

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. ROLANDO L. MAGNO AND THE COURT OF APPEALS (SPECIAL FORMER FIFTH DIVISION), RESPONDENTS.

G.R. No. 178923. November 27, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Certiorari and Prohibition under Rule 65 of the Revised Rules of Court seeking to nullify and set aside the Decision[1] dated 7 November 2006 and Resolution[2] dated 14 June 2007 of the Court of Appeals in CA-G.R. SP No. 91080 entitled, Rolando L. Magno v. Lizabeth Carreon. The Court of Appeals reversed the Decision promulgated on 3 June 2005[3] and Order issued 22 August 2005[4] of the Office of the Ombudsman (Ombudsman) in OMB-ADM-0-00-0148 and denied the Omnibus Motion to Intervene and for Reconsideration of the Ombudsman in CA-G.R. SP No. 91080. The Ombudsman, in OMB-ADM-0-00-0148, dismissed from service private respondent Rolando L. Magno (Magno), Schools Division Superintendent of the Department of Education, Parañaque City Division, and Co-Chairman of the Parañaque City School Board (PCSB), for Grave Misconduct.

The following are the factual antecedents:

Lizabeth Carreon (Carreon) - alleging to be the legal representative of Kejo Educational System, Merylvin Publishing House, and Southern Christian Commercial which were distributors and suppliers of textbooks to public schools in Metro Manila - filed a complaint-affidavit[5] on 10 February 2000 before the Ombudsman against Magno and other officials of Parañaque City, particularly: Joey P. Marquez (Marquez), City Mayor and Chairman of the PCSB; Silvestre A. de Leon (de Leon), City Treasurer; Flocerfida Babida (Babida), City Budget Officer; Mar Jimenez (Jimenez), Executive Assistant to the City Mayor; and Antonette Antonio (Antonio), Assistant to the City Mayor (hereinafter collectively referred to as Magno, et al.). Carreon charged Magno, et al. with violation of Section 3, paragraphs (e) and (f) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, for allegedly having failed to pay the purchase price of books ordered and delivered to the different public schools in Parañaque City.[6]

Carreon averred that sometime in the first quarter of 1998, she was approached by a close family friend, Noli Aldip (Aldip), who also happened to be a friend of Marquez. Aldip introduced her to Jimenez and Antonio; the two, in turn, introduced her to Magno. Immediately after their meeting, Jimenez and Antonio proposed to Carreon that if the companies she represented, i.e., Kejo Educational System, Merylvin Publishing House, and Southern Christian Commercial, were willing to do business with PCSB, they could facilitate, through the Office of the City Mayor, book purchases for Parañaque City public schools. Magno, for his part, assured Carreon that he, Jimenez, and Antonio, could arrange the passage of the required PCSB Resolutions for said business transaction.

Carreon claimed that Jimenez and Antonio informed her that they had the go-signal of the City Mayor for the book purchases. Subsequently, she learned through Magno, Jimenez, and Antonio that the PCSB had already passed the following Resolutions in July 1998:

Resolution No.

Purpose

Amount

25

For 500 copies of Diksiyonaryong Pilipino P1,122,250.00

26

For 500 copies of Oxford Dictionary 1,247,500.00

28

For DECS Basic Textbooks in Grade II 2,021,250.00

29

For DECS Basic Textbooks

2,021,250.00

TOTAL

6,412,250.00

Four months after, in November 1998, Carreon said that Magno, Jimenez, and Antonio notified her that the funding for the dictionary and textbook purchases had been arranged and, in fact, some of the necessary documents were already signed. Carreon was provided by Magno, Jimenez, and Antonio with copies of Requests for Allocation of Allotment (ROAs) and Disbursement Vouchers (DVs) signed by Magno; Purchase Requests (PRs) No. 0001391, No. 0001387, No. 0001388 and No. 0001390, signed by Marquez and Magno; as well as Purchase Orders (POs) for individual requests signed by Marquez and the Parañaque Purchasing Officer. Magno, Jimenez, and Antonio then advised Carreon to start making deliveries of the dictionaries and textbooks.

