

OFFICE OF THE PRESIDENT AND PRESIDENTIAL ANTI-GRAFT COMMISSION, PETITIONERS, VS. CALIXTO R. CATAQUIZ, RESPONDENT.

G.R. No. 183445. September 14, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the January 31, 2008 Decision[1] and the June 23, 2008 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 88736 entitled "Calixto R. Cataquiz v. Office of the President and Concerned Employees of the LLDA (CELLDA)," which reversed and set aside the Amended Resolution[3] dated February 10, 2005 of the Office of the President (OP).

The Facts

Respondent Calixto R. Cataquiz (Cataquiz) was appointed as General Manager of the Laguna Lake Development Authority (LLDA) on April 16, 2001.[4]

On April 1, 2003, a majority of the members of the Management Committee and the rank-and-file employees of the LLDA submitted to then Department of Environment and Natural Resources (DENR) Secretary Elisea G. Gozun (Secretary Gozun) their Petition for the Ouster of Cataquiz as LLDA General Manager[5] on the grounds of corrupt and unprofessional behavior and management incompetence.

In response, Secretary Gozun ordered the formation of an investigating team to conduct an inquiry into the allegations against Cataquiz. The results of the fact-finding activity were submitted in a Report[6] dated May 21, 2003 in which it was determined that respondent may be found guilty for acts prejudicial to the best interest of the government and for violations of several pertinent laws and regulations. Consequently, the investigating team recommended that the case be forwarded to the Presidential Anti-Graft Commission (PAGC) for proper investigation.

In her Memorandum[7] for the President dated May 23, 2003, Secretary Gozun reported that there is prima facie evidence to support some accusations against Cataquiz which may be used to pursue an administrative or criminal case against him. It was further noted that respondent lost his leadership credibility. In light of these, she recommended that Cataquiz be relieved from his position and that he be investigated by PAGC.

On June 6, 2003, in a letter[8] to then President Gloria Macapagal-Arroyo (President Arroyo), the Concerned Employees of the Laguna Lake Development Authority (CELLDA), a duly organized employees union of the LLDA, expressed their support for the petition to oust Cataquiz and likewise called for his immediate replacement.

Thereafter, CELLDa formally filed its Affidavit Complaint[9] dated September 5, 2003 before PAGC charging Cataquiz with violations of Republic Act (R.A.) No. 3019 (The Anti-Graft and Corrupt Practices Act), Executive

Order (E.O.) No. 292 (The Administrative Code) and R.A. No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), to wit:

Violation of Section 3(e) of Republic Act 3019 in relation to Section 46 b(8) and (27), Chapter VI, Book V of EO 292.

- That respondent directly transacted with 35 fishpen operators and authorized [the] payment of fishpen fees based on negotiated prices in violation of LLDA Board Resolution No. 28, Series of 1996 as alleged.
- That respondent allegedly approved additional fishpen areas in the Lake without the approval of the Board and in violation of the existing Zoning and Management Plan (ZOMAP) of the Laguna de Bay that allows a carrying capacity of 10,000 hectares [of] fishpen structures in the lake based on scientific and technical studies.
- That respondent allegedly condoned or granted reductions of fines and penalties imposed by the Public Hearing Committee, the duly authorized adjudicatory body of the LLDA. The condonation was allegedly without the concurrence of LLDA Board of Directors.
- That respondent allegedly caused the dismissal of some cases pending with the LLDA without the concurrence of the Public Hearing Committee.
- That on June 4, 2002, respondent allegedly appropriated and disbursed the amount of Five Hundred Thousand Pesos (P500,000.00) from LLDA funds and confidential funds without any authority from the Department of Budget and Management.
- That respondent allegedly contracted the services of several consultants without prior written concurrence from the Commission on Audit.
- That on December 19, 2001, respondent allegedly appropriated and disbursed LLDA funds for the grant of gifts to indigent residents of San Pedro, Laguna. Said appropriation is not within the approved budget neither was it sanctioned by the Board of Directors, as alleged.
- That respondent allegedly allowed a Taiwanese company identified as Phil-Tai Fishing and Trade Company to occupy and utilize certain portions of LLDA facilities located at Km. 70, Barangay Bangyas, Calauan, Laguna without any contract nor authority from the LLDA Board.
- That respondent allegedly authorized the direct procurement of fish breeders from Delacon Realty and Development Corporation without the required bidding in accordance with COA rules and regulations.

Violation of Section 7(d) of Republic Act 6713:

- That respondent allegedly solicited patronage from regulated industries in behalf of RVQ Productions, Inc. for the promotion of its film entry to the 2002 Metro Manila Film Festival entitled "Home Alone the Riber."

Violation of Section 5(a) of Republic Act 6713:

- That respondent allegedly failed to act promptly and expeditiously on official documents, requests, papers or letters sent by the public or those which have been processed and completed staff work for his appropriate action.[10]

On December 5, 2003, PAGC issued a Resolution[11] recommending to the President that the penalty of dismissal from the service with the accessory penalties of disqualification for re-employment in the public service and forfeiture of government retirement benefits be imposed upon Cataquiz.

