legal Officer Atty. Don Antonio Marie Abogado.

13 *Id.* at 49–50.

14 *Id.* at 50.

15 *Id.* at 126–127. Signed by State Auditor IV Beatris A. Pataueg.

16 *Id.* at 118–119. Signed by State Auditor IV Mary Ann T. Carag.

17 *Id.* at 125. It listed the following farm inputs/implements/facilities: seeds, inorganic fertilizers, organic fertilizers, Bio-N, bactericides, soil ameliorant, pesticides/rotenticides, other chemicals, leaf color soil analysis guide, power tillers, hand tractor/rotovator, pumps, rotary tillers, weeders, sprayers, drum seeders, floating tillers, reapers, seed cleaner, delivery truck (seed), seed cold storage, multi-purpose drying pavement, mechanical driers, mini-warehouse, and tarpaulins.

Malabanan furnished the DA's resident auditor with a list of farm inputs/implements/facilities being provided under the said program (Malabanan list).[18]

On December 10, 2012, the Task Force Abono-Field Investigation Office of the Ombudsman (TFA-FIO) filed, before the Ombudsman a Complaint[19] for violation of Section 3(e) and (g) of Republic Act No. 3019[20] and Article 220[21] of the Revised Penal Code, as well as for dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service against several officials of the Province of Isabela, including Nicolas. The TFA-FIO observed that no public bidding was conducted for the procurement of the farm machineries prior to the execution of the MOA. Moreover, it claimed that the PBAC did not furnish copies of the documents pertaining to the supposed public bidding held on March 18, 2004. Further, it asserted that the purchased farm machineries were not even among those farm inputs/implements/facilities covered by the GMA Program as enumerated in the Malabanan list. Lastly, it alleged that the respondents used the public funds for a purpose other than what it was intended for, i.e., the FIFIP, and in fact, the State Auditor observed that the farm machineries appeared to have been purchased for no purpose. Thus, the TFA-FIO claimed that the whole procurement process was tainted with serious irregularities and that the

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18 *Id.* at 51.

19 *Id.* at 70–82. Prepared by Graft Investigation and Prosecution Officer I Ronald Allan D. Ramos. The Complaint consolidated three charges: (i) criminal complaint for violation of Section 3(e) and (g) of Republic Act No. 3019 against Governor Dy, Tumamao, et. al., and criminal complaint for violation of Article 220 of the Revised Penal Code against the same respondents, docketed before the Ombudsman as OMB-C-C-13-00030; and (ii) administrative complaint for dishonesty, grave misconduct, conduct prejudicial to the best interest of the service against Tumamao, Nicolas, et. al., docketed as OMB-C-A-13-0031. (*See also id.* at 132).

20 The "Anti-graft and Corrupt Practices Act." It pertinently provides:

> **Section 3.** *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
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> . . .
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> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.
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> . . .
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> (g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

21 ART. 220. *Illegal use of public funds or property.* — Any public officer who shall apply any public fund or property under his administration to any public use other than that for which such fund or property were appropriated by law or ordinance shall suffer the penalty of *prision correccional* in its minimum period or a fine ranging from one-half to the total value of the sum misapplied, if by reason of such misapplication, any damage or embarrassment shall have resulted to the public service. In either case the offender shall also suffer the penalty of temporary special disqualification.

If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 per cent of the sum misapplied.

respondents *a quo* took advantage of their positions to collude and conspire with EMI.[22]

In his defense, Nicolas narrated[23] that the sub-allotment funds were originally intended for the purchase of liquid fertilizers under the FIFIP. However, the price of the liquid fertilizers was reduced, thus, LGU-Isabela had savings after the purchase. Nicolas argued that since the funds received under the FIFIP was in the nature of a continuing appropriation and considering that there were funds left after the purchase of the fertilizers, he certified the availability of such funds for the purchase of the farm machineries which still fell within the purpose of the FIFIP. For these reasons, he contended that any slight deviation from the use of the funds could not amount to technical malversation especially considering that the budget allocation for the FIFIP did not originate from a law or ordinance.[24]

Additionally, Nicolas asserted that he certified the availability of funds in the DV after ascertaining the necessity and lawfulness of the purchase of the farm machineries, as well as the completeness of the supporting documents. Similarly, he claimed that he signed the check issued to EMI in payment for the farm machineries in the exercise of his ministerial duties. In this regard, he stressed that his mere act of signing the said documents is not enough to establish bad faith and overcome the presumption of regularity in the exercise of official functions.[25]

Finally, he claimed that he had worked in the Treasury Office since 1972 until his retirement on December 7, 2006, during which time he had been repeatedly recognized for his leadership and performance. In this respect, he pointed out that he had no pending administrative case, per the Certification issued by the Provincial Legal Office of Isabela and Municipality of Burgos, Isabela. He also asserted that he is serving his second consecutive term of office as municipal councilor of Burgos, Isabela.[26]

The Ombudsman Ruling

In a Decision[27] dated July 14, 2017, the Ombudsman found Nicolas, Danilo B. Tumamao, Pete Gerald L. Javier, Alfredo B. Mendoza, Medardo B. Aggari, and Don Antonio Marie V. Abogado administratively liable for grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service. Consequently, the Ombudsman imposed upon them the penalty of dismissal from the service, with the accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits, perpetual disqualification

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22 *Rollo*, p. 51.
23 *Id.* at 132–157. See Counter-Affidavit executed on June 27, 2013.
24 *Id.* at 51–52.
25 *Id.* at 52.
26 *Id.*
27 *Id.* at 52–54. Copy not attached to the *rollo* but see CA Decision dated October 2, 2018.

from holding public office, and bar from taking civil service examinations. In the event that the penalty of dismissal can no longer be enforced, the Ombudsman ordered that the penalty shall be converted into a fine in the amount equivalent to their salaries for one year, with the accessory penalties attached to the penalty of dismissal shall continue to be imposed.

The Ombudsman held that the procurement of the farm machineries was premature and baseless because: *first*, there was neither a prior project proposal nor report of program of work identifying the items to be procured or market survey of products or product standards; *second*, the documents required to commence the procurement were issued or signed only after the supposed public bidding on March 18, 2004; *third*, based on the evidence, the March 18, 2004 bidding was actually for the Isabela Grains Project that was approved on November 18, 2003 and funded by a loan from the Development Bank of the Philippines; and *fourth*, the undated PR, in which Nicolas certified as to the availability of funds for the same, clearly indicated that it was for the Isabela Grains Project, not for the FIFIP for which the available funds were allotted.[28]

Additionally, the Ombudsman pointed out that the specification of brands and models for the farm machineries violated Republic Act No. 9184 or the "Government Procurement Reform Act." Finally, it highlighted the fact that the supporting documents were undated and unnumbered. For these reasons, the Ombudsman disregarded Nicolas's defense of good faith and regularity in the performance of ministerial duties explaining that as signatory to the DV, Nicolas was not precluded from raising reasonable questions on the legality, regularity, necessity, or economy of the transaction or expenditure. Consequently, the Ombudsman concluded that the various acts performed by Nicolas, along with the other respondents, exhibited evident bad faith, manifest partiality, and gross excusable negligence thus, giving EMI unwarranted benefit, advantage, and preference to the injury of the government.[29]

Aggrieved, Nicolas elevated the case before the CA via petition for review under Rule 43 of the Rules of Court.

The CA Ruling

In a Decision[30] dated October 2, 2018, the CA affirmed the ruling of the Ombudsman. Prefatorily, it upheld the jurisdiction of the Ombudsman over Nicolas notwithstanding the fact that he had retired from his post as provincial treasurer on December 7, 2006 and had only rejoined government service when he became an elective local official on July 1, 2007 until June

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28 *Id.* at 52.
29 *Id.* at 52-53.
30 *Id.* at 47-65.

30, 2013. The CA reasoned that the apparent difference between the position or designation of Nicolas's public office at the time the act or omission complained of and at the time the Complaint against him was instituted is immaterial given the Ombudsman's statutorily granted disciplinary authority over all elective and appointive officials. At any rate, the cessation from public office by virtue of Nicolas's intervening retirement did not warrant the dismissal of the administrative complaint against him since he committed the acts covered while he was still in service.[31]

Moreover, it ruled that Nicolas's right to speedy disposition of cases was not violated considering that (i) only two years had elapsed between the Ombudsman's February 27, 2015 Order requiring respondents to file their respective position papers[32] and the rendition of the July 14, 2017 Decision, (ii) the administrative case involved eight respondents, and (iii) there is no showing that the period was marked by vexatious, capricious, or oppressive delay.[33]

Anent the administrative charges, the CA ruled that as provincial treasurer, Nicolas was considered an accountable officer under the Government Auditing Code of the Philippines, the Revised Administrative Code, and Republic Act No. 7160 or the "Local Government Code of 1991," whose duties necessitated the cautious exercise of discretion since it permitted or required the possession or custody of government funds or property, including the disbursement of the same, and was thus, accountable and responsible for their safekeeping. Based on the evidence, Nicolas's participation in the transaction with EMI was not limited to signing the DV and the check, but also included certifying the availability of funds in the undated PR that was explicitly intended for the Isabela Grains Project, as well as signing the undated Certificate of Inspection and witnessing the Certificate of Acceptance. In this respect, the CA stressed that no disbursement of the public funds of LGU-Isabela could have been made without Nicolas's participation in practically every step of the transaction.[34]

Further, the CA found that Nicolas overlooked other "red flags" in the transaction that flagrantly disregarded established procurement rules and regulations: the undated PR—which Nicolas certified as to the availability of funds—pertained to a contract that was supposedly awarded through public bidding on March 18, 2004, even though the MOA was only notarized the following day, or on March 19, 2004; and, the Province of Isabela actually received the initial transfer of funds only on March 23, 2004.[35]

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31 *Id.* at 57–58.
32 *Id.* at 291.
33 *Id.* at 58–59.
34 *Id.* at 60–61.
35 *Id.* at 61–62.

Finally, the CA ruled that there is no indication that Nicolas issued any written objection to Governor Dy or any other officer or employee over the patent anomalies in the EMI transaction despite his expertise and experience, as he had in fact willfully played an indispensable, unique, and active part in the defraudation of the government. Citing Section 342[36] of Republic Act No. 7160, the CA stressed that the local treasurer shall not be relieved of liability for illegal or improper use or application or deposit of government funds or property by reason of them having acted upon the direction of a superior officer or upon participation of other department heads or officers of equivalent rank unless they register their objection in writing.[37]

For the above reasons, the CA held that by his acts, Nicolas permitted the anomalous application of the FIFIP funds to a wholly different local government project, i.e., the Isabela Grains Project. Consequently, his claims of good faith and regular performance of official functions must necessarily fail.[38]

Undeterred, Nicolas moved for reconsideration, which the CA denied in a Resolution[39] dated March 19, 2019. Hence, the present Rule 45 Petition.