Allegedly relying on the representations of Magno, Jimenez, and Antonio, Carreon caused the deliveries of the dictionaries and textbooks, amounting to P6,412,201.91, to the PCSB, evidenced by delivery receipts dated 14, 21, and 22 December 1998,[7] signed by Teresita G. Diocadiz, Supply Officer of the PCSB. According to the Supplies and Materials Distribution Sheet, the dictionaries and textbooks were distributed to the various Parañaque public schools on 2 February 1999 by the officials of the PCSB, particularly Marquez and Magno.[8]

According to Carreon, she was assured several times that payments for the said dictionaries and textbooks would be released soon. On 17 January 2000, Carreon sent a demand letter to Marquez. For the first time, however, Marquez questioned the authenticity of his signatures on the PRs and POs for the dictionaries and textbooks.

Carreon asserted that the actions of Magno, et al. before, during, and subsequent to the delivery of the dictionaries and textbooks were done in evident bad faith and manifest evil design; and that the non-payment of said books caused her undue injury, in violation of Sections 3(e) and (f) of Republic Act No. 3019.

Carreon's complaint-affidavit gave rise to two separate proceedings before the Ombudsman: a criminal investigation, docketed as OMB-0-00-0350; and an administrative investigation, docketed as OMB-ADM-0-00-0148. The administrative charges against Magno, et al. were particularly for Misconduct and Oppression.

Apparently in negotiations for the amicable settlement of her claims, Carreon filed a Manifestation in OMB-0-00-0350 dated September 2000 before the Evaluation and Preliminary Investigation Bureau of the Office of the Ombudsman withdrawing her complaint-affidavit, without prejudice to its re-filing in case the parties fail to reach an agreement.[9]

On 16 January 2001, finding enough basis to proceed with the administrative investigation of the case, the Director of the Administrative Investigation Bureau (AIB) of the Office of the Ombudsman issued an Order to proceed with the investigation on the administrative liability of Magno, et al. in OMB-ADM-0-00-0148, it appearing that the complaint was sufficient in form and substance. Magno, et al. were directed to file their counter-affidavits.[10]

In a letter[11] dated 28 March 2001 and addressed to the AIB Director, Magno, et al. (except Antonio), authorized Atty. Leo Luis Mendoza (Atty. Mendoza) to appear on their behalf in the preliminary conference on OMB-ADM-0-00-0148 and to present and submit the necessary documents/affidavits as may be required by law and/or the AIB.

On 16 April 2001, Atty. Mendoza filed a Manifestation[12] on behalf of Magno, et al. (except Antonio), adopting in OMB-ADM-0-00-0148 the Joint Counter-Affidavit already submitted in the criminal proceedings in OMB-0-00-0350.[13] In said Joint Counter-Affidavit, filed on 3 April 2000 by Magno, et al. (except Antonio) in OMB-0-00-0350, but which did not bear Magno's signature, it was asserted that the supposed contracts for the book purchases were null and void because the Board Resolutions approving the same were invalid and could not legally bind the city and its funds, given that the signatures of Marquez thereon were allegedly forged. It was further contended therein that the contracts for the book purchases violated existing law and rules and regulations regarding government contracts, since there was an absence of (1) public bidding, as mandated by Sections 356 and 366 of the Local Government Code; (2) a certification issued by Marquez, as PCSB Chairman, on the need for the dictionaries and textbooks purchased and where these were to be used; (3) a certification by the local budget officer, accountant, and treasurer, showing that an appropriation for the book purchases existed, that the estimated amount for the same had been obligated, and that the funds were available for the purpose, as required by Section 360 of the Local Government Code; and (4) Disbursement Vouchers properly issued and signed by the authorized public officials. The Joint Counter-Affidavit raised as additional ground for dismissal of the complaint-affidavit Carreon's lack of legal capacity to sue and lack of cause of action against the Parañaque City officials for failure to show any documentary proof that she was indeed the legal representative of the book distributors and suppliers. Hence, it was argued in the Joint Counter-Affidavit that Carreon delivered the books at her own risk and must bear the loss for the non-payment thereof. The same Joint Counter-Affidavit also presented the defenses for each of the Parañaque official involved. For Magno, in particular, it was admitted therein that he signed the ROAs and PRs for the books supplied by Kejo Educational System, Merylvin Publishing House, and Southern Christian Commercial, but it was done in good faith and simply in compliance with his duty as the requesting or requisitioning official for PCSB. And, it was denied in the Joint Counter-Affidavit that Magno dealt with Carreon regarding these purchases.[14]

In the meantime, separate Ex-Parte Manifestations[15] were filed by Kejo Educational System,[16] Merylvin Publishing House,[17] and Southern Christian Commercial,[18] disclaiming the authority of Carreon to file with the Ombudsman the complaint-affidavit against Magno, et al. on their behalf.

