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[G.R. No. 176409, February 27, 2008]

OFFICE OF THE OMBUDSMAN, Petitioner, vs. ROLANDO S. MIEDES, SR., Respondent.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (CA) dated March 30, 2005 in CA-G.R. SP No. 86643 and the Resolution[2] dated January 17, 2007 which denied petitioner's Omnibus Motion for Intervention and Partial Reconsideration.

The facts are undisputed:

Marlou L. Billacura filed before the Office of the Ombudsman-Mindanao (OMB-MIN) a complaint and request for investigation on the propriety of the purchase and acquisition by the Municipal Government of Carmen, Davao del Norte of 19 cellular phone units amounting to P104,500.00.[3] OMB-MIN referred the complaint to the Provincial Auditor's Office of the Commission on Audit for necessary audit/investigation.[4]

The Provincial Auditor found that the acquisition of the cellular phones was made without a public bidding; that the purchase was made through an authorized distributor and not directly through a manufacturer or an exclusive distributor. Hence, he filed before OMB-MIN a complaint against the members of the Bids and Awards Committee (BAC) of the Municipal Government of Carmen, Davao del Norte, namely: Municipal Accountant Rolando S. Miedes, Sr. (respondent), Municipal Treasurer Cristeta M. Oducayen (Oducayen) and Municipal Budget Officer Sarah Jane L. Alcuzar[5] (Alcuzar) for violations of Section 3(e) of Republic Act No. 3019, Presidential Decree No. 1445; Civil Service Commission Memorandum Circular No. 19, Series of 1999, Abuse of Authority and Acts Prejudicial to the Best Interest of the Service.

In their Answer, respondents Oducayen and Alcuzar assert the regularity and propriety of the transactions.[6]

On October 21, 2002, the OMB-MIN issued a Joint Resolution[7] dismissing the criminal case against the three BAC members.

On January 6, 2003, the Ombudsman (petitioner) approved the said Joint Resolution only with respect to the dismissal of the criminal complaints. However, as to the administrative case, petitioner found substantial evidence on record proving that the offense of Simple Misconduct was committed by the BAC members and imposed

upon them the penalty of three-month suspension without pay.[8]

Dissatisfied, respondent filed a Petition for Review[9] before the CA.

In a Decision[10] dated March 30, 2005, the CA affirmed the findings of the OMB-MIN, but reduced the imposable penalty from three-month to one-month suspension, holding that respondent's act was not motivated by any corrupt or wrongful motive.

Petitioner filed an Omnibus Motion for Intervention and Partial Reconsideration dated April 25, 2005, insisting that it correctly imposed the medium-term penalty of suspension for three months for Simple Misconduct as the circumstance of lack of showing of corrupt or wrongful motive had been taken into consideration in the downgrading of the offense from Grave Misconduct to Simple Misconduct.

In a Resolution[11] dated January 17, 2007, the CA denied petitioner's Omnibus Motion for Intervention and Partial Reconsideration.

Hence, the present petition anchored on the following grounds:

1. WITH DUE RESPECT, THE APPELLATE COURT A QUO ERRED WHEN IT MODIFIED THE PENALTY IMPOSED UPON PRIVATE RESPONDENT MIEDES FOR SIMPLE MISCONDUCT FROM THREE (3) MONTHS TO ONE (1) MONTH SUSPENSION PREDICATED SOLELY ON THE GROUND THAT THERE IS AN ABSENCE OF CORRUPT MOTIVE ON THE PART OF THE PRIVATE RESPONDENT.

2. FINDINGS OF FACT OF AN ADMINISTRATIVE AGENCY ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT AT TIMES FINALITY.[12]

Petitioner argues that if there was a finding of corrupt motive, the infraction would have been Grave Misconduct punishable by dismissal from service; that the absence of a positive finding of corrupt motive diluted the offense to Simple Misconduct; that since its beneficial effects on respondent have already been used up to exhaustion, this so-called absence of corrupt motive cannot work further to mitigate the appropriate penalty; that a mitigating circumstance is susceptible to only one application.

In his Comment,[13] respondent submits that the penalty for Simple Misconduct of one month and one day to six months is susceptible of division into minimum, medium and maximum penalties; that the law is clear that if there is a mitigating circumstance and there is no aggravating circumstance, the mitigating circumstance is appreciated properly for the imposition of the proper penalty of minimum; and that to rule that a mitigating circumstance of lack of corrupt motive on the part of the respondent serves only to downgrade the offense and stop there and not to serve also as a mitigating circumstance for the imposition of the proper penalty for the offense, after an express finding that it is indeed a mitigating circumstance, must not be countenanced.

In its Reply, petitioner maintains that the mitigating circumstance of absence or lack

of corrupt motive was correctly applied in downgrading the offense from grave misconduct to simple misconduct; and that it cannot be used for the second time as a mitigating circumstance in the determination of the proper penalty to be imposed; otherwise, respondent would be benefiting from the application of the same element twice.

After considering respondent's comment and petitioner's reply, the Court gives due course to the petition and considers the case ready for decision without need of memoranda from the parties.

The Court finds it necessary, before delving on the propriety of the modification of the penalty, to discuss the propriety of the motion for intervention filed by petitioner after the CA rendered its decision.

Under the rules on intervention, the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court.[14] Discretion is a faculty of a court or an official by which he may decide a question either way, and still be right.[15] The permissive tenor of the rules shows an intention to give to the court the full measure of discretion in permitting or disallowing the intervention. The discretion of the court, once exercised, cannot be reviewed by *certiorari* or controlled by *mandamus* save in instances where such discretion has been so exercised in an arbitrary or capricious manner.[16]

In denying the motion for intervention of petitioner, the CA acted arbitrarily.

As a general rule, intervention is legally possible only "before or during a trial"; hence, a motion for intervention filed after trial - and, *a fortiori*, when the case has already been submitted, when judgment has been rendered, or worse, when judgment is already final and executory - should be denied.[17] The rule, however, is not without exceptions.

In *Director of Lands v. Court of Appeals*,[18] intervention was allowed even when the petition for review of the assailed judgment was already submitted for decision in the Supreme Court. In *Tahanan Development Corporation v. Court of Appeals*,[19] the Court allowed intervention almost at the end of the proceedings. In *Mago v. Court of Appeals*,[20] the Court granted intervention despite the fact that the case had become final and executory, thus:

> [The] facts should have convinced the trial court and the Court of Appeals that a less stringent application of the Rules of Court was the more prudent recourse. Indeed, the exercise of discretion has often been characterized as odious; but where the necessity exists for its exercise, a judge is bound not to shirk from the responsibility devolving in him. For it is in relaxing the rules that we ultimately serve the ends of equity and justice based not on folly grounds but on substance and merit.[21]

Recently, in *Pinlac v. Court of Appeals*,[22] the Court, finding merit the claim of the intervenor, allowed intervention even after it had rendered its decision and the resolution denying the motion for reconsideration.