The Issues Before the Court

The issues for the Court's resolution are whether: (i) the Ombudsman has jurisdiction over the administrative Complaint filed against Nicolas; and (ii) the CA reversibly erred in upholding the Ombudsman's Decision finding Nicolas guilty of grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service.

Nicolas argues that since he already retired from government service on December 7, 2006, the Ombudsman no longer had jurisdiction to hold him administratively liable for the alleged acts committed prior to his retirement. Moreover, while he became an elected official in 2007, the administrative charges pertain to acts committed while he was an appointive official, not an elective official. Besides, he already completely left government service as an elective official on June 30, 2013. Further, the condonation doctrine applies.[40]

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[36] SECTION 342. Liability for Acts Done Upon Direction of Superior Officer, or Upon Participation of Other Department Heads or Officers of Equivalent Rank. – **Unless he registers his objection in writing, the local treasurer,** accountant, budget officer, or other accountable officer **shall not be relieved of liability for illegal or improper use or application or deposit of government funds or property by reason of his having acted upon the direction of a superior officer, elective or appointive, or upon participation of other department heads or officers of equivalent rank.** The superior officer directing, or the department head participating in such illegal or improper use or application or deposit of government funds or property, shall be jointly and severally liable with the local treasurer, accountant, budget officer, or other accountable officer for the sum or property so illegally or improperly used, applied or deposited. (Emphasis supplied)

[37] *Rollo*, p. 62.

[38] *Id.* at 62–64.

[39] *Id.* at 67–68.

[40] *Id.* at 17–22.

At any rate, Nicolas insists that his participation in the purchase of the farm machineries was limited to signing the documents which were complete and regular on their face. He argues that pursuant to Section 38 to 40, Volume I, Chapter III, Letter D of the Manual on the New Government Accounting System for the Local Government Units, his only duty with respect to the DVs was to certify that there is cash available for the expenditure which he may do so only after the head of the department concerned has certified that the same is necessary and lawful, and the provincial accountant attested thereof that the supporting documents are complete. Moreover, when the local chief executive signs the same DV, it becomes his ministerial duty as provincial treasurer to issue the corresponding check, failing in which, may amount to nonfeasance or dereliction of duty. As such, he contends that there is no sufficient evidence to hold him liable for grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service.[41]

Finally, Nicolas argues that since the Sandiganbayan had already dismissed the corresponding criminal complaint on the ground of inordinate delay in violation of the right to speedy disposition of cases, the present administrative case should have been dismissed on the same ground.[42]

In its Comment[43] dated January 9, 2020, the TFA-FIO, through the Office of the Solicitor General, argues that the CA correctly affirmed the Ombudsman's jurisdiction over Nicolas considering that at the time the administrative complaint was filed against him, he was admittedly an incumbent government official, albeit there had been a gap in his service. As such, the subsequent expiration of his elective term of office did not divest the Ombudsman of its jurisdiction over the pending administrative case against him.[44]

Moreover, the TFA-FIO argues that Nicolas is belatedly raising the defense of condonation for the first time before the Court, and thus, should be deemed waived. At any rate, it claims that the doctrine does not apply to Nicolas's case since it applies only when, despite knowledge of the misconduct committed in a previous elective post, the electorate still chose to reelect the erring official; it does not apply when, as in this case, the misconduct was previously committed by the elective official while they were holding an appointive position.[45]

Further, the TFA-FIO maintains that the Ombudsman's findings, as affirmed by the CA, sufficiently showed that Nicolas' act of disregarding the public bidding requirements, as well as the various auditing and accounting

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41 *Id.* at 22-38.
42 *Id.* at 38–42.
43 *Id.* at 270-299.
44 *Id.* at 276-278.
45 *Id.* at 278-281.

rules and regulations, paved the way for the illegal disbursement of local government funds which constituted dishonesty and grave misconduct in office, as well as conduct prejudicial to the best interest of the service.[46]

Finally, the TFA-FIO contends that there was no inordinate delay in the resolution of the administrative charge against Nicolas. At any rate, his failure to timely raise this defense constitutes a waiver thereof.[47]

The Court's Ruling

The Court denies the Petition.

The Court affirms the findings of the Ombudsman and the CA that Nicolas should be held administratively liable for grave misconduct and dishonesty. However, Nicolas is not liable for conduct prejudicial to the best interest of the service, as will be explained herein.

Prefatorily, it must be stressed that findings of fact by the Ombudsman are conclusive when supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[48] Its findings are generally accorded great weight and respect, if not finality by the courts, especially when affirmed by the CA, by reason of their special knowledge and expertise over matters falling under their jurisdiction.[49]

Moreover, it is settled that in a petition for review under Rule 45 of the Rules of Court, only questions of law can be raised. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.[50]

In this case, in addition to questioning the jurisdiction of the Ombudsman over the administrative complaint against him, Nicolas likewise assails the uniform factual findings and conclusions of the Ombudsman and the CA as to his administrative liability for dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service in connection with the procurement of the farm machineries. Evidently, the issues raised with respect to the findings of the Ombudsman and the CA are factual in nature which are not proper for a Rule 45 petition. Moreover, as our subsequent discussions

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46 *Id.* at 281-290.

47 *Id.* at 290-296.

48 *Estarija v. Ranada*, 525 Phil. 718, 727 (2006) [Per J. Quisumbing, *En Banc*]; *Office of the Ombudsman v. Torres*, 588 Phil. 55, 59 (2008) [Per J. Nachura, Third Division].

49 *Aguilar v. Benlot*, 845 Phil. 885, 896 (2019) [Per J. Reyes, Jr., Second Division]; *Estarija v. Ranada*, 525 Phil. 718, 727 (2006) [Per J. Quisumbing, *En Banc*]. *See also Soliva v. Tanggol*, 869 Phil. 707, 721 (2020) [Per J. Carandang, Third Division].

50 *Aguilar v. Benlot*, 845 Phil. 885, 896 (2019) [Per J. Reyes, Jr., Second Division]

will show, the findings of the Ombudsman, which the CA affirmed, are well supported by substantial evidence and hence, conclusive upon this Court.

I.

JURISDICTION OF THE OMBUDSMAN

The mandate of the Ombudsman gives it jurisdiction over the administrative complaint filed against Nicolas

The mandate of the Ombudsman to investigate complaints against erring public officials, derived from both the Constitution and the law, gives it jurisdiction over the administrative complaint filed against Nicolas.

The Office of the Ombudsman was created by the Constitution to be the "protector of the people" against the inept, abusive, and corrupt in the Government.[51] Under Article XI, Section 12 of the Constitution, the Ombudsman is mandated to act promptly on complaints filed in any form or manner against public officials or employees of the government. Moreover, under Section 13 thereof, the Ombudsman is vested with the power and duty to investigate, on its own, or on complaint, "any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient."[52]

To further realize the vision of the Constitution, Congress, exercising the power granted to it under Article XI, Section 13(8) of the Constitution, enacted Republic Act No. 6770, otherwise known as "The Ombudsman Act of 1989" giving the Ombudsman **disciplinary authority over "all elective and appointive officials of the government and its subdivisions, instrumentalities, and agencies, including members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries,"** except only over "officials who may be removed only by impeachment or over members of Congress and the Judiciary.[53] In addition, Congress granted the Ombudsman investigative and disciplinary authority over "**all kinds of malfeasance, misfeasance and non-feasance of all public officials that have been committed . . . during [their] tenure of office**."[54]

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51 *Ombudsman Carpio Morales v. Court of Appeals*, 772 Phil. 672, 721–722 (2015) [Per J. Perlas-Bernabe, *En Banc*].

52 *See* Section 13, Article XI of the Constitution

53 *See* Section 21 of Republic Act No. 6770. *See also Lavina, Sr. v. Ombudsman*, 508 Phil. 527, 536 (2005) [Per J. Tinga, Second Division]; *Alejandro v. Office of the Ombudsman Fact-Finding and Intelligence Bureau*, 708 Phil. 32, 44 (2013) [Per J. Brion, Second Division]; *Estarija v. Ranada*, 525 Phil. 718, 736 (2006) [Per J. Quisumbing, *En Banc*]; *Carpio-Morales v. Ombudsman*, 772 Phil. 672, 702–704 (2015) [Per J. Perlas-Bernabe, *En Banc*].

54 *See* Section 16 of Republic Act No. 6770.

This authority of the Ombudsman extends to all acts or omissions that (1) are contrary to law or regulation; (2) are unreasonable, unfair, oppressive, or discriminatory; (3) are inconsistent with the general course of an agency's functions, though in accordance with law; (4) proceed from a mistake of law or an arbitrary ascertainment of facts; (5) are in the exercise of discretionary powers but for an improper purpose; or (6) are otherwise irregular, immoral, or devoid of justification.[55]

Thus, under the Constitution and Republic Act No. 6770, the Ombudsman's investigative and disciplinary authority covers (i) all acts and/or omissions committed during their tenure of office, by (ii) all officers and employees of the government without any distinction, qualification, or exception other than those expressly provided therefor. The Constitution intended the Ombudsman to be a more active and effective agent of the people in ensuring accountability in public office[56] and for this purpose, endowed it with plenary and broad powers to investigate and prosecute all malfeasance, misfeasance, and non-feasance of public officers or employees. Accordingly, as long as the acts or omissions had been committed by the public officer or employee while they were in office, the same may be subject to the jurisdiction of the Ombudsman.

In fact, in *Santos v. Rasalan*,[57] the Court, through Associate Justice Angelina Sandoval-Gutierrez, held that even if the act or omission complained of is not service-connected, the same still falls within the jurisdiction of the Ombudsman. The law does not qualify the nature of the illegal act or omission of the public officer or employee that the Ombudsman may investigate. It does not require that the act or omission be related to or arise from the performance of official duty. Since the law does not distinguish, neither should the Court.[58]

In the same vein, neither can the Court make a distinction between public officers and employees subject to the Ombudsman's jurisdiction considering that other than the expressed exemptions therefrom, the law neither provides for any distinction or qualification. Hence, as long as the respondents of the investigation are holding appointive or elective positions

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55 *Ombudsman v. De Leon*, 705 Phil. 26, 41 (2013) [Per J. Bersamin, First Division], citing Section 19 of Republic Act No. 6770, which provides:

> Section 19. *Administrative Complaints.* — The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:
> (1) Are contrary to law or regulation;
> (2) Are unreasonable, unfair, oppressive or discriminatory;
> (3) Are inconsistent with the general course of an agency's functions, though in accordance with law;
> (4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
> (5) Are in the exercise of discretionary powers but for an improper purpose; or
> (6) Are otherwise irregular, immoral or devoid of justification.