After holding a preliminary conference, the Ombudsman issued on 23 November 2001 an Order submitting OMB-ADM-0-00-0148 for decision.

The Office of the Ombudsman rendered its Decision in OMB-ADM-0-00-0148 on 3 June 2005 holding only

Magno and Jimenez guilty of Grave Misconduct and dismissing them from service. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, this Office rules and so holds that:

- Respondent ROLANDO L. MAGNO is hereby FOUND GUILTY of the offense of GRAVE MISCONDUCT, and for which he is hereby meted the penalty of DISMISSAL FROM THE SERVICE WITH ALL ITS ACCESSORY PENALTIES, pursuant to Section 52(A-3), Rule IV, Uniform Rules on Administrative Cases in the Civil Service;
- Respondent MARIO "MAR" L. JIMENEZ is hereby found guilty of GRAVE MISCONDUCT and for which he is hereby meted the penalty of DISMISSAL FROM THE SERVICE WITH ALL ITS ACCESSORY PENALTIES, pursuant to Section 52(A-3), Rule IV, Uniform Rules on Administrative Cases in the Civil Service. In view, however, of recent developments which now preclude this Office from dismissing him from office, it is (sic) hereby ordered the forfeiture of his retirement benefits and his perpetual disqualification for reemployment in the government service;
- Respondents FLORCEFIDA M. BABIDA and SILVESTRE A. DE LEON are hereby ABSOLVED of the instant charge; and
- For having been rendered moot and academic, the instant case against respondents JOEY P. MARQUEZ and ANTONETTE ANTONIO is hereby DISMISSED.[19]

Magno filed with the Ombudsman a Motion for Reconsideration of the afore-quoted Decision. He alleged in his Motion that he was not a signatory to the Joint Counter-Affidavit submitted on 3 April 2000 in OMB-0-00-0350 and adopted in OMB-ADM-0-00-0148; consequently, he argued that he "can not be adversely affected by whatever unfavorable allegations contained therein regarding the refusal of [the other Parañaque City officials] to pay Carreon due to lack of funds." [20] The 3 June 2005 Decision of the Ombudsman in OMB-ADM-0-00-0148, which adjudged Magno guilty of Grave Misconduct based on the Joint Counter-Affidavit which he did not execute, was clearly erroneous. Contrary to the allegations in the said Joint Counter-Affidavit, Magno did not deny signing the ROAs and the PRs for the book purchases but explained that it was only an initial step for the purchase of the dictionaries and textbooks, and was proper and legal since it was part of his official functions and duties. Moreover, to negate the claim of injury, Magno attached a certification [21] dated 15 August 2003, issued by the current Parañaque City Treasurer showing that payment for the dictionaries and textbooks were already received by Kejo Educational System, [22] Merylvyn Publishing House [23] and Southern Christian Commercial. [24]

The Ombudsman, in its Order issued on 22 August 2005, denied Magno's Motion for Reconsideration and affirmed its Decision of 3 June 2005.

Magno elevated his case to the Court of Appeals via a Petition for Review on Certiorari under Rule 43 of the Rules of Court, where it was docketed as CA-G.R. SP No. 91080. Magno grounded his appeal on the following arguments: that Carreon had no legal standing to institute the administrative case against him; that he signed the ROAs and PRs for the book purchases as part of his official duties, and that, even then, the said documents had no bearing unless approved by the appropriate officials of the Parañaque City government; and that since he was administratively charged only with Misconduct and Oppression for his supposed violation of Sections 3(e) and (f) of Republic Act No. 3019, he could not be found guilty of Grave Misconduct without violating his right to due process.

The Court of Appeals issued on 1 March 2006 a preliminary injunction to enjoin the implementation of the 3 June 2005 Decision of the Ombudsman in OMB-ADM-0-00-0148 dismissing Magno from service. Upon Carreon's

failure to file a Comment on Magno's Petition in CA-G.R. SP No. 91080 as directed, the appellate court submitted the case for decision.