Thereafter, on December 8, 2003, Cataquiz was replaced by Fatima A.S. Valdez, who then assumed the position of Officer-in-Charge/General Manager and Chief Operating Officer of the LLDA by virtue of a letter of

appointment dated December 3, 2003 issued by President Arroyo.[12]

In its Decision[13] dated June 29, 2004, the OP adopted by reference the findings and recommendations of PAGC. The dispositive portion thereof reads:

WHEREFORE, as recommended by the PAGC, respondent Calixto R. Cataquiz, is hereby DISMISSED FROM THE SERVICE, with the accessory penalties of disqualification from re-employment to government service and forfeiture of retirement benefits, effective immediately upon receipt of this order.

SO ORDERED.

Aggrieved, Cataquiz filed his Motion for Reconsideration and/or for New Trial[14] dated August 4, 2004, arguing that: (1) prior to the issuance by the PAGC of its Resolution and by the OP of its Decision, he was already removed from office, thereby making the issue moot and academic; and (2) he cannot be found guilty for violating a resolution which was foreign to the charges against him or for acts which did not constitute sufficient cause for his removal in office, as shown by acts and documents which subsequently became available to him, entitling him to a new trial.

On February 10, 2005, the OP issued an Amended Resolution,[15] imposing on Cataquiz the penalties of disqualification from re-employment in the government service and forfeiture of retirement benefits, in view of the fact that the penalty of dismissal was no longer applicable to him because of his replacement as General Manager of the LLDA.

Cataquiz elevated his case to the CA via a petition for review[16] dated March 2, 2005, raising the same issues presented in his Motion for Reconsideration and/or New Trial before the OP.

The CA promulgated its Decision on January 31, 2008, which reversed and set aside the Amended Resolution of the OP. In so resolving, the CA reasoned that the accessory penalties of disqualification from employment in the government service and forfeiture of retirement benefits could no longer be imposed because the principal penalty of dismissal was not enforced, following the rule that the accessory penalty follows the principal penalty. The CA also agreed with Cataquiz that he could not be held liable for a violation of Board Resolution No. 68 of the LLDA, which when examined, was found not to be related to fishpen awards. If at all, the applicable rule would be Board Resolution No. 28, as suggested by Cataquiz himself. Said resolution though would be an invalid basis because it was not approved by the President pursuant to Section 4(k) of R.A. No. 4850 (An Act Creating the Laguna Lake Development Authority). Finally, the CA found that the offenses charged against Cataquiz under R.A. No. 4850 constituted acts that were within his authority as general manager of the LLDA to perform.

Not in conformity, the OP and the PAGC (petitioners) filed this petition for review.

After the submission of respondent's comment[17] and the petitioners' reply,[18] Cataquiz filed an Urgent Motion for Judicial Notice[19] dated August 13, 2009 urging the Court to take judicial notice of the Resolution[20] rendered by the Office of the Ombudsman (Ombudsman) on November 30, 2004 which recommended the dismissal of the charges against him for violation of R.A. No. 3019.

The Issues

Petitioners cite the following errors as grounds for the allowance of the petition:

I.

The Court of Appeals gravely erred when it reversed in toto the findings of the OP and PAGC without stating clearly and distinctly the reasons therefor, which is contrary to the Constitution and the Rules of Court; the findings of the Court of Appeals are conclusions without citation of specific evidence on which they are based.

II.

The Court of Appeals erred because its judgment is based on a misapprehension of facts;

III.

The Court of Appeals erred when it went beyond the issues of the case;

IV.

The findings of the Court of Appeals are contrary to the findings of the OP, PAGC and DENR Fact Finding Committee, [and]

V.

The OP and PAGC correctly found respondent to be unfit in public service, thus it did not err in imposing the accessory penalties of disqualification from employment in the government service and forfeiture of retirement benefits.[21]

Cataquiz, on the other hand, submits the following arguments in his Memorandum:[22]

I.

The dismissal by the Ombudsman of the cases against the respondent under the same set of facts further constitute the law of the case between the parties which necessitates the dismissal of this appeal and further supports the correctness of the decision of the Court of Appeals.

II.

The Court of Appeals did not commit any error when it reversed the amended resolution of the petitioner Office of the President.[23]

The issues can be condensed into four essential questions:

- (1) Whether the CA made an incorrect determination of the facts of the case warranting review of its factual findings by the Court;
- (2) Whether the dismissal by the Ombudsman of the charges against Cataquiz serves as a bar to the decision of the OP;
- (3) Whether Cataquiz can be made to suffer the accessory penalties of disqualification from re-employment in the public service and forfeiture of government retirement benefits, despite his dismissal from the LLDA prior to the issuance by the PAGC and the OP of their decision and resolution, respectively; and
- (4) Whether Cataquiz can be charged with a violation of Board Resolution No. 28, despite the clerical error made by the PAGC in indicating the Board Resolution number to be No. 68.

The Court's Ruling

The Court finds merit in the petition.