56 *Estarija v. Ranada*, 525 Phil. 718, 735 (2006) [Per J. Quisumbing, *En Banc*].

57 544 Phil. 35, 42-44 (2007) [Per J. Sandoval-Gutierrez, First Division].

58 *Samson v. Restrivera*, 662 Phil. 45, 53 (2011) [Per J. Villarama, Jr., Third Division]. See also *Santos v. Rasalan*, 544 Phil. 35, 42 (2007) [Per J. Sandoval-Gutierrez, First Division], citing *Vasquez v. Hobilla-Alinio*, 337 Phil. 513 (1997) [Per J. Bellosillo, *En Banc*]; and *Bureau of Internal Revenue v. Ombudsman*, 430 Phil. 223 (2002) [Per J. De Leon, Jr., Second Division].

in the government, they may be subject to the investigative and disciplinary authority of the Ombudsman. Notably, under Section 22 of Republic Act No. 6770, even private persons may be subject to the Ombudsman's jurisdiction in situations where they act in conspiracy with an officer or employee of the government.

In this case, it is undisputed that Nicolas was an incumbent public officer at the time the administrative complaint was filed against him. As admitted in his counter-affidavit filed before the Ombudsman, Nicolas was at that time serving his second term as "Municipal Councilor of Burgos, Isabela"—an elective public officer. Verily, therefore, as an incumbent public officer, Nicolas was subject to the jurisdiction of the Ombudsman pursuant to Article XI, Section 12 of the Constitution, as replicated in Section 13 of Republic Act No. 6770.

Moreover, there is no question that the acts and/or omissions subject of the administrative complaint were committed/omitted while Nicolas was serving as provincial treasurer of LGU-Isabela—an appointive office of the local government. As they were committed during Nicolas's tenure of office as treasurer, said acts and/or omissions fall well within the disciplinary authority of the Ombudsman as provided under Sections 15 and 16 of Republic Act No. 6770.

Finally, it bears pointing out that the intervening temporary cessation or interruption of Nicolas's government service did not warrant the dismissal of the administrative complaint against him. Indeed, as aptly explained by the CA, the acts subject of the administrative Complaint were committed while he was still in public office. Verily, to subscribe to Nicolas's argument that "his retirement for the said type of position, divest the Ombudsman of the authority to prosecute him administratively for such charge"[59] would set a dangerous precedent that would effectively defeat the intention of our framers in strengthening the powers of the Ombudsman. As protector of the people, the Ombudsman is armed with the power to prosecute erring public officers and employees, giving it an active role in the enforcement of laws on anti-graft and corrupt practices and such other offenses that may be committed by such officers and employees.

In fine, the Ombudsman has jurisdiction over the acts and/or omissions subject of the administrative complaint against Nicolas even though these were committed during his tenure as provincial treasurer of LGU-Isabela. Since the law does not qualify nor distinguish the nature of the illegal act or omission of the public officer or employee that the Ombudsman may investigate, nor does it specify the tenure when these acts and/or omissions should have occurred to vest the Ombudsman with authority to investigate the same, neither should the Court distinguish.

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[59] *Rollo*, p. 20.

Hence, the Ombudsman properly exercised disciplinary authority over Nicolas even though he was already serving under a different position. As the CA correctly noted, the precise position or designation of Nicolas's public office at the time of the commission of the act complained of and at the time of the institution of the complaint against him is immaterial. Since the law does not distinguish, neither should the Court.

II.

THE CONDONATION DOCTRINE

Under the condonation doctrine, reelected public officials may not be held administratively liable for misconduct committed during a prior term since their reelection to office operates as a condonation of their past misconduct.[60] The doctrine labored under the rationale that since election expresses the sovereign will of the people, the reelection of a public official supersedes a pending administrative case under the principle of *vox populi est suprema lex*.[61]

In *Ombudsman Carpio Morales v. Court of Appeals*,[62] which attained finality on April 12, 2016,[63] the Court, through Associate Justice Estela M. Perlas-Bernabe, abandoned the condonation doctrine, declaring that "Election is not a mode of condoning an administrative offense . . . [as] there is simply no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is fully absolved of any administrative liability arising from an offense done during a prior term."[64] Indeed, "the concept of public office is a public trust and the corollary requirement of accountability to the people at all times," which the Constitution mandates, "is plainly inconsistent with the idea that an elective local official's administrative liability for a misconduct committed during a prior term can be wiped off by the fact that he was elected to a second term of office, or even another elective post."[65]

Despite its abandonment, however, the Court explained[66] that the condonation doctrine can still apply to pending administrative cases provided that the reelection is also before the abandonment. But, for cases filed after

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60 *Madreo v. Bayron*, 888 Phil. 768, 777 (2020) [Per J. Delos Santos, *En Banc*]; *Gabornes v. Ombudsman*, G.R. No. 237245, September 15, 2021 [Per J. Inting, Second Division].

61 *Salumbides, Jr. v. Ombudsman*, 633 Phil. 325, 335-336 (2010) [Per J. Carpio-Morales, *En Banc*], citing *Civil Service Commission v. Sojor*, 577 Phil. 52, 72 (2008) [Per J. Reyes, R.T., *En Banc*].

62 772 Phil. 672 (2015) [Per J. Perlas-Bernabe, *En Banc*].

63 *Crebello v. Ombudsman*, 851 Phil. 1094, 1097 (2019) [Per C.J. Bersamin, First Division].

64 *Ombudsman Carpio Morales v. Court of Appeals*, 772 Phil. 672, 769 (2015) [Per J. Perlas-Bernabe, *En Banc*].

65 *Id.* at 769.

66 *Crebello v. Ombudsman*, 851 Phil. 1094, 1097-1104 (2019) [Per C.J. Bersamin, First Division]; *Ombudsman v. Malapitan*, G.R. No. 229811, April 28, 2021 [Per J. Leonen, Third Division].

April 12, 2016, the impleaded public official can no longer resort to the condonation doctrine.[67]

Nonetheless, it should be noted that in *Ombudsman v. Torres*,[68] the Court, through Associate Justice Antonio Eduardo Nachura, ruled that the condonation of an administrative offense takes place only when the public official is reelected despite the pendency of an administrative case against them.

Moreover, in *Salumbides, Jr. v. Ombudsman*,[69] penned by Justice Conchita Carpio Morales, the Court held that the condonation rule operates when the alleged misconduct was committed during the prior term as an elective official; it does not apply to appointive officials.[70]

Thus, in order for condonation to operate, **the misconduct must have been committed during the public official's prior term in an elective office such that their subsequent reelection operates as a condonation of the past administrative offense.** Where, however, the misconduct was committed while the public official was holding an appointive office, as in this case, their subsequent election (or reelection) to office **does not operate** as a condonation of the past administrative offense.

Here, it must be recalled that the acts and/or omissions subject of the administrative complaint were committed/omitted while Nicolas was serving as provincial treasurer of LGU-Isabela—an appointive office in the provincial local government. Hence, his subsequent election as municipal councilor in 2007, as well as his reelection as such in 2010, did not operate as a condonation of his administrative infractions committed while holding the appointive office.

Indeed, as the Court cautioned in *Salumbides, Jr.*, the unwarranted expansion of the condonation doctrine, as urged by Nicolas, "would provide civil servants, particularly local government employees, with blanket immunity from administrative liability that would spawn and breed abuse in the bureaucracy."[71] Naturally, this unwarranted expansion cannot be allowed by the Court.

Moreover, it is settled that condonation of administrative liability is an exculpatory affirmative defense that must be raised and passed upon during the administrative disciplinary proceedings, failing in which, it is deemed

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67 *Gabornes v. Ombuasman*, G.R. No. 237245, September 15, 2021 [Per J. Inting, Second Division].
68 567 Phil. 46 (2008) [Per J. Nachura, Third Division].
69 633 Phil. 325 (2010) [Per J. Carpio Morales, *En Banc*].
70 *Salumbides, Jr. v. Ombudsman*, 633 Phil. 325, 336 (2010) [Per J. Carpio Morales, *En Banc*]. See also *Ombudsman v. Malapitan*, G.R. No. 229811, April 28, 2021 [Per J. Leonen, Third Division].
71 *Id.* at 337–338.

waived.[72] Here, **Nicolas did not raise the defense of condonation before the Ombudsman nor before the CA.** As such, the Court can no longer appreciate the same.

III.

THE DEFENSE OF INORDINATE DELAY

Article III, Section 16[73] of the Constitution guarantees every person's right to speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. This constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as in all proceedings, either judicial or quasi-judicial. Violation of the right to speedy disposition of cases has a serious consequence: it results in the dismissal of the case. Thus, dismissal on speedy disposition grounds has been characterized as a "radical relief."[74] For this reason, Article XI, Section 12[75] of the Constitution and Section 13[76] of Republic Act No. 6770 specifically commands the Office of the Ombudsman to act promptly on all complaints brought before it.[77]

Indubitably, there is nothing in the Constitution or in the law that provides for the specific period within which to determine whether the right to speedy disposition of cases has been violated. And rightfully so as the administration of justice does not deal primarily with speed. Indeed, case law settles that delay, when reasonable under the circumstances, does not by itself violate said right.[78]

Consequently, it has been held that a mere mathematical reckoning of the time involved is not sufficient to rule that there was inordinate delay as it requires a consideration and a delicate balancing of a number of factors, which include: **the length of delay, the reason for delay, the respondent or defendant's assertion or non-assertion of their right, and the prejudice to**

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72 *Crebello v. Ombudsman*, 851 Phil. 1094, 1104–1105 (2019) [Per C.J. Bersamin, First Division].

73 SECTION 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

74 *Baya v. Sandiganbayan*, 876 Phil. 57, 94 (2020) [Per J. Leonen, Third Division].

75 SECTION 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

76 Section 13. *Mandate.* — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

77 *People v. Sandiganbayan, Herrera, Lopez, et al.*, 866 Phil. 439, 448–449 (2019) [Per J. Perlas-Bernabe, Second Division].

78 *Id.* at 449.

them as a result of the delay.[79] Thus, it has been said that the right to speedy disposition of cases is a relative and flexible concept.[80]

Nonetheless, case law settles that the violation of the right to speedy cases is a matter of defense which respondents must timely raise, failing in which, they are deemed to have acquiesced to the delay and thus, have waived this right.[81] As the Court held in *Cagang v. Sandiganbayan*,[82] penned by Associate Justice Marvic Mario Victor F. Leonen, "respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases."[83] Further, in *Salcedo v. Sandiganbayan*,[84] the Court, through Associate Justice Diosdado M. Peralta, reiterated that "the accused must invoke his or her constitutional right to speedy disposition of cases in a timely manner and failure to do so even when he or she has already suffered or will suffer the consequences of delay constitutes a valid waiver of that right."[85]

In this case, it is significant to note that Nicolas has not asserted his right to speedy disposition of cases before the Ombudsman. It was only after the administrative case was decided against him and he had elevated the case before the CA that he decided to invoke this right. To the Court's mind, Nicolas's belated invocation of this right constitutes a valid waiver thereof.