On 7 November 2006, the Court of Appeals reversed the Ombudsman and dismissed the administrative charges against Magno, ratiocinating that:

The Office of the Ombudsman erred in finding [Magno] guilty of grave misconduct. [Magno] was charged with violation of Section 3 (e) and (f), R.A. 3019. He was not charged with grave misconduct, as to put him on notice that he stands accused of misconduct coupled with any of the elements of corruption, willful intent to violate the law or established rules. Therefore, he was not afforded the opportunity to rebut the elements of corruption, willful intent to violate the law, or flagrant disregard of established rules in grave misconduct, in violation of his constitutional right to be informed of the charges against him.[25]

On 24 November 2006, the Ombudsman filed with the Court of Appeals an Omnibus Motion to Intervene and for Reconsideration[26] of the appellate court's Decision in CA-G.R. SP No. 91080. The Ombudsman justified its move to intervene by reasoning that CA-G.R. SP No. 91080 concerned a decision rendered by the Ombudsman pursuant to its function as the disciplinary authority over public officials and employees. Its 3 June 2005 Decision in OMB-ADM-0-00-0148 finding Magno administratively liable for Grave Misconduct was based on substantial evidence. It did not violate due process, as due process never required the Ombudsman to limit its findings to the designation of the offense in the complaint.

Magno opposed the Omnibus Motion of the Ombudsman, contending that the latter was not a real party-in-interest, and its motion to intervene was already belatedly filed since such should have been filed before the Court of Appeals promulgated its Decision in CA-G.R. SP No. 91080.

In a Resolution[27] dated 14 June 2007, the Court of Appeals denied the Omnibus Motion of the Ombudsman, and pronounced that the arguments raised in Magno's Petition in CA-G.R. SP No. 91080 had already been adequately discussed and passed upon in the Decision dated 7 November 2006.

Hence, the Petition at bar, in which the Ombudsman asserts that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction in the following manner:

THE RESPONDENT COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE OMNIBUS MOTION FOR INTERVENTION AND RECONSIDERATION FILED BY PETITIONER OMBUDSMAN, IT APPEARING THAT THE QUESTIONED RESOLUTION AND DECISION ARE NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THIS HONORABLE COURT UNDER THE FOLLOWING CIRCUMSTANCES:

- PETITIONER OMBUDSMAN HAS SUFFICIENT LEGAL INTEREST WARRANTING ITS INTERVENTION IN CA-GR SP NO. 91080, ENTITLED "ROLANDO L. MAGNO VS. LIZABETH CARREON."

- PETITIONER OMBUDSMAN DID NOT VIOLATE PRIVATE RESPONDENT MAGNO'S RIGHT TO DUE PROCESS WHEN IT DECLARED HIM ADMINISTRATIVELY LIABLE FOR GRAVE MISCONDUCT.

The Ombudsman prays that the Court issue (1) a writ of certiorari setting aside the 7 November 2006 Decision and 14 June 2007 Resolution of the Court of Appeals and reinstating the 3 June 2005 Decision and 22 August 2005 Resolution of the Ombudsman; and (2) a writ of prohibition perpetually restraining Magno and the Court of Appeals from enforcing the assailed Decision and Resolution.

The present Petition is without merit and is accordingly dismissed by this Court.

Petitions for certiorari and prohibition are special remedies governed by Rule 65 of the Revised Rules of Court, relevant provisions of which read:

SEC. 1. Petition for Certiorari. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

x x x x

SEC. 2. Petition for prohibition. - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceeding in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The rules are explicit that the special remedies of certiorari and prohibition may only be availed of when the tribunal, corporation, board, officer, or person, exercising judicial, quasi-judicial, or ministerial functions, acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.

A petition for certiorari (as well as one for prohibition) will only prosper if grave abuse of discretion is manifested.[28] The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave.[29] The term grave abuse of discretion has a technical and set meaning. Grave abuse of discretion is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[30]

Judging from the foregoing standards, there is no grave abuse of discretion in the case at bar. There is factual and legal justification for the denial by the Court of Appeals of the Ombudsman's Omnibus Motion.

The Court notes that only Carreon was named a respondent in CA-G.R. SP No. 91080; the Ombudsman was not impleaded as a party in said case, even as a nominal party. The Ombudsman, despite receiving notices from said case, failed to immediately move to intervene in CA-G.R. SP No. 91080. Instead, the Ombudsman waited until the Court of Appeals rendered its judgment dismissing the charges against Magno before filing its Omnibus Motion to Intervene and for Reconsideration. The appellate court no longer allowed the Ombudsman to intervene.

