

EN BANC

[G.R. No. 146927, December 10, 2002]

**MARCELO G. TUAZON, JR. AND RODOLFO M. AGDEPPA,
PETITIONERS, VS. GUILLERMO GODOY AND ROMMEL TRINIDAD,
RESPONDENTS.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on certiorari^[1] assailing the Decision of the Court of Appeals dated April 26, 2000^[2] and its Resolution dated January 24, 2001^[3] in CA-G.R. SP No. 46598^[4] holding that the Civil Service Commission did not act with grave abuse of discretion in dismissing the complaint against Guillermo Godoy and Rommel Trinidad, respondents, for lack of a *prima facie* case.

Petitioner Marcelo G. Tuazon, Jr. is the proprietor of Celcon Construction (Celcon), a private firm, while co-petitioner Rodolfo M. Agdeppa is Tuazon's Attorney-In-Fact. Respondents Guillermo A. Godoy and Rommel Trinidad are the Officer-In-Charge and the Principal Engineer, respectively, of the National Housing Authority (NHA) Maharlika Village Project in Taguig, Metro Manila.

On February 2, 1995, the NHA Board of Directors issued Resolution No. 3122 approving Celcon's bid for the construction of a two-storey multi-purpose building at the Maharlika Village Project (Maharlika Project). The construction is for a period of 120 calendar days with a cost of Seven Hundred Four Thousand, Nine Hundred Fifty-One and 15/100 (P704,951.15) Pesos.^[5] On March 20, 1995, NHA and Celcon formalized the contract.

Petitioners alleged in their petition that during the construction of the Maharlika Project, they encountered several problems in dealing with the NHA officials, specifically respondents. Before acting on Celcon's request for a 15% advance payment,^[6] OIC Godoy made several unreasonable demands. He deliberately withheld Celcon's application for Change Order/Extra Work. As a result, NHA issued a letter dated June 6, 1995 warning Celcon that it had incurred work slippage of 17.24%.^[7] Petitioners also alleged that respondents made it difficult for Celcon to collect payments by manipulating the accomplishment reports necessary for its Progress Billings.^[8]

Thus, on September 29, 1995, Celcon notified NHA that effective October 1, 1995, it will stop construction work because it could no longer pay its suppliers and workers due to its (NHA) refusal to pay for the work already completed.^[9]

On November 29, 1995, petitioners filed with the Civil Service Commission (CSC) a Sworn Statement charging respondents with dishonesty, grave misconduct, oppression, and conduct prejudicial to the best interest of the service. Petitioners alleged that they suffered financial losses and other injuries because:

- 1) Respondents recommended the termination of the contract and government take-over of the project despite the fact that the construction was ahead of schedule;
- 2) They delayed payments for specific contract work, thus forcing Celcon to stop construction for lack of funds;
- 3) They arbitrarily and maliciously required the petitioners to submit certain documents before processing a legitimate progress billing; and
- 4) They concealed vital documents to the prejudice of petitioners.

On September 2, 1996, respondents submitted their counter-affidavits.

On January 28, 1997, the CSC issued its questioned Resolution dismissing the complaint against respondents.

Forthwith, petitioners filed a motion for reconsideration but it was denied by the CSC in its Resolution No. 97-4211 dated October 21, 1997. They then filed with the Court of Appeals a petition for certiorari but it was dismissed. Their motion for reconsideration was eventually denied.

Hence, this petition for review on certiorari. Petitioners contend that the Court of Appeals erred in ruling that the CSC did not act with grave abuse of discretion in dismissing their complaint for lack of a *prima facie* case; and that the error of judgment by the CSC is not correctible by certiorari but by appeal.

In its comment on the petition, the CSC, through the Solicitor General, asserted that:

- 1) The impugned Resolutions have long attained finality because the wrong mode of remedy (certiorari) resorted to by petitioners did not toll the running of the period of appeal;^[10] and
- 2) The CSC did not act with grave abuse of discretion in dismissing petitioners' complaint since respondents did not violate the Civil Service Rules and Regulations.^[11]

In their reply, petitioners maintained that under Section 49(1), Book V of Executive Order No. 292 (otherwise known as the Administrative Code of 1987), which provides that appeals shall be made by the party adversely affected by the decision, and pursuant to the ruling of this Court in *University of the Philippines vs. Civil Service Commission*,^[12] they are not allowed to file an appeal. The term "party adversely affected" who can interpose an appeal refers to the respondent or the party against whom the administrative case is filed. Because they (petitioners) were the complainants, not the respondents, in the administrative case before the CSC, they are not considered as the "party adversely affected" authorized to appeal from the CSC decision. Verily, their only remedy before the Court of Appeals is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

We find for the respondents.

The Court of Appeals should have dismissed outright the petition for certiorari. Petitioners resorted to a wrong mode of remedy. Under Section 5, Rule 43 of the 1997 Rules of Civil Procedure, as amended, final orders or resolutions of the CSC are appealable to the Court of Appeals through a petition for review. Instead of filing with the Appellate Court a petition for review within fifteen (15) days from notice of the CSC Resolution dated October 21, 1997, petitioners resorted to certiorari. As held by this Court in numerous cases, a special civil action for certiorari is not a substitute for a lost or lapsed remedy of appeal.^[13]

Even if a petition for certiorari before the Court of Appeals was the correct remedy, however, the same must fail.

In dismissing petitioners' complaint after conducting a preliminary investigation pursuant to its Uniform Rules of Procedure in the Conduct of Administrative Investigations, the CSC held:

"A careful evaluation of the records and arguments of the opposing parties, yielded absence of a *prima facie* case against Guillermo Godoy and Rommel Trinidad for the charge of dishonesty, grave misconduct, oppression, and conduct grossly prejudicial to the best interest of the service.

"Complainants failed to show grave abuse of discretion on the part of respondents. At most, the conflict arose from the disagreements of the parties on the administrative aspect of the project, that is payment for progress billings and dates to submit certain requirements, which pertained mostly on the terms of the contract. The matters at issue are beyond the authority of this Commission absence of (*sic*) showing that a public servant violated Civil Service Rules and Regulations.

"In the case of *Arca vs. Lepanto Consolidated Mining Company*, November 24, 1958, the Supreme Court held: 'for dishonesty to prosper, an absence of integrity, a disposition to betray, cheat, deceive or defraud, bad faith must be shown.' In the complaint there is no *prima facie* showing that respondents committed the same.

"In the offense of grave misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule or regulation must be manifest (*Landrito vs. CSC*, 223 SCRA 551). In the instant case, there is no showing of clear intent to violate the law or flagrant disregard of established rule on the part of respondents.

"Anent the allegation of oppression, the same is defined as an act of cruelty, severity, unlawful exaction, domination or excessive use of authority (*Ochate vs. Deling*, 105 Phil. 390).

"With the said standards, the Commission finds that respondents could not have committed or even demonstrated an act of oppression against complainant."^[14]

We are convinced that the CSC validly dismissed the petitioners' complaint. The CSC found no evidence to sustain the finding that respondents committed dishonesty,