In any event, applying the foregoing parameters and considering the facts and circumstances surrounding this case, the Court finds that Nicolas's right to speedy disposition of cases has not been violated.

On this score, the Court notes that only four years and seven months had elapsed from the time the Complaint was filed by the TFA-FIO on December 10, 2012 until the Ombudsman rendered its Decision on July 14, 2017. In between these periods, records show that the Ombudsman gave Nicolas, together with his co-respondents, opportunity to study and respond to the administrative charges through the filing of their respective counter-affidavits. Notably, Nicolas filed his counter-affidavit only on June 27, 2013.[86] The Ombudsman also gave them the opportunity to further support their respective defenses through the submission of position papers in an Order dated February 27, 2015,[87] with which they duly complied. Thereafter,

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79 *Id.*

80 *Baya v. Sandiganbayan*, 876 Phil. 57, 62 (2020) [Per J. Leonen, Third Division].

81 *People v. Sandiganbayan Herrera, Lopez, et al.*, 856 Phil. 439, 452 (2019) [Per J. Perlas-Bernabe, Second Division]

82 857 Phil. 815 (2018) [Per J. Leonen, *En Banc*].

83 *See Peñas v. Commission on Elections*, UDK-16015, February 15, 2022 and *Baya v. Sandiganbayan*, 876 Phil. 57, 94, 101 (2020) [Per J. Leonen, Third Division].

84 847 Phil. 129 (2019) [Per J. Peralta, Third Division].

85 *Baya v. Sandiganbayan*, 876 Phil. 57, 103 (2020) [Per J. Leonen, Third Division]; *Pancho v. Sandiganbayan*, 874 Phil. 568, 580 (2020) [Per J. Inting, Second Division].

86 *Rollo*, pp. 132–157.

87 *Id.* at 58 and 291.

the case was submitted for resolution. In addition, records confirm that the administrative case involved a total of eight respondents,[88] who appeared to have separately defended their cases.[89] Finally, it is undisputed that the case necessitated the review of numerous records and documents relative to the charges involving the purchase of the farm machineries. Based on these circumstances, the Court is hard-pressed to conclude that the period—from the filing of the Complaint up to the issuance of the Ombudsman Decision—was vexatious, capricious, or oppressive to Nicolas to warrant the dismissal of the administrative case on the ground of inordinate delay.

IV.

ON THE ISSUE OF NICOLAS'S ADMINISTRATIVE LIABILITY

At any rate, the Ombudsman correctly found Nicolas liable for dishonesty and grave misconduct, but not for conduct prejudicial to the best interest of the service.

Nicolas's liability for dishonesty and grave misconduct

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 and an intent to violate the truth.[90] It implies a disposition to lie, cheat, deceive, or defraud, untrustworthiness, lack of integrity, lack of honesty, probity or integrity in principle, lack of fairness and straightforwardness, disposition to defraud, deceive or betray.[91]

On the other hand, **misconduct** is defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. And when the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are manifest, the public officer shall be liable for grave misconduct.[92]

In this case, it is undisputed that Nicolas signed the undated PR,[93] as well as the DV,[94] and certified as to the availability of funds for the procurement of the farm machineries. Records also show, which Nicolas did not controvert, that the procurement of the farm machineries covered by the

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88 *Id.* at 59.
89 *Id.* at 224.
90 *Lukban v. Ombudsman*, 870 Phil. 776, 775 (2020) [Per J. Caguioa, First Division].
91 *Estarija v. Ranada*, 525 Phil. 718, 728-729 (2006) [Per J. Quisumbing, *En Banc*].
92 *Id.* at 728.
93 *Rollo*, p. 107.
94 *Id.* at 113.

undated PR was made pursuant to the Isabela Grains Project. Nicolas likewise admitted that the funds, which he certified were available and were used for the procurement of the farm machineries, were savings from the funds allotted for the FIFIP. While Nicolas claimed that the funds allotted for the FIFIP were in the nature of a continuing appropriation and hence, the savings therefrom could be used for subsequent purchases, such as the farm machineries, he nonetheless failed to explain why he certified the availability of funds even when the procurement of the farm machineries covered by the undated PR were being made under the Isabela Grains Project. Notably, as found by the Ombudsman, the Isabela Grains Project was funded by a loan obtained by LGU-Isabela from the Development Bank of the Philippines and thus, had a separate and duly allotted funding for the purpose.

Moreover, as correctly pointed out by the CA, Nicolas is, under the law, an accountable officer responsible for the safekeeping of government funds. Under Section 340 of Republic Act No. 7160, an accountable officer includes "any officer of the local government unit whose duty permits or requires the possession or custody of local government funds." Additionally, Section 470(d)(2) and (3)[95] of the same law explicitly states that the local treasurer is responsible for "tak[ing] custody and exercis[ing] proper management of the funds of the local government unit," as well as taking "charge of the disbursement of all local government funds and such other funds the custody of which may be entrusted to him by law or other competent authority." Likewise, Section 344[96] thereof provides that no money shall be disbursed unless, among others, the local treasurer certifies as to the availability of funds for the purpose. Further, Section 345 states that "checks in settlement of obligations shall be drawn by the local treasurer . . ." Meanwhile, under Section 342[97] of the same law, the local treasurer shall not be relieved of

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[95] SECTION 470. Appointment, Qualifications, Powers, and Duties. — . . .

. . . .

(d) The treasurer shall take charge of the treasury office, perform the duties provided for under Book II of this Code, and shall:

(1) Advise the governor or mayor, as the case may be, the sanggunian, and other local government and national officials concerned regarding disposition of local government funds, and on such other matters relative to public finance;

(2) **Take custody and exercise proper management of the funds of the local government unit concerned;**

(3) **Take charge of the disbursement of all local government funds and such other funds the custody of which may be entrusted to him by law or other competent authority;**

. . . . (Emphasis supplied)

[96] SECTION 344. Certification on, and Approval of, Vouchers. — **No money shall be disbursed unless** the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and **the local treasurer certifies to the availability of funds for the purpose**. . . . (Emphasis and underscoring supplied)

[97] SECTION 342. Liability for Acts Done Upon Direction of Superior Officer, or Upon Participation of Other Department Heads or Officers of Equivalent Rank. — **Unless he registers his objection in writing, the local treasurer,** accountant, budget officer, or other accountable officer **shall not be relieved of liability for illegal or improper use or application or deposit of government funds or property by reason of his having acted upon the direction of a superior officer, elective or**

liability for illegal or improper use or application or deposit of government funds or property by reason of them having acted upon participation of other department heads or officers of equivalent rank unless they register their objection in writing.

Thus, in *Manuel v. Sandiganbayan*,[98] the Court, through Associate Justice Vicente V. Mendoza, held that "[a]s a required standard procedure, the signatures of the mayor and the treasurer are needed before any disbursement of public funds can be made. No checks can be prepared and no payment can be effected without their signatures on a disbursement voucher and the corresponding check. In other words, any disbursement and release of public funds require their approval."[99]

In this case, Nicolas is undeniably an accountable officer by the very nature of his functions as the provincial treasurer. As in *Manuel*, the signature of, among others, Nicolas is needed before any disbursement of public funds can be made. No purchase request can be approved, nor any DV and checks can be issued and payment can be effected without his signature. Thus, as aptly ruled by the CA, Nicolas's responsibilities necessitated the cautious exercise of discretion[100] that cannot simply be equated with the performance of purely ministerial functions.

For the foregoing reasons, it can be plainly concluded that when Nicolas signed the undated PR, he deliberately initiated and facilitated the improper use of the FIFIP funds in his custody and safekeeping. The preparation of a purchase request and the signing thereof by the accountable officers which included the local treasurer, in the case of local government units, is a necessary step in the procurement of supplies.[101] His certification in

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appointive, or upon participation of other department heads or officers of equivalent rank. The superior officer directing, or the department head participating in such illegal or improper use or application or deposit of government funds or property, shall be jointly and severally liable with the local treasurer, accountant, budget officer, or other accountable officer for the sum or property so illegally or improperly used, applied or deposited. (Emphasis supplied)

98 681 Phil. 273 (2012) [Per J. Mendoza, Third Division], citing *People of the Philippines v. Teofilo G. Pantaleon, Jr.*, 600 Phil. 186, 209 (2009) [Per J. Brion, Second Division].

99 *Manuel v. Sandiganbayan*, 681 Phil. 273 (2012) [Per J. Mendoza, Third Division], citing *People of the Philippines v. Teofilo G. Pantaleon, Jr.*, 600 Phil. 186, 209 (2009) [Per J. Brion, Second Division].

100 *Rollo*, p. 61.

101 *See Roque v. Court of Appeals*, 581 Phil. 623, 635–637 (2008) [*Per Curiam, En Banc*]. The Court pertinently ruled:

"x x x As provided in the Local Government Code of 1991, the General Appropriations Act and other pertinent laws and rules, the procurement of supplies is dependent on the availability of funds evidenced by the issuance of an Advice of Sub-Allotment and Notice of Transfer of Cash Allocation by the Central Finance Office of the agency to the procuring unit. Upon the establishment of fund availability, the basic procedures for the procurement of supplies are, as follows:

1) **Preparation of Purchase Request**. The Head of Office needing the supplies prepares a Purchase Request certifying the necessity of the purchase for official use and specifying the project where the supplies are to be used. **Every Purchase Request must be accompanied by a certificate signed by the local Budget Officer, the local Accountant, and the local Treasurer** showing that an appropriation therefor exists, that the estimated amount of such expenditure has been obligated, **and that the funds are available for the purpose**, respectively.

2) Approval of the Purchase Request. The Head of Office or department concerned who has

the undated PR therefore represented that there were funds available for the procurement of the farm machineries under the Isabela Grains Project even when he knew that the said funds were allotted for the FIFIP. Thereafter, when Nicolas signed the corresponding DV and the check[102] for the payment to EMI, he actively and deliberately participated in the completion of the improper application of the FIFIP funds to a public use other than for which they were intended. As such, the Court is hard-pressed to agree with Nicolas's claim that his participation in the transaction were nothing more than mere perfunctory performance of duties. To reiterate, Nicolas was an accountable officer whose responsibilities necessitated the cautious exercise of discretion, gravely failing in which, he should be held administratively liable for the resulting infractions.

Significantly, and as the CA likewise observed, Nicolas did not raise any objection against the improper application of the FIFIP funds for the procurements sought under an entirely different project. Thus, pursuant to

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administrative control of the appropriation against which the proposed expenditure is chargeable approves the Purchase Request.