Intervention is not a matter of right but may be permitted by the courts only when the statutory conditions for the right to intervene are shown. Thus, the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court.[31]

To allow intervention, it must be shown that (a) the movant has a legal interest in the matter in litigation or otherwise qualified, and (b) consideration must be given as to whether the adjudication of the rights of the original parties may be delayed or prejudiced, or whether the intervenor's rights may be protected in a separate proceeding or not. Both requirements must concur, as the first is not more important than the second.[32]

In the case at bar, the Court holds that the Ombudsman failed to sufficiently establish its legal interest to intervene

in CA-G.R. SP No. 91080.

Legal interest, which entitles a person to intervene, must be in the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by direct legal operation and effect of the judgment.[33]

The Ombudsman invokes its disciplining authority over public officers and employees in an attempt to justify its intervention in CA-G.R. SP No. 91080. It was in the exercise of such disciplining authority that the Ombudsman conducted the investigation in OMB-ADM-0-00-0148, the administrative case against Magno and the other Parañaque City officials. As a result of such investigation, the Ombudsman rendered its Decision of 3 June 2005, finding Magno guilty of Grave Misconduct and dismissing him from service.

That it was its decision, rendered as the disciplining authority over Magno, which was the subject of the appeal in CA-G.R. SP No. 91080, did not necessarily vest the Ombudsman with legal interest to intervene in the said case. Every decision rendered by the Ombudsman in an administrative case may be affirmed, but may also be modified or reversed on appeal - this is the very essence of appeal. In case of modification or reversal of the decision of the Ombudsman on appeal, it is the parties who bear the consequences thereof, and the Ombudsman itself would only have to face the error/s in fact or law that it may have committed which resulted in the modification or reversal of its decision.

Moreover, the reason for disallowing the disciplining authority from appealing the reversal of its decision, as decided in *National Appellate Board of the National Police Commission v. Mamauag*,^[34] citing *Mathay, Jr. v. Court of Appeals*,^[35] is also true for precluding said disciplining authority from intervening in the appeal of its decision, to wit:

RA 6975 itself does not authorize a private complainant to appeal a decision of the disciplining authority. Sections 43 and 45 of RA 6975 authorize "either party" to appeal in the instances that the law allows appeal. One party is the PNP member-respondent when the disciplining authority imposes the penalty of demotion or dismissal from the service. The other party is the government when the disciplining authority imposes the penalty of demotion but the government believes that dismissal from the service is the proper penalty.

However, the government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of demotion or dismissal from the service. The government party appealing must be one that is prosecuting the administrative case against the respondent. Otherwise, an anomalous situation will result where the disciplining authority or tribunal hearing the case, instead of being impartial and detached, becomes an active participant in prosecuting the respondent. Thus, in *Mathay, Jr. v. Court of Appeals*, decided after *Dacoycoy*, the Court declared:

To be sure, when the resolutions of the Civil Service Commission were brought before the Court of Appeals, the Civil Service Commission was included only as a nominal party. As a quasi-judicial body, the Civil Service Commission can be likened to a judge who should "detach himself from cases where his decision is appealed to a higher court for review."

In instituting G.R. No. 126354, the Civil Service Commission dangerously departed from its role as adjudicator and became an advocate. Its mandated function is to "hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments and to review decisions and actions of its offices and agencies," not to litigate. (Emphasis ours.)

In *Pleyto v. Philippine National Police Criminal Investigation and Detection Group*,^[36] the Court further warned that:

The court or the quasi-judicial agency must be detached and impartial, not only when hearing and resolving the case before it, but even when its judgment is brought on appeal before a higher court. The judge of a court or

the officer of a quasi-judicial agency must keep in mind that he is an adjudicator who must settle the controversies between parties in accordance with the evidence and the applicable laws, regulations, and/or jurisprudence. His judgment should already clearly and completely state his findings of fact and law. There must be no more need for him to justify further his judgment when it is appealed before appellate courts. When the court judge or the quasi-judicial officer intervenes as a party in the appealed case, he inevitably forsakes his detachment and impartiality, and his interest in the case becomes personal since his objective now is no longer only to settle the controversy between the original parties (which he had already accomplished by rendering his judgment), but more significantly, to refute the appellant's assignment of errors, defend his judgment, and prevent it from being overturned on appeal.