Findings of fact of the appellate court
can be reviewed

As a general rule, only questions of law can be raised in a petition for review on certiorari under Rule 45 of the Rules of Court.[24] Since this Court is not a trier of facts, findings of fact of the appellate court are binding and conclusive upon this Court.[25] There are, however, several recognized exceptions to this rule, namely:

- (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
- (2) When the inference made is manifestly mistaken, absurd or impossible;
- (3) Where there is a grave abuse of discretion;
- (4) When the judgment is based on a misapprehension of facts;
- (5) When the findings of fact are conflicting;
- (6) When the Court of Appeals, in making its findings, went beyond the issues of the case, and the same is contrary to the admissions of both appellant and appellee;
- (7) When the findings are contrary to those of the trial court;
- (8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
- (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs, are not disputed by the respondents; and
- (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[26] [Emphases supplied]

In this case, the findings of the CA are contrary to those of PAGC which recommended Cataquiz' dismissal for violating Section 3(e) of R.A. No. 3019, in relation to Section 46(b)(27), Chapter 6, Subtitle A, Title I, Book V of E.O. 292. Likewise, the Investigating Team of the DENR also agreed that there exists evidence that could sustain a finding of respondent's violation of several laws and regulations.

The result of PAGC's investigation, however, was simply brushed aside by the CA, without citing any evidence on which its findings were based. In ignoring the meticulous discussion of PAGC's conclusions and in absolving Cataquiz from any wrongdoing, the CA cavalierly declared as follows:

The petitioner likewise presented to us in support of his petition the argument that he had sufficient authority to do what had been complained against him. We have examined the charges against the provisions of R.A. No. 4850 and we found that the said acts could be sustained because they were within his powers as general manager of the Laguna Lake Development Authority as implied from express powers granted to him by the law. Moreover, the records of the Authority show that transactions resulting into contracts in the Authority's trading activities have been done by previous general managers of the Authority even without prior approval by the board. Ordinary corporate practices likewise point out to the fact that a general manager, having the general management and control of its business and affairs, has implied and apparent authority to do acts or make any contracts in its behalf falling within the scope of the ordinary and usual business of the company, especially so when, relative to a contract that the petitioner had entered into with Phil-Tai Fishing and Trade Company, the Office of the Government Corporate Counsel had formally acceded thereto.[27]

As plain as that, without any analysis of the evidence on record or a comprehensive discussion on how the decision was arrived at, the CA absolved Cataquiz of the acts he was accused of committing during his service as General Manager of the LLDA.

Section 14, Article VIII of the 1987 Constitution mandates that decisions must clearly and distinctly state the facts and the law on which it is based. Decisions of courts must be able to address the issues raised by the parties through the presentation of a comprehensive analysis or account of factual and legal findings of the court.[28] It is evident that the CA failed to comply with these requirements. PAGC, in its Resolution dated December 5, 2003, discussing each of the twelve allegations against Cataquiz, determined that he should be dismissed from the government service and that he could be held liable under Section 3(e) of R.A. No. 3019, in relation to Section

46(b)(27), Chapter 6, Subtitle A, Title I, Book V of E.O. No. 292, to wit:

R.A. No. 3019

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:

(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.

E.O. No. 292

Section 46. Discipline: General Provisions.

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(b) The following shall be grounds for disciplinary action:

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(27) Conduct prejudicial to the best interest of the service

The one-paragraph pronouncement of the CA that Cataquiz had authority to perform the acts complained of is grossly insufficient to overturn the determination by PAGC that he should be punished for acts prejudicial to the LLDA committed during his service as General Manager of the said agency. It should be emphasized that findings of fact of administrative agencies will not be interfered with and shall be considered binding and conclusive upon this Court provided that there is substantial evidence to support such findings.[29] Substantial evidence has been defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion"[30] or "evidence commonly accepted by reasonably prudent men in the conduct of their affairs." [31]

After a diligent review of the evidence presented and the pleadings filed, this Court finds that there is substantial evidence to justify the conclusion of PAGC that Cataquiz should be punished with the penalty of dismissal, along with its accessory penalties, for committing acts prejudicial to the best interest of the government and for giving undue advantage to a private company in the award of fishpens. Thus, the PAGC was correct when it wrote:

I.

[I]n the first allegation, respondent Cataquiz impliedly admitted his direct transaction with 35 fishpen operators and the payment of fishpen fees without conducting a public bidding. In respondent's defense, he raised the invalidity of Board Resolution No. 68 [sic] which provides for guidelines in public bidding for fishpen areas. Respondent argued that Board Resolution No. 68 [sic] is an unreasonable exercise of the Board's legislative power since public bidding has never been intended by RA 4850, the enabling law of LLDA.

The Commission finds the contention of the respondent bereft of merit. Section 25-A of RA 4850 authorizes the Board to "formulate, prescribe, amend and repeal rules and regulations to govern the conduct of business of the Authority" and it is the function of the respondent in his capacity as General Manager "to implement and administer the policies, programs and projects approved by the Board" pursuant to Section 26 (b) of RA 4850. While it is true that a Board Resolution draws life from the enabling statute, the Commission cannot find any inconsistency between the former and the latter. The Board Resolution No. 68 [sic] is still within the bounds of RA 4850 and is germane to its purpose in promoting a balanced growth of the Laguna Lake. Thus, the validity

of the questioned Resolution stands. It becomes now the duty of the respondent to implement the Resolution and not to question its legality nor disregard it.

In the case at hand, respondent's act of not giving credence to the Board Resolution resulted to undue prejudice to the best interest of the public service considering that the Authority incurred Revenue loss from the direct transaction of respondent Cataquiz amounting to Seven Hundred Fifty Five Thousand Seven Hundred Pesos P755,700.00.

The presumption that the official duty has been regularly performed was overcome by the fact that the government was deprived of much needed revenue as a result of the act committed by respondent Cataquiz.

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III.

The Commission finds that the act of respondent Cataquiz in condoning penalties and reducing the fines imposed by the Public Hearing Committee (PHC) of the LLDA has no basis in law. The premise of the respondent citing Section 26 (b) giving him the executive prerogative and Section 4 (a) justifying the condonation and reduction is misplaced. A careful examination of the aforementioned provisions would reveal that Section 26 (b) does not vest the respondent the executive prerogative. Said provision gives him the authority to execute and administer the policies, plans, programs and projects approved by the Board. There is no showing that the condonation of penalties and reduction of fines has been approved by the Board. Section 26 (b) is clear in its terms that before respondent executes any policy, program or project, the same has to be approved by the Board. Thus, there is no executive prerogative to speak of.

The Commission agrees with the contention of the complainant that Section 4 (d) refers to additional power and function of the Authority and not to the respondent. Of equal importance is that Section 4 (d) does not confer him the authority to condone penalties nor reduce fines. Said provision is referring to Orders requiring the discontinuance of pollution. When the law is clear it needs no further interpretation.

The contention of respondent Cataquiz that there is nothing in Section 25-A that states that the approval of the Board is necessary has no leg to stand on. Same provision gives the Board the implied power "to do such other acts and perform such other functions as may be necessary to carry out the provisions of this Charter."

In relation to this is Section 31 of RA 4850 that gives the Board the authority to create such other divisions and positions as may be deemed necessary for the efficient, economic and effective conduct of the activity of the Authority.

The findings of the PHC, although a recommendatory body, must be accorded great respect. The penalties imposed by the PHC cannot be substituted by the respondent without any basis and the latter cannot simply claim that he has the sole authority to condone penalties and reduce fines.

Evidently respondent's act of condonation of penalties and reduction of fines was uncalled for. Thus, his act resulted to undue prejudice to the best interest of the service and will set a dangerous precedent to the justice system of the government.

IV.

In the same vein, the dismissal of the pending case against Twenty First Century Resources Inc. by the respondent has no basis in law. Section 26 of RA 4850 clearly enumerates the powers and functions of respondent, to wit:

"xxx.

- Submit for consideration of the Board the policies and measures which he believes to be necessary to carry

out the purposes and provisions of this Act;

- Execute and administer the policies, plan, programs and projects approved by the Board;
- Direct and supervise the operation and internal administration of the Authority. The General Manager may delegate certain administrative responsibilities to other officers of the Authority subject to the rules and regulations of the Board;
- Appoint officials and employees below the rank of division heads to positions in the approved budget upon written recommendation of the division head concerned using as guide the standard set forth in the Authority's merit system;
- Submit quarterly reports to the Board on personnel selection, placement and training;
- Submit to the NEDA an annual report and such other reports as may be required, including the details of the annual and supplemental budgets of the Authority;
- Perform such other functions as may be provided by law."

From the aforementioned section, nowhere can the Commission find any grant of power to adjudicate in favor of respondent Cataquiz and the latter cannot hide under the cloak of 'managerial prerogative' absent any law that justifies his act of dismissing the case. To reiterate, the dismissal of the case against Twenty First Century is an act clearly prejudicial to the best interest of the service. Consequently, the Authority was deprived of a committed service to the government and this fact cannot be overlooked upon by the Commission.

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VI.

The contract of service for consultancy duly signed by the respondent and the legal consultants of LLDA is not in accordance with Section 212 of the Government Accounting and Auditing Manual (GAAM) 86 which provides that:

"Payment of public funds of retainer fees of private law practitioners who are so hired and employed without the prior written concurrence and acquiescence by the Solicitor General of the Government Corporate Counsel, as the case may be, as well as the written concurrence of the Commission on Audit, shall be disallowed in audit and the same shall be a personal liability of the official concerned."

The contention of the respondent that the LLDA Administrative Section failed to advise him regarding the requisites laid down by law cannot stand. Occupying an executive position, respondent is required to exercise diligence in the highest degree in the performance of his duties. Respondent cannot pass responsibility to other Division which in the first place, he has supervision and control of, pursuant to Section 31 of RA 4850. Supervision as defined is the overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. Control on the other hand, is the power of an officer to alter or modify or nullify or set aside what a subordinate officer has done in the performance of his duties and to substitute the judgment of the former for that of the latter. There is therefore a given authority to the respondent by law to regulate the acts of the Administrative Division and respondent cannot simply evade responsibility by invoking the shortcomings of his subordinates. In signing the contract, without verifying compliance of existing laws, respondent falls short of the required competence expected of him in the performance of his official functions. Incompetence, has been defined as 'lack of ability, legal qualification or fitness to discharge the required duty; want of physical or intellectual or moral fitness.'

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VIII.

The Commission finds that the transaction entered into by the respondent and Phil-Tai Fishing and Trade Company is violative of Section 3 (e) of RA 3019. The elements of Section 3 (e) are as follows:

- The accused is a public officer discharging official administrative, or judicial functions or private persons in conspiracy with them;
- The public officer committed the prohibited act during the performance of his official duty or in relation to his public position;
- The public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
- His action caused undue injury to the Government or any private party or gave any party any unwarranted benefit, advantage or preference.

Applying the first element, respondent Cataquiz is a public officer within the legal term of RA 3019 which provides that "Public officer includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt from service receiving compensation, even nominal from the government xxx." Clearly, respondent is a public officer discharging official functions in transacting with Phil-Tai to occupy and utilize portions of LLDA facilities locate (sic) at Km. 70 Brgy. Bangyas, Calauan, Laguna.

Relating to the second element in the instant case, respondent in the exercise of his official duties allowed Phil-Tai to use the LLDA facility without the concurrence of the Board of Directors of LLDA where the corporate powers of the Authority lies as explicitly provided in Section 16 of RA 4850.

Applying the third element, respondent Cataquiz acted with manifest partiality when by reason of his office he allowed Phil-Tai to occupy the LLDA facility without any contract and without the approval of the Board of Directors. The privilege granted was by virtue of a joint venture proposal which was never authorized by the Board as admitted by the respondent in his position paper. In fact the proposal is still awaiting resolution from the board. Partiality is synonymous with "bias" which excites a disposition to see and report matters as they are wished for rather than as they are.

Manifest means "obvious to the understanding, evident to the mind, not obscure or hidden and is synonymous with open, clear, visible, unmistakable, indubitable, indisputable, evident and self-evident."

There was manifest partiality when respondent Cataquiz entered a transaction with Phil-Tai disregarding the requirements set forth by RA 4850 which requires the approval of the Board. Worse, the joint venture proposal by Phil-Tai which was accepted by the respondent took place without any contract at all. The contention of the respondent that Phil-Tai is only given the authority to conduct a preliminary study and including the technical survey and Pilot testing at the aforesaid facility for the purpose of determining its structural integrity and commercial viability cannot prevail over the records available at hand.

The findings of DENR officials in their ocular inspection on May 13, 2003 would disclose that Phil-Tai is in actual possession of the LLDA facility and personally witnessed the actual harvesting of tilapia from the fishpond owned by LLDA. The report of DENR officials contains that the act of the respondent is prejudicial to the interest of the government mainly because there was no contract executed between LLDA and Phil-Tai.

Moreover, the Memorandum from the Division Chief III Jose K. Cariño III of the Community Development Division would reveal that Phil-Tai is introducing exotic aquatic species in one of the earthen ponds at LLDA Calauan Complex. RA 8550 otherwise known as the Philippine Fisheries Code of 1998 provides that the introduction of foreign crustaceans such as crayfish in Philippine waters without a sound ecological, biological

and environmental justification based on scientific studies is prohibited. There is, therefore, an unwarranted act by Phil-Tai which is prejudicial to the government.

Applying the fourth element in the case at bar, respondent Cataquiz gave Phil-Tai unwarranted benefit, advantage or preference when he entertained the joint venture proposal without any consideration. In fact, as stated in respondent's position paper, LLDA was assured by Phil-Tai that in the event the agreement does not materialize, it will remove all its equipment without damage to the LLDA aqua culture facilities. Be it noted that the assurance was not made in writing.

Respondent refused to discern the adverse consequences of the joint venture proposal considering that no available remedy was left to the government in case of untoward incidents that may arise. The transaction entered into is at most unenforceable because the agreements therein was (sic) not put into writing. The transaction cannot be tolerated by the Commission and the unwarranted benefit that Phil-Tai is enjoying deserves much consideration because it puts the government into a very disadvantageous situation.

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X.

The Commission finds that the promotion of the film entry of RVQ Productions by respondent Cataquiz does not offend Section 7 (d) of RA 6713 which provides as follows:

"Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties, or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office."

There was no undue solicitation of patronage of the film considering that the tickets sold are voluntary participation of interested employees. In fact, no monetary consideration was received nor accepted by the respondent.

Of important consideration, however, is the use of government vehicles in the delivery of movie tickets and the collection of payments thereof to different industrial establishments. Respondent Cataquiz in his official capacity as the General Manager of LLDA, approved the use of government vehicles and drivers for the promotion of the movie.

The impropriety of using government property in favor of a (sic) RVQ Production, a private entity cannot be countenanced as this is prejudicial to the best interest of the service. The very purpose of the use of the government property has not been properly served. [32] [Underscoring supplied]

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The dismissal of the criminal case against
Respondent does not bar the finding
of administrative liability.

Cataquiz claims that the dismissal by the Ombudsman of the case against him constitutes the law of the case between him and the OP which necessitates the dismissal of the petition before this Court.

At the outset, the Court would like to highlight the fact that Cataquiz never raised this issue before the CA, despite having had ample time to do so. The records show that the Ombudsman promulgated its resolution on November 30, 2004, more than three months prior to the filing by the respondent of his petition before the CA on March 2,

2005.[33] Nevertheless, he only chose to mention this after the CA had rendered its decision and after the submission of his comment on the petition at bench. This is evidently a desperate effort on his part to strengthen his position and support the decision of the CA exonerating him from any administrative liability. The Court has consistently ruled that issues not previously ventilated cannot be raised for the first time on appeal.[34] Otherwise, to consider such issues and arguments belatedly raised by a party would be tantamount to a blatant disregard of the basic principles of fair play, justice and due process.[35] Therefore, this issue does not merit the attention of the Court.

Even if the Court were to overlook this procedural lapse, Cataquiz' argument would still fail. The Ombudsman Resolution dated November 30, 2004 recommending the dismissal of the charges against him pertains only to the criminal case against him and not the administrative case, which is the subject matter of the case at bench. As can be gleaned from the Resolution, the charges referred to by the Ombudsman were for respondent's alleged violation of Section 3(b) and (c) of R.A. No. 3019 or for malversation of public funds and fraud against the public treasury.[36]

It is a basic rule in administrative law that public officials are under a three-fold responsibility for a violation of their duty or for a wrongful act or omission, such that they may be held civilly, criminally and administratively liable for the same act.[37] Obviously, administrative liability is separate and distinct from penal and civil liability.[38] In the case of *People v. Sandiganbayan*,[39] the Court elaborated on the difference between administrative and criminal liability:

The distinct and independent nature of one proceeding from the other can be attributed to the following: first, the difference in the quantum of evidence required and, correlatively, the procedure observed and sanctions imposed; and second, the principle that a single act may offend against two or more distinct and related provisions of law, or that the same act may give rise to criminal as well as administrative liability.[40]

Accordingly, the dismissal of the criminal case by the Ombudsman does not foreclose administrative action against Cataquiz.[41] His absolution from criminal liability is not conclusive upon the OP, which subsequently found him to be administratively liable. The pronouncement made by the Ombudsman cannot serve to protect the respondent from further administrative prosecution. A contrary ruling would be unsettling as it would undermine the very purpose of administrative proceedings, that is, to protect the public service and uphold the time-honored principle that a public office is a public trust.[42]

Respondent can be imposed with the accessory penalties.

Removal or resignation from office is not a bar to a finding of administrative liability.[43] Despite his removal from his position, Cataquiz can still be held administratively liable for acts committed during his service as General Manager of the LLDA and he can be made to suffer the corresponding penalties. The subsequent finding by the OP that Cataquiz is guilty of the charges against him with the imposition of the penalty of dismissal and its corresponding accessory penalties is valid.

It cannot be disputed that Cataquiz was a presidential appointee.[44] As such, he was under the direct disciplining authority of the President who could legitimately have him dismissed from service. This is pursuant to the well-established principle that the President's power to remove is inherent in his power to appoint.[45] Therefore, it is well within the authority of the President to order the respondent's dismissal.

Cataquiz argues that his removal has rendered the imposition of the principal penalty of dismissal impossible. Consequently, citing the rule that the accessory follows the principal, he insists that the accessory penalties may no longer be imposed on him.[46]

The respondent is mistaken.

In the case of *In Re: Complaint of Mrs. Corazon S. Salvador against Spouses Noel and Amelia Serafico*,^[47] despite the resignation from government service by the employee found guilty of grave misconduct, disgraceful and immoral conduct and violation of the Code of Conduct for Court Personnel, thereby making the imposition of the penalty of dismissal impossible, this Court nevertheless imposed the accessory penalties of forfeiture of benefits with prejudice to re-employment in any branch or instrumentality of government.

Similarly instructive is the case of *Pagano v. Nazarro, Jr.*^[48] where the Court held that:

The instant case is not moot and academic, despite the petitioner's separation from government service. Even if the most severe of administrative sanctions - that of separation from service - may no longer be imposed on the petitioner, there are other penalties which may be imposed on her if she is later found guilty of administrative offenses charged against her, namely, the disqualification to hold any government office and the forfeiture of benefits.^[49]

Based on the foregoing, it is clear that the accessory penalties of disqualification from re-employment in public service and forfeiture of government retirement benefits can still be imposed on the respondent, notwithstanding the impossibility of effecting the principal penalty of dismissal because of his removal from office.

PAGC's typographical error
can be corrected.

One of the charges against Cataquiz is for directly transacting with 35 fishpen operators and authorizing payment of fishpen fees based on negotiated prices, in contravention of the directive of Board Resolution No. 28, which requires the conduct of a public bidding. The PAGC Resolution dated December 5, 2003, recommending the dismissal of Cataquiz erroneously indicated that he violated Board Resolution No. 68, instead of No. 28.^[50] The CA then sustained his contention that he could not be found guilty for violating Board Resolution No. 68 of the LLDA because such resolution was not related to fishpen awards and that his right to due process was violated when the OP found him guilty of violating the said resolution. It further added that even if the respondent was charged with acting in contravention with Board Resolution No. 28, the said resolution would be invalid for not having been duly approved by the President.

Petitioners, however, claim that it was merely a typographical or clerical error on the part of PAGC which was unfortunately adopted by the OP.^[51] Cataquiz apparently will not be unduly prejudiced by the correction of the PAGC resolution. In the counter-affidavit he filed before the PAGC, he was able to exhaustively argue against the allegation that he had violated Board Resolution No. 28.^[52] Hence, he cannot feign ignorance of the true charges against him.

In this regard, the Court agrees with the petitioners.

It is clear from the pleadings submitted before PAGC - particularly in the Affidavit Complaint filed by CELLDA against Cataquiz and in the Counter-Affidavit submitted by the latter - that the resolution referred to as having been violated by the respondent was Board Resolution No. 28, and not No. 68, as was erroneously indicated in the PAGC Resolution. Thus, pursuant to the rule that the judgment should be in accordance with the allegations and the evidence presented,^[53] the typographical error contained in the PAGC Resolution can be amended. Clerical errors or any ambiguity in a decision can be rectified even after the judgment has become final by reference to the pleadings filed by the parties and the findings of fact and conclusions of law by the court.^[54]

A careful perusal of the PAGC's discussion on the violation of the questioned board resolution discloses that PAGC was undoubtedly referring to Board Resolution No. 28 which approved the policy guidelines for public

bidding of the remaining free fishpen areas in Laguna de Bay, and not Resolution No. 68 which had nothing at all to do with fishpen awards. Therefore, the reference to Board Resolution No. 68, instead of Board Resolution No. 28, in the PAGC Resolution is unmistakably a typographical error on the part of PAGC but, nonetheless, rectifiable.

Moreover, the respondent's counter-affidavit shows that he had knowledge of the fact that he was being charged with violation of Board Resolution No. 28. He even argued that the said resolution was an invalid and illegal administrative rule. His position was that the resolution issued by the Board of Directors of LLDA was an unreasonable exercise of its legislative power because the enabling law of LLDA, R.A. No. 4850, did not require the public bidding of free fishpen areas.[55] Then, in his motion for reconsideration before the OP, he argued that the resolution was invalid because it was never approved by the President, contrary to Section 4(k) of R.A. No. 4850 (as amended by Presidential Decree No. 813) which provides:

(K) For the purpose of effectively regulating and monitoring activities in Laguna de Bay. The Authority shall have exclusive jurisdiction to issue new permit for the use of the lake waters for any projects or activities in/or affecting the said lake including navigation, construction, and operation of fishpens, fish enclosures, fish corrals and the like, and to impose necessary safeguards for lake quality control and management and to collect necessary fees for said activities and projects: Provided, That the fees collected for fisheries may be shared between the Authority and other government agencies and political subdivisions in such proportion as may be determined by the President of the Philippines upon recommendation of the Authority's Board: Provided further, That the Authority's Board may determine new areas of fishery development or activities which it may place under the supervision of the Bureau of Fisheries and Aquatic Resources taking into account the overall development plans and programs for Laguna de Bay and related bodies of water: Provided, finally, That the Authority shall subject to the approval of the President of the Philippines promulgate such rules and regulations which shall govern fisheries development activities in Laguna de Bay which shall take into consideration among others the following: socio-economic amelioration of bona-fide resident fishermen whether individually or collectively in the form of cooperatives, lakeshore town development, a master plan for fish construction and operation, communal fishing ground for lakeshore town residents, and preference to lakeshore town residents in hiring laborers for fishery projects. [Emphasis supplied]

Regrettably, the CA sustained the respondent's argument. A careful examination of the abovementioned law shows that presidential approval is only required for rules and regulations which shall govern fisheries development activities in Laguna de Bay. The question then is whether Board Resolution No. 28 falls under that category of rules subject to approval by the President. The answer is in the negative.

The Revised Laguna de Bay Zoning and Management Plan[56] allocated 10,000 hectares of the lake surface areas for fishpen operators. In the event that the area would not be fully occupied after all qualified operators had been assigned their respective fishpen areas, the residual free areas would be opened for bidding to other prospective qualified applicants. Accordingly, Board Resolution No. 28 simply set forth the guidelines for the public bidding of the remaining free fishpen areas in Laguna de Bay.[57] It did not require presidential approval because it did not regulate any fisheries development activities. Hence, the questioned resolution cannot be declared invalid on the basis of the CA's ratiocination that the resolution lacked the approval of the President.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals is REVERSED and SET ASIDE and another judgment entered reinstating the June 29, 2004 Decision of the Office of the President, as amended by its February 10, 2005 Amended Resolution.

SO ORDERED.

Peralta, (Acting Chairperson), Bersamin,[*] Abad, and Sereno,**] JJ., concur.

[*] Designated as additional member per Raffle dated September 12, 2011.

[**] Designated as additional member of the Third Division per Special Order No. 1028 dated June 21, 2011.

[1] Rollo, pp. 68-76. Penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justice Amelita G. Tolentino and Associate Justice Lucenito N. Tagle.

[2] Id. at 80-81.

[3] Id. at 77-79.

[4] Id. at 69.

[5] Id. at 82.

[6] Id. at 102-114.

[7] Id. at 99.

[8] Id. at 127.

[9] Id. at 116-126.

[10] Id. at 171-173.

[11] Id. at 168-192.

[12] Id. at 196.

[13] Id. at 193-194.

[14] Id. at 195-213.

[15] Id. at 77-79.

[16] Id. at 214-229.

[17] Id. at 541-561.

[18] Id. at 573-585.

[19] Id. at 589-591.

[20] Id. at 592-613.

[21] Id. at 38.

[22] Id. at 623-657.

[23] Id. at 635.

[24] *Modesto v. Urbina*, G.R. No. 189859, October 18, 2010, 633 SCRA 383, 391.

[25] *Magno v. Francisco*, G.R. No. 168959, March 25, 2010, 616 SCRA 402, 414.

- [26] *Modesto v. Urbina*, supra note 24, citing *Ontimare, Jr. v. Elep*, 515 Phil. 237 (2006).
- [27] *Rollo*, p. 75.
- [28] *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004, 428 SCRA 283, 307, citing *Madrid v. Court of Appeals*, 388 Phil. 366 (2000).
- [29] *Salazar v. de Leon*, G.R. No. 127965, January 20, 2009, 576 SCRA 447, 462, citing *Perez v. Cruz*, 452 Phil. 597, 607 (2003).
- [30] Rules of Court, Rule 133, Section 5.
- [31] *Office of the Ombudsman (Visayas) v. Zaldarriaga*, G.R. No. 175349, June 22, 2010, 621 SCRA 373, 380, citing *Ombudsman v. Jurado*, G.R. 154155, August 6, 2008, 561 SCRA 135, 154; *Go v. Office of the Ombudsman*, 460 Phil. 14, 35 (2003).
- [32] *Rollo*, pp. 180-191.
- [33] *Id.* at 592-613 and 214-229.
- [34] *Bank of the Philippine Islands v. Shemberg Biotech Corporation*, G.R. No. 162291, August 11, 2010, 628 SCRA 70, 76, citing *Rasdas v. Estenor*, 513 Phil. 664 (2005).
- [35] *Madrid v. Mapoy*, G. R. No. 150887, August 14, 2009, 596 SCRA 14, 28.
- [36] *Rollo*, p. 592.
- [37] *Tecson v. Sandiganbayan*, 376 Phil. 191, 198 (1999).
- [38] *Id.* at 199; *Veloso v. Sandiganbayan*, G.R. No. 89043-65, July 16, 1990, 187 SCRA 504.
- [39] G.R. No. 164577, July 5, 2010, 623 SCRA 147.
- [40] *Id.* at 161, citing *Paredes v. CA*, G.R. No. 169534, July 30, 2007, 528 SCRA 577.
- [41] *Office of the Court Administrator v. Enriquez*, A.M. No. P-89-290, January 29, 1993, 218 SCRA 1, 10.
- [42] *Ferrer v. Sandiganbayan*, G.R. No. 161067, March 14, 2008, 548 SCRA 460, 468, citing *Valencia v. Sandiganbayan*, G.R. No. 141336, June 29, 2004, 433 SCRA 88.
- [43] *Muring, Jr. v. Gatcho*, A.M. No. CA-05-19-P, August 31, 2006, 500 SCRA 330, 349.
- [44] Republic Act No. 4850 (1966), Sec. 16.
- [45] *Larin v. Executive Secretary*, 345 Phil. 961, 974 (1997), citing Const. (1987), Art. VII, Sec. 16.
- [46] *Rollo*, p. 651.
- [47] A.M. No. 2008-20-SC, March 15, 2010, 615 SCRA 186.
- [48] G.R. No. 149072, September 21, 2007, 533 SCRA 622.
- [49] *Id.* at 628.
- [50] *Rollo*, p. 180.
- [51] *Id.* at 692.
- [52] *Id.* at 133.

[53] Locsin v. Paredes, 63 Phil. 87, 91 (1936).

[54] Reinsurance Company of the Orient, Inc. v. Court of Appeals, G.R. No. L-61250, June 3, 1991, 198 SCRA 19, 29, citing Filipino Legion Corporation v. Court of Appeals, 155 Phil. 616 (1974).

[55] Rollo, p. 133.

[56] Approved on January 25, 1996 under LLDA Board Resolution No. 5, Series of 1996.

[57] Rollo, p. 266.

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