3) Endorsement of the PBAC for bidding. The PBAC advertises the invitation to bid and the notice or prequalification, conducts the opening of bids, prepares the Abstract of Bids, conducts the evaluation of bids, undertakes post-qualification proceedings, and recommends to the Head of Office the award of contracts to the successful bidder. The Head of Office issues the Notice of Award.

4) Preparation of Certificate of Availability of Funds. The Chief Accountant certifies that funds have been duly appropriated/allotted for the purpose of entering into a contract involving expenditures of public funds and that the amount necessary to cover the proposed contract for the current fiscal year is available.

5) Preparation of Purchase Order. The Head of Office approves the Purchase Order which is a document evidencing a transaction for the purchase of supplies.

6) Delivery of Purchase Order. The Purchase Order is delivered to the supplier within a reasonable time after its approval.

7) Delivery of Items. The supplier delivers the supplies in accordance with the specifications, terms and conditions provided in the Purchase Order.

8) **Inspection of Items.** The inspector inspects and verifies the purchases made by the agency for conformity with the specifications in the order.

9) Preparation of Certificate of Acceptance. Acceptance of deliveries may be made only if the supplies and materials delivered conform to the standards and specification stated in the contract.

10) **Preparation of the Voucher.** The Budget Officer, the Accountant and **the Treasurer certify that all documents are complete and proper.** The Head of Office approves the Disbursement Voucher for the release of check for payment." (Emphases and underscoring supplied)

See also Section 260 of Republic Act No. 7160, which provides:

"SECTION 360. **Certification by the Local Budget Officer, Accountant, and Treasurer. – Every requisition must be accompanied by a certificate signed by the** local budget officer, the local accountant, and the **local treasurer showing that** an appropriation therefor exists, the estimated amount of such expenditure has been obligated, and the **funds are available for the purpose,** respectively." (Emphasis supplied)

[102] *See rollo*, pp. 114-115.

Section 342[103] of Republic Act No. 7160, Nicolas cannot be relieved of liability for the improper use or application of the FIFIP funds by reason of his having acted upon participation of other department heads or officers of equivalent rank.

Further, it should be pointed out that Nicolas's participation extended beyond the signing of the necessary documents for the availability and release of the funds for the procurement of the farm machineries. Records show that Nicolas was part of the Provincial Inspectorate Team that conducted the inspection on the farm machineries and certified[104] that these were in conformity with the technical specifications submitted during the purported bidding and witnessed its acceptance by the local government unit.[105]

Lastly, the totality of circumstances showed glaring irregularities surrounding the procurement of the farm machineries. Indeed, it was established, among others, that: (i) no public bidding was conducted for the purpose of procuring the farm machineries prior to execution of the MOA; (ii) there appeared no purpose or reason for the issuance of the farm machineries to the several barangays in the Province of Isabela; (iii) the undated PR indicated the brand of the farm machineries to be procured; and (iv) most of the documents are undated, including the PR and the Certificate of Inspection.

Altogether, the totality of the particular acts performed by Nicolas, as well as the established irregularities surrounding the procurement of the farm machineries, have caused or contributed to serious damage and grave prejudice to the government. Moreover, they show a propensity to disregard his responsibilities as an accountable officer of the government, as well as established procurement rules.

On this score, the Court finds it pertinent to stress that Nicolas's actions played an indispensable and instrumental part in the improper use of the FIFIP funds. The apparent lack of remorse on Nicolas's part and his failure to recognize his critical role in the transaction all the more convinced the Court of his administrative liability.

Consequently, the Court finds no reason to disturb the findings of the Ombudsman with respect to Nicolas's liability for dishonesty and grave

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[103] SECTION 342. Liability for Acts Done Upon Direction of Superior Officer or Upon Participation of Other Department Heads or Officers of Equivalent Rank. – **Unless he registers his objection in writing, the local treasurer**, accountant, budget officer, or other accountable officer **shall not be relieved of liability for illegal or improper use or application or deposit of government funds or property by reason of his having acted upon the direction of a superior officer, elective or appointive, or upon participation of other department heads or officers of equivalent rank.** The superior officer directing, or the department head participating in such illegal or improper use or application or deposit of government funds or property, shall be jointly and severally liable with the local treasurer, accountant, budget officer, or other accountable officer for the sum or property so illegally or improperly used, applied or deposited. (Emphasis supplied)

[104] *Rollo*, p. 112. *See* Certificate of Inspection

[105] *Id.* at 111. *See* Certificate of Acceptance.

misconduct. As these findings are supported by substantial evidence and considering that they were affirmed by the CA, they are conclusive and binding on this Court. In this regard, it must be reiterated that findings of fact by the Ombudsman are conclusive when supported by substantial evidence.[106] "The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming,"[107] as in this case.

Nicolas cannot be held liable for conduct prejudicial to the best interest of the service

The foregoing discussions, notwithstanding, the Court does not find Nicolas liable for conduct prejudicial to the best interest of the service.

Under Section 52 of the Uniform Rules on Administrative Cases in the Civil Service (URACCS),[108] the applicable Rules at the time the acts subject of the administrative charges against Nicolas were committed, conduct prejudicial to the best interest of the service is classified as a grave offense punishable by suspension of six months and one day to one year for the first offense and dismissal from the service for the second offense. The Civil Service Law or Rules, however, do not define conduct prejudicial to the best interest of the service. Neither does case law provide a clear and categorical definition for the same.

a. Legal background of conduct prejudicial to the best interest of the service.

The administrative offense of conduct prejudicial to the best interest of the service appears to have been first introduced in our Civil Service Rules sometime prior to 1949 under Rule XIII, Section 6 of the then prevailing Civil Service Rules.[109]

In 1959, Republic Act No. 2260 (or the Civil Service Act of 1959),[110] as amended, was enacted which, while not categorically recognizing "conduct prejudicial to the best interest of the service" as an administrative infraction, nonetheless allowed the removal of "any subordinate officer or employee

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106 *Aguilar v. Benlot*, 845 Phil. 885, 895-896 (2019) [Per J. Reyes, Jr., Second Division].

107 *Id.* at 896.

108 CSC Resolution No. 991936, effective August 31, 1999.

109 *See Lacson v. Romero*, 84 Phil. 740 (1949) [Per J. Montemayor], where the Court held:
"x x x conduct prejudicial to the best interest of the service, or the willful violation by any person in the Philippine civil service of any of the provisions of the Revised Civil Service Act or rules, among others, may be considered reasons demanding proceedings to remove for cause, to reduce in class or grade, or to inflict other punishment as provided by law in the discretion of the Governor-General (now the President) or proper head of Department."

110 Approved on June 19, 1959.

from the service, demot[ion] . . . in rank, suspen[ion] . . . for not more than one year without pay or fine . . . in an amount not exceeding six months' salary in the interest of the service."[111]

Subsequently, Presidential Decree (P.D.) No. 807[112] (Civil Service Decree of the Philippines) was enacted explicitly providing conduct prejudicial to the best interest of the service as ground for disciplinary action.[113] This explicit inclusion is believed to be significant as it underscores the constitutional declaration, first enunciated under the 1973 Constitution, that "public office is a public trust" which mandated public officers and employees to "serve with the highest degree of responsibility, integrity, loyalty, and efficiency, and shall remain accountable to the people."[114]

This constitutional declaration and policy ordaining public office as a public trust was replicated in the 1987 Constitution further commanding public officers and employees to be at all times "accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."[115]

Following the example of P.D. No. 807, and pursuant to the mandate of the 1987 Constitution, Executive Order No. 292[116] (Administrative Code of 1987) equally established that "public office is a public trust" and required "public officers and employees [to be] all times . . . accountable to the people." It likewise adopted conduct prejudicial to the best interest of the service as a ground for disciplinary action.

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[111] See Article VII, Section 33 of Republic Act No. 2260, which provides:

> **Section 33.** *Administrative Jurisdiction for Disciplining Officers and Employees.* The Commissioner may, for dishonestly, oppression, misconduct, neglect of duty, conviction of a crime involving moral turpitude, notoriously disgraceful or immoral conduct, improper or unauthorized solicitation of contributions from subordinate employees and by teachers or school officials from school children, violation of the existing Civil Service law and rules or of reasonable office regulations, **or in the interest of the service**, remove any subordinate officer or employee from the service, demote him in rank, suspend him for not more than one year without pay or fine him in an amount not exceeding six months' salary.
>
> In meting out punishment, like penalties shall be imposed for like offenses and only one penalty shall be imposed in each case.

See also Section 695 of Act No. 6711 (or An Act Amending the Administrative Code, approved on March 10, 1917) (amending Section 720 of Act No. 2657, as amended by C.A. 177 and C.A. 598), which pertinently states that The Commissioner of Civil Service may "for neglect of duty or violation of reasonable office regulations, or in the interest of the public service, remove any subordinate officer or employee from the service, suspend him without pay for not more than two months, reduce his salary or compensation, or deduct therefrom any sum of not exceeding one month's pay."

[112] Approved on October 6, 1974.

[113] *See* Section 36(b)(27) of P.D. No. 807

[114] *See* Article XIII, Section 1 of the 1973 Constitution.

[115] *See* Article XI, Section 1 of the 1987 Constitution.

[116] Approved on July 25, 1987. See particularly Book V, Title I, Chapter 7, Section 46(b)(27) thereof.

Subsequently, Republic Act No. 6713[117] (Code of Conduct and Ethical Standards for Public Officials and Employees) reiterated the foregoing constitutional mandate, adding that public officials and employees shall at all times "uphold public interest over personal interest."[118]

Thereafter, the administrative offense of conduct prejudicial to the best interest of the service was subsequently adopted under Rule IV, Section 52(20) of Resolution No. 991936,[119] or the Uniform Rules on Administrative Cases in the Civil Service (URACCS), and reiterated in Section 46(B)(8), Rule 10 of Resolution No. 1101502,[120] or the Revised Rules on Administrative Cases in the Civil Service (RRACCS).

b. Jurisprudential background of conduct prejudicial to the best interest of the service

The phrase "conduct prejudicial to the best interest of the service" seemed to have first appeared in our case law in 1949 in the case of *Lacson v. Romero*,[121] penned by Associate Justice Marcelino R. Montemayor, where it was cited as among the acts which may be considered as reason for "demanding proceedings to remove for cause, to reduce in class or grade, or to inflict other punishment as provided by law," as provided under Rule XIII, Section 6 of the then prevailing Civil Service Rules.