Equally relevant herein is Section 2, Rule 19 of the Revised Rules of Court, which states that the motion to intervene may be filed at any time before rendition of judgment by the court. The period within which a person may intervene is thus restricted. After the lapse of this period, it will not be warranted anymore. This is because, basically, intervention is not an independent action but is ancillary and supplemental to an existing litigation.[37]

In the instant case, the Ombudsman moved to intervene in CA-G.R. SP No. 91080 only after the Court of Appeals had rendered its decision therein. It did not offer any worthy explanation for its belated attempt at intervention, and merely offered the feeble excuse that it was not ordered by the Court of Appeals to file a Comment on Magno's Petition. Even then, as the Court has already pointed out, the records disclose that the Ombudsman was served with copies of the petition and pleadings filed by Magno in CA-G.R. SP No. 91080, yet it chose not to immediately act thereon.

While there may be cases in which the Court admitted and granted a motion for intervention despite its late filing to give way to substantive justice, the same is not applicable to the case at bar, for here, not only did the Ombudsman belatedly move for intervention in CA-G.R. SP No. 91080, but more importantly, it has no legal interest at all to intervene. The absence of the latter is insurmountable.

Since the Court of Appeals denied the intervention of the Ombudsman in CA-G.R. SP No. 91080, then the Court of Appeals could not admit, much less, take into account the Ombudsman's Motion for Reconsideration of the Decision dated 7 November 2006. In the absence of any validly filed Motion for Reconsideration of the said Decision or any appeal thereof taken to this Court within the prescribed period, then the same has become final and executory, and beyond the power of this Court to review even if the Decision should contain any errors.

The Ombudsman, however, insists that this Court delve into the merits of the Court of Appeals Decision dated 7 November 2006, on certiorari instead of appeal, alleging grave abuse of discretion on the part of the appellate court in promulgating the same.

Firstly, this Petition for Certiorari of the 7 November 2006 Decision of the Court of Appeals was filed beyond the reglementary period for doing so.

According to Section 4, Rule 65 of the Revised Rules of Court, a petition for certiorari may be filed not later than 60 days from receipt of the judgment, order or resolution sought to be assailed in the Supreme Court. The Ombudsman received a copy of the Court of Appeals Decision dated 7 November 2006 on 9 November 2006. It had only until 8 January 2008 to file a petition for certiorari assailing the said Decision. This period was not tolled by the filing by the Ombudsman of its Omnibus Motion on 24 November 2006, as the denial of its intervention by the appellate court in the assailed Resolution dated 14 June 2007 resulted in the non-admittance of its motion for reconsideration. Still, according to Section 4, Rule 65 of the Revised Rules of Court, only the filing of a motion for reconsideration interrupts the 60-day reglementary period for the filing of a petition for certiorari.

The results would have been different had the Ombudsman been successful in the instant Petition to have the

Resolution dated 14 June 2007 of the Court of Appeals, denying its motion to intervene, reversed; because, then, its motion for reconsideration of the Decision dated 7 November 2006 of the appellate court would have also been deemed admitted and would have suspended the running of the 60-day reglementary period for the filing of a petition for certiorari. Regrettably for the Ombudsman, it failed in this regard.

Secondly, even if this Court disregards the lapse of the reglementary period for the filing of a petition for certiorari assailing the 7 November 2008 Decision of the Court of Appeals, it will still not issue the writ prayed for by the Ombudsman since it is not persuaded that the assailed Decision had been rendered by the appellate court in grave abuse of discretion.

The administrative charges against Magno, arising from his alleged violation of Sections 3(e) and (f) of Republic Act No. 3019, were Misconduct and Oppression. Magno, in his pleadings filed before the Ombudsman, argued and presented evidence based on such charges. However, the Ombudsman finally adjudged him to be guilty of Grave Misconduct for which he was ordered dismissed from service.

Misconduct has been defined as improper or wrongful conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. On the other hand, 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.[38]

Simple Misconduct is distinct and separate from Grave Misconduct. The Court clarified in *Landrito v. Civil Service Commission*[39] that "in grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest."

In point is the Court's ruling in *Civil Service Commission v. Lucas*,[40] where:

The issues are (a) whether respondent Lucas was denied due process when the CSC found him guilty of grave misconduct on a charge of simple misconduct, and (b) whether the act complained of constitutes grave misconduct.