The phrase subsequently appeared in the 1961 case of *Camus v. The Civil Service Board of Appeals*,[122] penned by Associate Justice Jose Maria Valera Paredes, the 1963 case of *Ang-Angco v. Castillo*,[123] penned by Associate Justice Felix Angelo Bautista, and the 1967 case of *Ibañez v. Commission on Elections*,[124] penned by Associate Justice Fred Ruiz Castro. The phrase likewise appeared in the 1974 case of *Court of Industrial Relations v. Gruspe, Jr.*,[125] penned by Associate Justice Felix Q. Antonio (Associate Justice Antonio), wherein the respondent was dismissed from the service after having been found guilty of conduct prejudicial to the best interest of the service. Similarly, in *Muñasque v. Cape*,[126] penned by Associate Justice Salvador Esguerra, therein respondents were charged with conduct prejudicial to the best interest of the service, among others; the case, however, was

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117 Approved on February 20, 1989.
118 *See* Section 2 of Republic Act No. 6713.
119 Promulgated on August 31, 1999.
120 Promulgated on November 8, 2011.
121 84 Phil. 740 (1949) [Per J. Montemayor, Second Division]. *See also Camus v. The Civil Service Board of Appeals*, 112 Phil. 301 (1961) [Per J. Paredes, *En Banc*], citing *Lacson v. Romero*. *See further Diaz v. Arca*, 122 Phil. 593 (1965) [Per J. Bautista Angelo, *En Banc*] where the concerned government employee was charged with acts prejudicial to the best interest of the service, among others.
122 112 Phil. 301 (1961) [Per J. Paredes *En Banc*]
123 118 Phil. 1468 (1963) [Per J. Bautista, *En Banc*].
124 126 Phil. 305 (1967) [Per J. Castro, *En Banc*]
125 156 Phil. 376 (1974) [Per J. Antonio, *En Banc*].
126 158 Phil. 231 (1974) [Per J. Esguerra, First Division].

dismissed due to the parties' amicable settlement. Notably, these cases were decided during the effectivity of Republic Act No. 2260 which, as discussed above, did not categorically consider "conduct prejudicial to the best interest of the service" as an administrative infraction.

Notably, in the 1957 case of *Cammayo v. Viña*,[127] penned by Associate Justice Pastor Endencia, therein petitioner-appellant was found guilty of "dishonest conduct highly prejudicial to the best interest of the service." Meanwhile, the 1965 case of *Diaz v. Arca*,[128] penned by Associate Justice Angelo Bautista, mentioned "acts prejudicial to the best interest of the service."

Subsequent cases—decided under the effectivity of P.D. No. 807—that involve charges of conduct prejudicial to the best interest of the service include *Gutierrez v. Fernandez*,[129] (penned by Associate Justice Salvador Esguerra), *Taga-An v. Roa*,[130] (penned by Associate Justice Felix Makasiar), *Bron v. Delis*,[131] (penned by Associate Justice Antonio), *Sangco v. Palileo*,[132] (penned by Associate Justice Juvenal K. Guerrero), *Zari v. Flores*,[133] (penned by Associate Justice Ramon Fernandez), *Pioquinto v. Hernandez*,[134] (penned by Associate Justice Antonio), *Pajares v. Alipante*,[135] (penned by Associate

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127 101 Phil. 1149 (1957) [Per J. Endencia, *En Banc*].

128 122 Phil. 593 (1965) [Per J. Bautista, *En Banc*].

129 160 Phil. 915 (1975) [Per J. Esguerra, First Division], wherein respondent was charged with conduct prejudicial to the best interest of the service, dishonesty, and violation of Civil Service Rules, albeit the case was dismissed.

130 164 Phil. 462 (1976) [Per J. Makasiar, *En Banc*]. Notably, therein respondent was found guilty of serious **misconduct prejudicial to the best interest of the service.**

131 178 Phil. 347 (1979) [Per J. Antonio, Second Division]. Therein respondent was found guilty of grave misconduct, dishonesty and conduct prejudicial to the best interest of the service for knowingly or negligently failed to comply with her duty of returning the typewriter to the court and to pay her bills.

132 180 Phil. 26 (1979) [Per J. Guerrero, *En Banc*], wherein respondent was held liable for conduct prejudicial to the best interest of the service and gross insubordination for his habitual absences and undertimes, despite repeated warnings and admonition. Notably, the Court reasoned:

> **Respondent's misconduct and dereliction to duty are prejudicial to the service** and by his incorrigible and obstinate refusal to comply with the orders of his superior to report for work regularly, he has shown willful and gross insubordination. For these offenses, a civil service employee may be dismissed from the service in accordance with civil service rules and regulations.
>
> **Respondent, although a janitor in the City Court of Manila, is as much duty-bound to serve with the highest degree of responsibility, integrity, loyalty and efficiency as all other public officers and employees, all of them being held accountable to the people.** And to give effect to the constitutional mandate on the accountability of public officers and employees, the disciplining authority must impose disciplinary action on any and all forms of official misconduct which undermine the trust and faith of the people to those in the public office. (Emphasis supplied)

133 183 Phil. 27 (1979) [Per J. Fernandez, First Division].

134 202 Phil. 360 (1982) Per J. Plana, First Division]. Therein respondent was found guilty of grave misconduct, dishonesty and conduct prejudicial to the best interest of the service for knowingly or negligently failed to comply with her duty of returning the typewriter to the court and to pay her bills.

135 *See* A.M. No. R-190-P, September 15, 1987 [*Per Curiam, En Banc*], wherein respondent was found dishonesty and conduct prejudicial to the best interest of the service for failing to immediately deposit the court fees collected by her and using it for her personal benefit, returning and depositing them only after demand.

Justice Plana), *De Guzman v. People*,[136] (penned by Associate Justice Ameurfina Melencio-Herrera), and *Estioko v. Cantos*,[137] (penned by Associate Justice Ramon Fernandez) to name a few.

In *Balleza v. Astorga*,[138] penned by Associate Justice Enrique Fernando, the respondent was charged with conduct prejudicial to the best interest of the service and to the administration of justice, albeit the case was dismissed. Meanwhile, in *Ancheta v. Hilario*,[139] penned by Associate Justice Claudio Teehankee (Associate Justice Teehankee), therein respondent was found guilty of gross dishonesty and neglect of duty for failing to deliver to the plaintiffs the amount received from the judgment debtors. Notably the Court said that respondent's "conduct is highly prejudicial to the best interest of the service" considering that under Article XIII, Section 1 of the 1973 Constitution, public officers and employees are mandated to observe the highest degree of responsibility, integrity, loyalty, and efficiency and shall remain accountable to the people.

Significantly, as in the 1957 case of *Cammayo*, the Court, in *Labaco v. Parale*,[140] penned by Associate Justice Teehankee, found therein respondent guilty of "gross dishonesty and grave misconduct prejudicial to the best interest of the service" for failing to turn over to the prevailing party or to deposit with the municipal treasurer the amount of PHP 8,500.00 despite repeated demands from the said party and order from the municipal court.

Upon the effectivity of the 1987 Constitution and thereafter of E.O. 292, as well as of Republic Act No. 6713, as further implemented by the various issued Rules on Administrative Cases in the Civil Service, the cases of *Bareno v. Cabauatan*,[141] *Pajares v. Alipante*,[142] *Al-Amanah Islamic Investment Bank of the Philippines v. Civil Service Commission and Napoleon M. Malbun*,[143] (penned by Associate Justice Hugo Gutierrez, Jr.), *Neeland v. Villanueva*,[144] to name a few, were decided finding therein respondents guilty of conduct prejudicial to the best interest of the service, or absolved thereof, **in conjunction** with other administrative offenses such as dishonesty, negligence, incompetence, misconduct, insubordination, and/or conduct unbecoming of a public official, among others. In this regard, it should be noted that the pattern observed in *Cammayo* and *Labaco* could likewise be seen in these cases.

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136 204 Phil. 663 (1982) [Per J. Melencio-Herrera, *En Banc*]. The Court found therein petitioner guilty of the accompanying administrative charge for dishonesty, conduct prejudicial to the best interest of the service and for violation of civil service rules and regulations

137 169 Phil. 165 (1977) [Per J. Fernandez, First Division]. Therein respondent was found guilty of conduct prejudicial to the best interest of the service only for receiving money from complainant without issuing official receipt therefore and keeping the same for more than a year.

138 162 Phil. 575 (1976) [Per J. Fernando, Second Division].

139 185 Phil. 35 (1980) [Per J. Teehankee, First Division].

140 *See* A.M. No. P-2266-A, December 14, 1981 (Per J. De Castro, *En Banc*].

141 255 Phil. 284 (1987) [*Per Curiam, En Banc*].

142 238 Phil. 58 (1987) [*Per Curiam, En Banc*].

143 284 Phil. 92 (1992) [Per J. Gutierrez, *En Banc*].

144 376 Phil. 1 (1999) [*Per Curiam, En Banc*].

Particularly, in *Bareno*, the Court found therein respondent guilty of "serious dereliction in the performance of his official duties **and** of grave misconduct prejudicial to the best interest of the service" for failure to make returns of service of Court processes and of a writ of execution. In *Pajares*, therein respondent was found guilty of gross negligence **and** conduct seriously prejudicial to the best interest of the service. Meanwhile, in *Al-Amanah Islamic Investment Bank of the Philippines*, respondent Malbun was found guilty of grave misconduct, conduct prejudicial to the best interest of the service, **and** gross neglect of duty. In *Neeland*, therein respondent was found guilty of dishonesty **and** "gross misconduct prejudicial to the best interest of the service" for failure to turn over to the complainant the excess of the bid price.

In *In Re: Pioquinto Villapana*,[145] the Court adopted the investigating judge's recommendation finding therein respondent guilty of grave misconduct and "dishonesty prejudicial to the best interest of the service" and acts unbecoming of a court employee, albeit the dispositive portion found the latter liable only for grave misconduct. In *Torres v. Salon*,[146] the Court found therein respondent's acts prejudicial to the best interest of the service **and** constituting grave misconduct. While in *Pefianco v. Moral*,[147] penned by Associate Justice Josue N. Bellosillo, the respondent was found guilty of dishonesty, grave misconduct **and** conduct prejudicial to the best interest of the service for the commission of pilferage of historical documents of the national library, to the prejudice of the national library in particular, and the country in general.

What is strikingly apparent in the foregoing cases is the fact that none of them has specifically defined nor clearly characterized conduct prejudicial to the best interest of the service. In a few cases too, it can be observed that the Court merges conduct prejudicial to the best interest of the service with one or some other administrative offense, as demonstrated by the cases of *Cammayo*, *Labaco*, *Bareno*, *Neeland*, and *In Re: Pioquinto Villapana*.

The first characterization of conduct prejudicial to the best interest of the service as a demeanor or conduct that "tarnishes the image or integrity of the public service" appears to have first emerged in the 2001 case of *Dino v. Dumukmat*[148] where the Court, through Associate Justice Angelina Sandoval-Gutierrez, said:

> Obviously, **respondent's actuations constitute conduct prejudicial to the best interest of the service. They tarnish and diminish the respect of the people, especially the litigants, in the judiciary and all those**

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145 299 Phil. 769 (1994) [*Per Curiam, En Banc*].
146 *See* A.M. No. P-94-1033, August 12, 1994 [*Per Curiam, En Banc*].
147 379 Phil. 468 (2000) [Second Division].
148 412 Phil. 748 (2001) [Per J. Sandoval-Gutierrez, Third Division].

> **involved in the administration of justice, including respondent herein, a court interpreter**. (Emphasis supplied).

Subsequently, in the 2007 case of *Largo v. Court of Appeals*,[149] penned by Associate Justice Consuelo Ynares-Santiago, the Court categorically declared for the first time that the administrative offense of conduct prejudicial to the best interest of the service need not be related or connected to the public officer's official functions, as long as the questioned conduct tarnished the image and integrity of their public office:

> Nevertheless, **the complained acts of petitioner constitute the administrative offense of conduct prejudicial to the best interest of the service, which need not be related or connected to the public officer's official functions. As long as the questioned conduct tarnished the image and integrity of his/her public office, the corresponding penalty may be meted on the erring public officer or employee.** The Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713) enunciates, inter alia, the State policy of promoting a high standard of ethics and utmost responsibility in the public service. Section 4 (c) of the Code commands that "[public officials and employees] shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest." By his actuations, petitioner failed to live up to such standard.[150] (Emphasis and underscoring supplied)

A year later, the Court, in *Avenido v. Civil Service Commission*,[151] reiterated that "[a]cts may constitute Conduct Prejudicial to the Best Interest of the Service as long as they tarnish the image and integrity of his/her public office x x x pursuant to the State policy of promoting a high standard of ethics and utmost responsibility in the public service." There, the Court held:

> **Acts may constitute Conduct Prejudicial to the Best Interest of the Service as long as they tarnish the image and integrity of his/her public office. The Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713) enunciates, *inter alia*, the State policy of promoting a high standard of ethics and utmost responsibility in the public service.** Section 4(c) of the Code commands that "[public officials and employees] shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest." By showing undue interest in securing for Animus International a Permit to Import, even if it had not complied with the requirements, petitioner compromised the image and integrity of his public office. Dishonesty and Conduct Prejudicial to the Best Interest of the Service are intrinsically connected since acts of dishonesty would indubitably tarnish the integrity of a public official.[152] (Emphasis supplied, citations omitted).

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[149] 563 Phil. 293 (2007) [Per J. Ynares-Santiago, *En Banc*].
[150] *Id.* at 305.
[151] 576 Phil. 654 (2008) [*Per Curiam*, *En Banc*].
[152] *Id.* at 662.

The foregoing rulings were later reiterated in the cases of *Pia v. Gervacio*[153] (penned by Associate Justice Bienvenido L. Reyes), *Holasca v. Pagunsan*[154] (penned by Associate Justice Arturo D. Brion), *Ombudsman v. Borja*[155] (penned by Associate Justice Estela M. Perlas-Bernabe), *Ombudsman v. Castro*[156] (penned by Associate Justice Arturo D. Brion), *Abos v. Borromeo*[157] (penned by Associate Justice Marvic Mario Victor F. Leonen), *Recto-Sambajon v. PAO*[158] (penned by Associate Justice Samuel Martires), *Civil Service Commission v. Rodriguez*[159] (penned by Associate Justice Amy C. Lazaro-Javier), *Lukban v. Ombudsman*[160] (penned by Associate Justice Alfredo Benjamin S. Caguioa), *Ramos v. Rosell*[161] (penned by Associate Justice Alfredo Benjamin S. Caguioa), *Turiano v. Task Force Abono*[162] (penned by Associate Justice Alfredo Benjamin S. Caguioa), *Valdez v. Soriano*[163] (penned by Associate Justice Estela M. Perlas-Bernabe), *Monteroso v. Special Panel*[164] (penned by Associate Justice Amy C. Lazaro-Javier), and *Rodil v. Posadas* (*Per Curiam*),[165] to name a few.

Meanwhile, in the 2006 case of *Ito v. De Vera*,[166] the Court, through Associate Justice Angelina Sandoval-Gutierrez, held that conduct prejudicial to the best interest of the service referred to acts or omissions that violate the norm of public accountability." This was reiterated in the 2013 case of *Buenaventura v. Mabalot*,[167] penned by Associate Justice Jose C. Mendoza.

As matters now stand, conduct prejudicial to the best interest of the service is jurisprudentially characterized as "demeanor or conduct that tarnishes the image or integrity of the public service"[168] or those that "violate the norm of public accountability."[169] Case law too has clarified that the conduct need not be related to or connected with the public officer's official functions.[170]

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153 710 Phil. 196 (2013) [Per J. Reyes, First Division].
154 739 Phil. 315 (2014) [Per J. Brion, Second Division].
155 772 Phil. 470 (2015) [Per J. Perlas-Bernabe, First Division].
156 759 Phil. 68 (2015) [Per J. Brion, Second Division].
157 765 Phil. 10 (2015) [Per J. Leonen, Second Division].
158 817 Phil. 879 (2017) [Per J. Martires, Third Division].
159 880 Phil. 364 (2020) [Per J. Lazaro-Javier, First Division].
160 870 Phil. 756 (2020) [Per J. Caguioa, First Division].
161 885 Phil. 703 (2020) [Per J. Lopez, First Division].
162 892 Phil. 210 (2020) [Per J. Caguioa, First Division].
163 883 Phil. 344 (2020) [Per J. Perlas-Bernabe, Second Division].
164 *See* G.R. No. 235274-75, October 13, 2021 [Per J. Lazaro-Javier, First Division].
165 *See* A.M. No. CA-20-55-P, August 3, 2021 [*Per Curiam, En Banc*].
166 540 Phil. 22 (2006) [Per J. Sandoval-Gutierrez, Second Division].
167 716 Phil. 476 (2013) [Per J. Mendoza, Third Division].
168 *See Avenido v. CSC*, 576 Phil. 654 (2008) [*Per Curiam, En Banc*]; *Pia v. Gervacio*, 710 Phil. 196 (2013) [Per J. Reyes, First Division]; *Ombudsman v. Castro*, 759 Phil. 68 (2015) [Per J. Brion, Second Division]; *Ombudsman v. Faller*, 786 Phil. 467 (2016) [Per J. Perlas-Bernabe, First Division].
169 *See Buenaventura v. Mabalot*, 716 Phil. 476 (2013) [Per J. Mendoza, Third Division].
170 *Office of the Ombudsman v. Borja*, 772 Phil. 470 (2015) [Per J. Perlas-Bernabe, First Division]; *Sampana v. Imperial*, G.R. No. 175445, November 16, 2016 [First Division], citing *Government Service Insurance System (GSIS) v. Mayordomo*, 665 Phil. 131 (2011) [Per J. Mendoza, *En Banc*].

With these characterizations, conduct prejudicial to the best interest of the service is considered broader as it encompasses all transgressions which may put a particular public office in a bad light.[171] Among others, the Court has considered the following acts or omissions, *inter alia*, as conduct prejudicial to the best interest of the service: misappropriation of public funds, abandonment of office, failure to report back to work without prior notice, failure to safe keep public records and property, making false entries in public documents, and falsification of court orders.[172] The Court has also considered as conduct prejudicial to the best interest of the service a judge's brandishing a gun and threatening the complainants during a traffic altercation; and a court interpreter's participation in the execution of a document conveying the complainant's property that resulted in a quarrel in the latter's family.[173]

Proper delineation of the application of conduct prejudicial to the best interest of the service

Significantly, many of the acts/omissions that jurisprudentially exemplifies conduct prejudicial to the best interest of the service can ostensibly fall under one or more of the administrative offenses enumerated under the URACCS or RRACCS, as the case may be, depending on the circumstances of the case.

For example, "abandonment of office" may amount to violation of reasonable office rules and regulations under Section 52(C)(3) of the URACCS, or frequent unauthorized absences or tardiness in reporting for duty or loafing from duty during regular office hours, or refusal to perform official duty, violation of existing Civil Service Law and rules of serious nature, or violation of reasonable office rules and regulations under Section 46(B)(5) or (6), or (D)(4), or (F)(3), respectively, of the RRACCS.

On the other hand, "misappropriation of public funds" may constitute dishonesty or grave misconduct, or directly or indirectly having financial and material interest in any transaction requiring the approval of their office, under Section 52(A)(1) or (3), or 52(A)(21), respectively, of the URACCS; or serious dishonesty or grave misconduct, less serious dishonesty, or directly or indirectly having financial and material interest in any transaction requiring the approval of their office, under Section 46(A)(1) or (3), (B)(1), or (9), respectively, of the RRACCS.

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171 *Recto-Sambajon v. Public Attorney's Office*, 817 Phil. 879 (2017) [Per J. Martires, Third Division].
172 *Office of the Ombudsman v. Borja*, 772 Phil. 470 (2015) [Per J. Perlas-Bernabe, First Division].
173 *Sampana v. Imperial*, G.R. No. 175445, November 16, 2016 [First Division], citing *Government Service Insurance System (GSIS) v. Mayordomo*, 665 Phil. 131 (2011) [Per J. Mendoza, *En Banc*].

Additionally, the act of "failure to safe keep public records and property" may amount to gross neglect of duty, inefficiency and incompetence in the performance of official duties, simple neglect of duty, or violation of reasonable office rules and regulations under Section 52(A)(2) or (16), (B)(1), or (C)(3), respectively, of the URACCS; or gross neglect of duty, inefficiency and incompetence in the performance of official duties, simple neglect of duty, or violation of reasonable office rules and regulations under Section 46(A)(2), (B)(4), (D)(1), or (F)(3), respectively, of the RRACCS.

Further, "falsification of court orders" may constitute as falsification of official document under Section 46(A)(6) of the RRACCS or under Section 52(A)(6) of the URACCS; while "making false entries in public documents" may amount to serious dishonesty, less serious dishonesty, or simple dishonesty under Sections 46(A)(1), (B)(1), or (E), respectively, of the RRACCS, or dishonesty or violation of existing Civil Service Law and rules of serious nature under Section 52(A)(1) or (b)(4), respectively, of the URACCS.

Finally, a judge's act of "brandishing a gun and threatening the complainants during a traffic altercation" may constitute the grave offense of being notoriously undesirable or disgraceful and immoral conduct under Section 52(A)(15) of the URACCS or Sections 46(A)(4) or (B)(3) of the RRACCS. In this respect, the same may also constitute as "grave abuse of authority or prejudicial conduct that besmirches or taints the reputation of the service under Section 14(l) of A.M. No. 21-08-09-SC (Further Amendments to Rule 140 of the Rules of Court),[174] if applicable.