Petitioner anchors its position on the view that "the formal charge against a respondent in an administrative case need not be drafted with the precision of an information in a criminal prosecution. It is sufficient that he is apprised of the substance of the charge against him; what is controlling is the allegation of the acts complained of, and not the designation of the offense."

We deny the petition.

As well stated by the Court of Appeals, there is an existing guideline of the CSC distinguishing simple and grave misconduct. In the case of *Landrito vs. Civil Service Commission*, we held that "in grave misconduct as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest," which is obviously lacking in respondent's case. Respondent maintains that as he was charged with simple misconduct, the CSC deprived him of his right to due process by convicting him of grave misconduct.

We sustain the ruling of the Court of Appeals that: (a) a basic requirement of due process is that a person must be duly informed of the charges against him and that (b) a person can not be convicted of a crime with which he was not charged.

Administrative proceedings are not exempt from basic and fundamental procedural principles, such as the right to due process in investigations and hearings.

The right to substantive and procedural due process is applicable in administrative proceedings.

The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of.[41] As found by the Court of Appeals, Magno was clearly deprived of his right to due process when he was convicted of a much serious offense, carrying a more severe penalty, without him being properly informed thereof or being provided with the opportunity to be heard thereon.

WHEREFORE, premises considered, the instant Petition for Certiorari and Prohibition is DISMISSED, without prejudice to the outcome of the criminal cases still pending against private respondent Rolando L. Magno for the same acts.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Santiago Javier Ranada with Associate Justices Roberto A. Barrios and Mario L. Guariña III concurring; Rollo, pp. 22-32.

[2] Id. at 19.

[3] Although the Decision was dated 30 August 2004, it was signed and approved by Ombudsman Simeon V. Marcelo only on 3 June 2005; Records, pp. 228-259.

[4] Although the Order was dated 23 June 2005, it was signed and approved by Ombudsman Simeon V. Marcelo only on 22 August 2005; CA rollo, pp. 82-92.

[5] Records, pp. 1-5.

[7] Id. at 26-36.

[8] Id. at 38.

[9] Id. at 139; People v. Marquez, docketed as Criminal Cases No. 27778 to No. 27779 are pending before the Sandiganbayan.

[10] Id. at 68-76.

[11] Id. at 81.

[12] Id. at 90-92.

[13] Id. at 90-93.

[14] Id. at 105.

[15] Id. at 82-89.

[16] 30 March 2001.

[17] Id.

[18] 8 February 2001.

- [19] CA rollo, pp. 64-65.
- [20] Id. at 267; Motion for Reconsideration filed before the Ombudsman.
- [21] Annex 1 to the Motion for Reconsideration before the Ombudsman; id. at 273.
- [22] 30 April 2001.
- [23] 9 November 2001.
- [24] 28 February 2001 and 20 March 2001.
- [25] Rollo, pp. 30-31.
- [26] CA rollo, pp. 224-241.
- [27] Id. at 273.
- [28] Microsoft Corporation v. Best Deal Computer Center Corporation, 438 Phil. 408, 414 (2002).
- [29] See Suliguin v. COMELEC, G.R. No. 166046, 23 March 2006, 485 SCRA 219, 233.
- [30] Natalia Realty, Inc. v. Court of Appeals, 440 Phil. 1, 20-21 (2002).
- [31] Manalo v. Court of Appeals, 419 Phil. 215, 233 (2001).
- [32] Yao v. Perello, 460 Phil. 658, 664 (2003).
- [33] Nordic Asia, Ltd. v. Court of Appeals, G.R. No. 111159, 13 July 2004, 434 SCRA 195, 199.
- [34] G.R. No. 149999, 12 August 2005, 466 SCRA 624, 641-642.
- [35] 378 Phil. 466, 483-484 (1999).
- [36] G.R. No. 169982, 23 November 2007, 538 SCRA 534, 549.
- [37] Manalo v. Court of Appeals, supra note 31.
- [38] Estarija v. Ranada, G.R. No. 159314, 26 June 2006, 492 SCRA 652, 663.
- [39] G.R. Nos. 104304-05, 22 June 1993, 223 SCRA 564, 567.
- [40] 361 Phil. 486, 490-491 (1999).
- [41] Firestone Tire and Rubber Company of the Philippine v. Lariosa, G.R. No. L-70479, 27 February 1987, 148 SCRA 187, 192.

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