Based on the above discussions, it is demonstrably clear that, depending on the evidence presented and the circumstances of the case, erring public officers or employees may be held liable for the same act/omission under one or more administrative offenses of varying degrees of gravity, in addition to conduct prejudicial to the best interest of the service.

Indeed, from the time this administrative offense first appeared in our case law in 1949, respondent public officers or employees in administrative cases have at times been found guilty thereof **in conjunction with another or other administrative offense/s involving the same act/omission**. In such cases, however, there had been no clear and categorical delineation between one and the other, other than the broad and general characterization—only recently formulated—that conduct prejudicial to the best interest of the service **need not be related to or connected with the public officer's official function, so long as it tarnishes the image or integrity of the public service**.

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[174] Approved on February 22, 2022.

On this score, it bears highlighting that all the acts/omissions currently enumerated and penalized under the URACCS or RRACCS, and other civil service laws and rules, affect, in one way or another, the image or integrity of the public service. As extensively discussed in this Decision, the Constitution ordained public office as a public trust and for this reason, it mandates all public officers and employees to be "at all times . . . accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."[175] These principles serve as the standards by which all in the public service must measure up to.[176] It is also these very principles that guide and animate our Civil Service Law and Rules penalizing various acts/omissions that are deemed contrary thereto or violative thereof. **Thus, all acts/omissions of public officers and employees, regardless of their relation or connection—or non-relation or non-connection—to the performance of official duties that are contrary to these constitutional principles tarnish the image or integrity of the public service and therefore, constitute conduct prejudicial to the best interest of the service.**

Moreover, it bears mentioning that the Court, in an apparent recognition of the foregoing conclusion—and perhaps because of the absence of a clear and categorical delineation between conduct prejudicial to the best interest of the service and the other administrative offenses—has held erring public officers or employees liable for dishonest conduct highly prejudicial to the best interest of the service,[177] grave or gross misconduct prejudicial to the best interest of the service,[178] and dishonesty prejudicial to the best interest of the service[179] in the cases of *Cammayo*, *Labaco*, *Bareno*, *Neeland*, and *In Re: Pioquinto Villapana*, to name a few.

To be sure, the Court recognizes that there may be acts/omissions that our existing Civil Service Laws and Rules have not fully and specifically accounted for. Presumably for this reason, the Civil Service Commission, as the constitutionally ordained body to administer the civil service and in the exercise of its power to promulgate rules,[180] provided for the administrative offense of conduct prejudicial to the best interest of the service to approximate and embrace acts/omissions **not currently** specifically penalized under the URACCS or RRACCS. Indeed, this approximation is a constitutionally justified and necessary, if not crucial, means to achieve the constitutional policy of ensuring public trust in public office.

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175 *Flores-Concepcion v. Castañeda*, 884 Phil. 66 (2020) [Per J. Leonen, *En Banc*].
176 *Buenaventura v. Mabalot*, 716 Phil. 476 (2013) [Per J. Mendoza, Third Division].
177 *See Cammayo v. Viña*, 101 Phil. 1149 (1957) [Per J. Endencia, *En Banc*].
178 *See Labaco v. Parale*, A.M. No. P-2266-A, December 14, 1981 [Per J. De Castro, *En Banc*]; *Bareno v. Cabauatan*, 235 Phil. 284 (1987) [*Per Curiam, En Banc*]; and *Neeland v. Villanueva*, 376 Phil. 1 (1999) [*Per Curiam, En Banc*].
179 *In Re: Pioquinto Villapana*, 299 Phil. 769 (1994) [*Per Curiam, En Banc*].
180 *See* Article IX-B, Section 1(1) and Article IX-A, Section 9 of the 1987 Constitution.

Nonetheless, and if only to reiterate, it must be equally discerned that the administrative offense of conduct prejudicial to the best interest of the service has left much to be desired in terms of clarity inasmuch as it can practically cover all acts/omissions perceptibly tainting the image and integrity of the public office such as the administrative offenses already specifically enumerated under the URACCS or RRACCS.

From the foregoing analysis, two legal conclusions can be inferred:

First, the administrative offense of conduct prejudicial to the best interest of the service was specifically added to cover **only the acts/omissions not currently specifically penalized under the URACCS or RRACCS**. In this sense, this administrative offense serves to embrace acts/omissions that our civil service laws and rules had not or cannot currently account for.

Second, the administrative offense of conduct prejudicial to the best interest of the service was added to embrace all acts/omissions that tarnish the image and integrity of the public office, **including even those acts/omissions specifically penalized under the URACCS or RRACCS**.

In this regard, it is well to stress that the purpose of administrative penalties is to restore and preserve the public trust in our institutions.[181] The imposition of penalties is part of public accountability, which arises from the State's duty to preserve the public trust.[182]

Given the restorative and preservative nature of the penalties imposed for administrative offenses, the Court is hard-pressed to conclude that the CSC intended for an act/omission that fall squarely under one of the administrative offenses specifically identified and enumerated under the URACCS or RRACSS to likewise be penalized under the separate but general and encompassing administrative offense of conduct prejudicial to the best interest of the service.

Considering that the basis for the imposition of administrative liabilities rests on the core constitutional principles of public trust, accountability, responsibility, integrity, loyalty, efficiency, patriotism and justice, and modest living, conduct prejudicial to the best interest of the service is, in reality, a summation of these standards by which all in the public service must measure up to.

Conversely, the administrative offenses specifically enumerated under the URACCS or RRACSS are, in and of themselves, prejudicial to the best interest of the service. Moreover, consideration should be given to the fact

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[181] Section 1, Article XI of the 1987 Constitution.
[182] *Id.*

that several of the grave offenses under the URACCS or RRACCS are punishable by dismissal on the first offense, with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and either: perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision (under the URACCS); or perpetual disqualification from holding public office and bar from taking civil service examinations (under the RRACCS).

Consequently, there appears to be no reasonable, practical, and equitable restorative or preservative justification to additionally hold liable erring public officers or employees with conduct prejudicial to the best interest of the service for the same act/omission when they have already been found liable for a grave offense (as often appears to be the case) that carries the penalty of dismissal from the service for the first offense.

The same rational operates when erring public officers or employees have already been found liable for a grave offense that carries the penalty of suspension for the first offense and dismissal from the service on the second offense. To additionally hold them liable for conduct prejudicial to the best interest of the service, which carries the same penalty, for the **same act/omission** will serve no further purpose other than to defeat the restorative and preservative nature of the penalties.

To be sure, the Court recognizes that under Section 55 of the URACCS and Section 50 of the RRACCS, erring public officers or employees found guilty of two or more charges or counts shall be meted with the penalty corresponding to the most serious charge, while the rest shall be considered as aggravating circumstances.

The Court, however, clarifies that, in contrast with the foregoing situations—where the erring public officer or employee is being held liable for two separate administrative offenses but involving the **same act/omission**, Section 55 of the URACCS and Section 50 of the RRACCS embrace situations where erring public officers or employees are found liable for two or more charges or counts, i.e., separate acts/omissions, irrespective of whether they involve similar or different administrative offenses. Verily, in such situations, what the foregoing provisions penalize is the **propensity** of the erring public officers or employees to commit administrative infractions that therefore warrant the aggravation of the penalty.

Lastly, it must be recognized that in additionally holding erring public officers or employees liable for the grave offense of conduct prejudicial to the best interest of the service for acts/omissions that already constitute as less grave and light offenses under the URACCS or RRACCS, it would be the

height of injustice considering that the CSC has already deemed such act/omission as less grave or light offense only.

Based on the foregoing discussions, the Court hereby holds that when erring public officers or employees are found liable for an administrative offense specifically enumerated under the applicable Civil Service Rules, they can no longer be held liable for conduct prejudicial to the best interest of the service for the same act/omission.

In view thereof, the Court modifies the CA ruling, and consequently deletes Nicolas's liability for conduct prejudicial to the best interest of the service.

Finally, for the guidance of the bench, the bar, and the public, the Court sets the following guidelines in the application of conduct prejudicial to the best interest of the service in administrative cases:

(a) Conduct prejudicial to the best interest of the service need not be related to the performance of official duty, as long as the act/omission subject of the administrative complaint tarnish the image or integrity of the public service.

(b) Nonetheless, in the evaluation of the charge/s and the evidence against the respondent, the act/omission must not already constitute as an administrative offense under the URACCS or RRACCS, as the case may be.

    (i) If the acts/omission subject of the administrative complaint already constitute as an administrative offense under the URACCS or RRACCS, respondent must be charged under the listed administrative offense and must no longer be additionally charged with conduct prejudicial to the best interest of the service.

    (ii) If the acts/omission subject of the administrative complaint does not or cannot fall under any of the administrative offenses enumerated under the URACCS or RRACCS, respondent may be charged with conduct prejudicial to the best interest of the service.

(c) If the act/omission does not or cannot fall under any of the administrative offenses enumerated under the URACCS or RRACCS, in which case respondent may be charged with conduct prejudicial to the best interest of the service;

(i) said act/omission must be of the same character or nature as the grave offenses enumerated under the pertinent provision of the URACCS or RRACCS considering that these Rules classify conduct prejudicial to the best interest of the service as a grave offense;

(ii) if said act/omission is not of such grave character or nature, respondent can be held liable for the administrative offense of the same or similar nature as enumerated under the URACCS or RRACCS, i.e., less grave or light offenses; otherwise, the administrative charge/s must be dismissed, without prejudice, however, to the imposition of reprimand or admonition if warranted under the circumstances.

Proper penalty to be imposed on Nicolas

Under Section 52 of the URACCS,[183] which applies at the time the acts subject of the administrative charges against Nicolas were committed, dishonesty and grave misconduct are classified as grave offenses punishable by dismissal from the service for the first offense.

Thus, Nicolas is hereby meted with the penalty of dismissal from the service, with the accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office, and bar from taking civil service examinations. In the event that the penalty of dismissal can no longer be enforced, the foregoing penalty of dismissal shall be converted into a fine in the amount equivalent to his salaries for one year. The accessory penalties attached to the dismissal shall continue to be imposed.

ACCORDINGLY, the petition is **DENIED**. The Decision dated October 2, 2018 and the Resolution dated March 19, 2019 of the Court of Appeals in C.A.-G.R. SP No. 153302 are hereby **AFFIRMED with MODIFICATION**. Petitioner William Dadez Nicolas, Sr. is found administratively liable for dishonesty and grave misconduct warranting the penalty of **DISMISSAL** from the service, with the accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office, and bar from taking civil service examinations. In view, however, of his prior separation from public service, he is hereby meted with the penalty of **FINE** in the amount equivalent to his salaries for one year, together with the accessory penalties attached to dismissal from the service.

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[183] CSC Resolution No. 991936, effective August 31, 1999.

SO ORDERED.

ANTONIO T. KHO, JR.
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice