Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MISAMIS ORIENTAL II ELECTRIC SERVICE COOPERATIVE (MORESCO II),
Petitioner,

- versus -

VIRGILIO M. CAGALAWAN,
Respondent.

G.R. No. 175170

Present:

CARPIO, *Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, *and*
PERLAS-BERNABE, *JJ.*

Promulgated:
SEP 05 2012

x - x

DECISION

DEL CASTILLO, *J.*:

In labor cases, strict adherence with the technical rules is not required.[1] This liberal policy, however, should still conform with the rudiments of equitable principles of law. For instance, belated submission of evidence may only be allowed if the delay is adequately justified and the evidence is clearly material to establish the party's cause.[2]

By this Petition for Review on *Certiorari*,[3] petitioner Misamis Oriental II Electric Service Cooperative (MORESCO II) assails the Decision[4] dated July 26, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 84991, which reversed and

---

[1] *Spic N' Span Services Corporation v. Paje,* G.R. No. 174084, August 25, 2010, 629 SCRA 261, 268-269.

[2] *Anabe v. Asian Construction (ASIAKONSTRUKT),* G.R. No. 183233, December 23, 2009, 609 SCRA 213, 219.

[3] *Rollo,* pp. 8-16.

[4] CA *rollo,* pp. 133-141; penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Normandie B. Pizarro.

set aside the Resolutions dated February 27, 2004[5] and April 26, 2004[6] of the National Labor Relations Commission (NLRC), and thereby reinstated the Labor Arbiter's Decision[7] dated September 30, 2003 pronouncing respondent Virgilio M. Cagalawan (Cagalawan) to have been constructively dismissed from employment. Also assailed is the CA Resolution[8] dated September 6, 2006 which denied MORESCO II's Motion for Reconsideration and granted Cagalawan's Partial Motion for Reconsideration.

Factual Antecedents

On September 1, 1993, MORESCO II, a rural electric cooperative, hired Cagalawan as a Disconnection Lineman on a probationary basis. On March 1, 1994 Cagalawan was appointed to the same post this time on a permanent basis.[9] On July 17, 2001, he was designated as Acting Head of the disconnection crew in Area III sub-office of MORESCO II in Balingasag, Misamis Oriental (Balingasag sub-office).[10] In a Memorandum[11] dated May 9, 2002, MORESCO II General Manager Amado B. Ke-e (Ke-e) transferred Cagalawan to Area I sub-office in Gingoog City, Misamis Oriental (Gingoog sub-office) as a member of the disconnection crew. Said memorandum stated that the transfer was done "in the exigency of the service."

In a letter[12] dated May 15, 2002, Cagalawan assailed his transfer claiming he was effectively demoted from his position as head of the disconnection crew to a mere member thereof. He also averred that his transfer to the Gingoog sub-office is inconvenient and prejudicial to him as it would entail additional travel expenses to

---

5 Id. at 24-30; penned by Commissioner Jovito C. Cagaanan and concurred in by Presiding Commissioner Salic B. Dumarpa and Commissioner Proculo T. Sarmen.
6 Id. at 32-34.
7 Id. at 75-79; penned by Labor Arbiter Henry F. Te.
8 Id. at 216-220; penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Teresita Dy-Liacco Flores and Mario V. Lopez.
9 Id. at 90-91.
10 Id. at 52.
11 Id. at 62.
12 Id. at 63.

and from work. He likewise sought clarification on what kind of exigency exists as to justify his transfer and why he was the one chosen to be transferred.

In a Memorandum[13] dated May 16, 2002, Ke-e explained that Cagalawan's transfer was not a demotion since he was holding the position of Disconnection Head only by mere designation and not by appointment. Ke-e did not, however, state the basis of the transfer but instead advised Cagalawan to just comply with the order and not to question management's legitimate prerogative to reassign him.

In reply, Cagalawan claimed that he was transferred because he executed an Affidavit[14] in support of his co-employee Jessie Rances, who filed an illegal dismissal case against MORESCO II.[15] He emphasized though that his action was not an act of disloyalty to MORESCO II, contrary to what was being accused of him. Nonetheless, Cagalawan still reported for work at Gingoog sub-office on May 27, 2002 but reserved his right to contest the legality of such transfer.[16]

Meanwhile and in view of Cagalawan's transfer, Ke-e issued an order[17] recalling the former's previous designation as Acting Head of the disconnection crew of the Balingasag sub-office.

Cagalawan eventually stopped reporting for work. On July 1, 2002, he filed a Complaint for constructive dismissal before the Arbitration branch of the NLRC against MORESCO II and its officers, Ke-e and Danilo Subrado (Subrado), in their capacities as General Manager and Board Chairman, respectively.

Proceedings before the Labor Arbiter

When the Labor Arbiter, in an Order[18] dated September 13, 2002, directed

---

13 Id. at 64.
14 Id. at 61.
15 Id. at 65.
16 Id. at 66.
17 Id. at 67.
18 Id., unpaginated (in between pp. 34 and 35).

the parties to submit their respective verified position papers, only Cagalawan complied.[19] He alleged that his transfer was unnecessary and was made only in retaliation for his having executed an affidavit in favor of a co-worker and against MORESCO II. In support of his contention, Cagalawan submitted a certification[20] executed by the Head of the disconnection crew of the Gingoog sub-office, Teodoro Ortiz (Ortiz), attesting that the said sub-office was not undermanned. In fact, when Cagalawan stopped working, no other employee was transferred or hired in his stead, a proof that there were enough disconnection crew members in Gingoog sub-office who can very well handle the assigned tasks. Moreover, Cagalawan claimed that his transfer constituted a demotion from his position as Acting Head of the disconnection crew which he had occupied for almost 10 months. As such, he should be considered regular in that position and entitled to its corresponding salary.

Cagalawan further alleged that his transfer from Balingasag to Gingoog sub-office was tantamount to illegal constructive dismissal for being prejudicial and inconvenient as he had to spend an additional amount of ₱197.00[21] a day, leaving him nothing of his salary. He therefore had no choice but to stop working.

Aside from reinstatement and backwages, Cagalawan sought to recover damages and attorney's fees because to him, his transfer was effected in a wanton, fraudulent, oppressive or malevolent manner. Apart from MORESCO II, he averred that Ke-e and Subrado should also be held personally liable for damages since the two were guilty of bad faith in effecting his transfer. He believed that Subrado had a hand in his arbitrary transfer considering that he is the son-in-law of Subrado's opponent in the recent election for directorship in the electric cooperative. In fact, Subrado even asked a certain Cleopatra Moreno Manuel to file a baseless complaint against him as borne out by the declaration of Bob Abao in an affidavit.[22]

---

19 Id. at 35-47.
20 Id. at 69.
21 Id. at 68.
22 Id. at 59 and 70.

In view of MORESCO II's failure to file a position paper, Cagalawan filed a Motion[23] for the issuance of an order to declare the case submitted for decision. This was granted in an Order[24] dated March 14, 2003.

On September 30, 2003, the Labor Arbiter rendered a Decision[25] declaring that Cagalawan's transfer constituted illegal constructive dismissal. Aside from finding merit in Cagalawan's uncontroverted allegation that the transfer became grossly inconvenient for him, the Labor Arbiter found no sufficient reason for his transfer and that the same was calculated to rid him of his employment, impelled by a vindictive motive after he executed an Affidavit in favor of a colleague and against MORESCO II.

Thus, the Labor Arbiter ordered Cagalawan's reinstatement to the position of Collector and awarded him backwages from the date of his transfer on May 16, 2002 up to his actual reinstatement. However, the Labor Arbiter denied his prayer for regularization as head of the disconnection crew since the period of six months which he claimed as sufficient to acquire regular status applies only to probationary employment. Hence, the fact that he was acting as head of the disconnection crew for 10 months did not entitle him to such position on a permanent basis. Moreover, the decision to promote him to the said position should only come from the management.

With respect to damages, the Labor Arbiter found Ke-e to have acted capriciously in effecting the transfer, hence, he awarded moral and exemplary damages to Cagalawan. Attorney's fees was likewise adjudged in his favor.

The dispositive portion of the Decision reads:

---

23 Id. at 71-72.
24 Id. at 73.
25 Id. at 75-79.

> WHEREFORE, premises considered, judgment is rendered declaring the transfer of complainant as tantamount to constructive dismissal and ordering respondent[s] to reinstate complainant to his position as collector in Balingasag, Misamis Oriental without loss of seniority rights and to pay complainant the following:
>
> | | |
> |---|---|
> | 1. Backwages | - ₱189,096.00 |
> | 2. Exemplary damages | - ₱ 10,000.00 |
> | 3. Moral damages | - ₱ 20,000.00 |
> | 4. Attorney's fee 10% | - ₱ 21,909.60 |
> | GRAND TOTAL AWARD | ₱241,005.60 |
>
> SO ORDERED.[26]

Proceedings before the National Labor Relations Commission

MORESCO II and Cagalawan both appealed the Labor Arbiter's Decision.

In its Memorandum on Appeal,[27] MORESCO II invoked the liberal application of the rules and prayed for the NLRC to admit its evidence on appeal. MORESCO II denied that Cagalawan's transfer was done in retaliation for executing an affidavit in favor of a co-worker. MORESCO II explained that the transfer was in response to the request of the area manager in Gingoog sub-office for additional personnel in his assigned area. To substantiate this, it submitted a letter[28] dated May 8, 2002 from Gingoog sub-office Area Manager, Engr. Ronel B. Canada (Engr. Canada), addressed to Ke-e. In said letter, Engr. Canada requested for two additional disconnection linemen in order to attain the collection quota allocated in his area. MORESCO II then averred that as against this letter of Engr. Canada who is a managerial employee, the certification issued by Ortiz should be considered as incompetent since the latter is a mere disconnection crew.

Moreover, Cagalawan's claim of additional expenses brought about by his transfer, specifically for meal and transportation, deserves no appreciation at all since he would still incur these expenses regardless of his place of assignment and

---

26 Id. at 79.
27 Id. at 80-89.
28 Id at 93.

also considering that he was provided with a rented motorcycle with fuel and oil allowance.

Also, MORESCO II intimated that it has no intention of removing Cagalawan from its employ especially since his father-in-law was its previous Board Member. In fact, it was Cagalawan himself who committed an act of insubordination when he abandoned his job.

In his Reply[29] to MORESCO II's Memorandum of Appeal, Cagalawan averred that the latter cannot present any evidence for the first time on appeal without giving any valid reason for its failure to submit its evidence before the Labor Arbiter as provided under the NLRC rules. Further, the evidence sought to be presented by MORESCO II is not newly discovered evidence as to warrant its admission on appeal. In particular, he claimed that the May 8, 2002 letter of Engr. Canada should have been submitted at the earliest opportunity, that is, before the Labor Arbiter. MORESCO II's failure to present the same at such time thus raises suspicion that the document was merely fabricated for the purpose of appeal. Moreover, Cagalawan claimed that if there was indeed a request from the Area Manager of Gingoog sub-office for additional personnel as required by the exigency of the service, such reason should have been mentioned in Ke-e's May 16, 2002 Memorandum. In this way, the transfer would appear to have a reasonable basis at the outset. However, no such mention was made precisely because the transfer was without any valid reason.

Anent Cagalawan's partial appeal,[30] he prayed that the decision be modified in that he should be reinstated as Disconnection Lineman and not as Collector.

The NLRC, through a Resolution[31] dated February 27, 2004, set aside and vacated the Decision of the Labor Arbiter and dismissed Cagalawan's complaint

---

29 Id. at 95-101.
30 *Rollo*, pp. 61-69.
31 CA *rollo*, pp. 24-30.

against MORESCO II. The NLRC admitted MORESCO II's evidence even if submitted only on appeal in the interest of substantial justice. It then found said evidence credible in showing that Cagalawan's transfer to Gingoog sub-office was required in the exigency of the cooperative's business interest. It also ruled that the transfer did not entail a demotion in rank and diminution of pay as to constitute constructive dismissal and thus upheld the right of MORESCO II to transfer Cagalawan in the exercise of its sound business judgment.

Cagalawan filed a Motion for Reconsideration[32] but the same was denied by the NLRC in a Resolution[33] dated April 26, 2004.

Proceedings before the Court of Appeals

Cagalawan thus filed a Petition for *Certiorari*[34] with the CA. In a Decision[35] dated July 26, 2005, the CA found the NLRC to have gravely abused its discretion in admitting MORESCO II's evidence, citing Section 3, Rule V of the NLRC Rules of Procedure[36] which prohibits the parties from making new allegations or cause of action not included in the complaint or position paper, affidavits and other documents. It held that what MORESCO II presented on appeal was not just an additional evidence but its entire evidence after the Labor Arbiter rendered a Decision adverse to it. To the CA, MORESCO II's belated submission of evidence despite the opportunities given it cannot be countenanced

---

32 Id. at 106-111.
33 Id. at 32-34.
34 Id. at 2-22.
35 Id. at 133-141.
36 **SECTION 3**. *Submission of Position Papers/Memorandum*. – Should the parties fail to agree upon an amicable settlement, either in whole or in part, during the conferences, the Labor Arbiter shall issue an order stating therein the matters taken up and agreed upon during the conferences and directing the parties to simultaneously file their respective verified position papers.

These verified position papers shall cover only those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony. The parties shall thereafter not be allowed to allege facts, or present evidence to prove facts, not referred to and any cause or causes of action not included in the complaint or position papers, affidavits and other documents. Unless otherwise requested in writing by both parties, the Labor Arbiter shall direct both parties to submit simultaneously their position papers/ memorandum with the supporting documents and affidavits within fifteen (15) calendar days from the date of the last conference, with proof of having furnished each other with copies thereof.

as such practice "defeats speedy administration of justice" and "smacks of unfairness."

The dispositive portion of the CA Decision reads:

> **IN VIEW THEREOF**, the petition is **GRANTED**. The Decision of the Labor Arbiter is reinstated with the modification that if reinstatement of petitioner is not feasible, he should be paid separation pay in accordance with law.
>
> **SO ORDERED.**[37]

MORESCO II filed a Motion for Reconsideration[38] insisting that it may present evidence for the first time on appeal as the NLRC is not precluded from admitting the same because technical rules are not binding in labor cases. Besides, of paramount importance is the opportunity of the other party to rebut or comment on the appeal, which in this case, was afforded to Cagalawan.

Cagalawan, for his part, filed a Partial Motion for Reconsideration,[39] seeking modification of the Decision by ordering his reinstatement to the position of Disconnection Lineman instead of Collector.

In a Resolution[40] dated September 6, 2006, the CA maintained its ruling that MORESCO II's unexplained failure to present evidence or submit a position paper before the Labor Arbiter for almost 12 months from receipt of Cagalawan's position paper is intolerable and cannot be permitted. Hence, it denied its Motion for Reconsideration. With respect to Cagalawan's motion, the same was granted by the CA, *viz:*

> Anent petitioner's Partial Motion for Reconsideration, We find the same meritorious. The records of this case reveal that prior to his constructive dismissal, petitioner was a Disconnection Lineman, not a Collector, assigned at

---

37 CA *rollo*, p. 140.
38 Id. at 201-205.
39 Id. at 197-200.
40 Id. at 216-219.

Balingasag, Misamis Oriental. Hence, We modify the dispositive portion of Our July 26, 2005 Decision, to read:

> 'IN VIEW THEREOF, the petition is GRANTED. The Decision of the Labor Arbiter is reinstated with modification **that petitioner be reinstated to his position as Disconnection Lineman in Balingasag, Misamis Oriental with further modification** that if reinstatement of petitioner is not feasible, he should be paid separation pay in accordance with law.' [41] (Emphasis in the original.)

Issues

MORESCO II thus filed this petition raising the following issues:

(1) Was the respondent constructively dismissed by the petitioner?

(2) Did the Court of Appeals err in reversing the NLRC?[42]

MORESCO II insists that Cagalawan's transfer was necessary in order to attain the collection quota of the Gingoog sub-office. It contests the credibility of Ortiz's certification which stated that there was no need for additional personnel in the Gingoog sub-office. According to it, Ortiz is not a managerial employee but merely a disconnection crew who is not competent to make declarations in relation to MORESCO II's business needs. It likewise refutes Cagalawan's claim of incurring additional expenses due to his transfer which caused him inconvenience. In sum, it claims that Cagalawan was not constructively dismissed but instead had voluntarily abandoned his job.

MORESCO II avers that the CA's ruling is not in accordance with jurisprudence on the matter of admitting evidence on appeal in labor cases. It submits that the NLRC is correct in accepting its evidence submitted for the first time on appeal in line with the basic precepts of equity and fairness. The NLRC also correctly ruled in its favor after properly appreciating its evidence which had been rebutted and contradicted by Cagalawan.

---

41 Id. at 219.
42 *Rollo*, p. 210.

Our Ruling

The petition has no merit.

MORESCO II's belated submission of evidence cannot be permitted.

Labor tribunals, such as the NLRC, are not precluded from receiving evidence submitted on appeal as technical rules are not binding in cases submitted before them.[43] However, any delay in the submission of evidence should be adequately explained and should adequately prove the allegations sought to be proven.[44]

In the present case, MORESCO II did not cite any reason why it had failed to file its position paper or present its cause before the Labor Arbiter despite sufficient notice and time given to do so. Only after an adverse decision was rendered did it present its defense and rebut the evidence of Cagalawan by alleging that his transfer was made in response to the letter-request of the area manager of the Gingoog sub-office asking for additional personnel to meet its collection quota. To our mind, however, the belated submission of the said letter-request without any valid explanation casts doubt on its credibility, specially so when the same is not a newly discovered evidence. For one, the letter-request was dated May 8, 2002 or a day before the memorandum for Cagalawan's transfer was issued. MORESCO II could have easily presented the letter in the proceedings before the Labor Arbiter for serious examination. Why it was not presented at the earliest opportunity is a serious question which lends credence to Cagalawan's theory that it may have just been fabricated for the purpose of appeal.

---

43 *Iran v. National Labor Relations Commission*, 352 Phil. 261, 274 (1998).

44 *Anabe v. Asian Construction (ASIAKONSTRUKT)*, supra note 2; *Angeles v. Fernandez*, G.R. No. 160213, January 30, 2007, 513 SCRA 378, 384; *Tanjuan v. Philippine Postal Savings Bank, Inc.*, 457 Phil. 993, 1004-1005 (2003); *AG & P United Rank & File Association v. National Labor Relations Commission*, 332 Phil. 937, 943 (1996).

It should also be recalled that after Cagalawan received the memorandum for his transfer to the Gingoog sub-office, he immediately questioned the basis thereof through a letter addressed to Ke-e. If at that time there was already a letter-request from the Gingoog area manager, Ke-e could have easily referred to or specified this in his subsequent memorandum of May 16, 2002 which served as his response to Cagalawan's queries about the transfer. However, the said memorandum was silent in this respect. Nevertheless, Cagalawan, for his part, faithfully complied with the transfer order but with the reservation to contest its validity precisely because he was not adequately informed of its real basis.

The rule is that it is within the ambit of the employer's prerogative to transfer an employee for valid reasons and according to the requirement of its business, provided that the transfer does not result in demotion in rank or diminution of salary, benefits and other privileges.[45] This Court has always considered the management's prerogative to transfer its employees in pursuit of its legitimate interests. But this prerogative should be exercised without grave abuse of discretion and with due regard to the basic elements of justice and fair play, such that if there is a showing that the transfer was unnecessary or inconvenient and prejudicial to the employee, it cannot be upheld.[46]

Here, while we find that the transfer of Cagalawan neither entails any demotion in rank since he did not have tenurial security over the position of head of the disconnection crew, nor result to diminution in pay as this was not sufficiently proven by him, MORESCO II's evidence is nevertheless not enough to show that said transfer was required by the exigency of the electric cooperative's business interest. Simply stated, the evidence sought to be admitted by MORESCO II is not substantial to prove that there was a genuine business urgency that necessitated the transfer.

---

45 *Genuino Ice Company, Inc. v. Magpantay*, 526 Phil. 170, 188 (2006).
46 *Yuco Chemical Industries, Inc. v. Ministry of Labor and Employment*, 264 Phil 338, 341 (1990).

Notably, the only evidence adduced by MORESCO II to support the legitimacy of the transfer was the letter-request of Engr. Canada. However, this piece of evidence cannot in itself sufficiently establish that the Gingoog sub-office was indeed suffering from losses due to collection deficiency so as to justify the assignment of additional personnel in the area. Engr. Canada's letter is nothing more than a mere request for additional personnel to augment the number of disconnection crew assigned in the area. While it mentioned that the area's collection efficiency should be improved and that there is a shortage of personnel therein, it is, standing alone, self-serving and thus cannot be considered as competent evidence to prove the accuracy of the allegations therein. MORESCO II could have at least presented financial documents or any other concrete documentary evidence showing that the collection quota of the Gingoog sub-office has not been met or could not be reached. It should have also submitted such other documents which would show the lack of sufficient personnel in the area. Unfortunately, the area manager's letter provides no more than bare allegations which deserve not even the slightest credit.

When there is doubt between the evidence submitted by the employer and that submitted by the employee, the scales of justice must be tilted in favor of the employee.[47] This is consistent with the rule that an employer's cause could only succeed on the strength of its own evidence and not on the weakness of the employee's evidence.[48] Thus, MORESCO II cannot rely on the weakness of Ortiz's certification in order to give more credit to its own evidence. Self-serving and unsubstantiated declarations are not sufficient where the quantum of evidence required to establish a fact is substantial evidence, described as more than a mere scintilla.[49] "The evidence must be real and substantial, and not merely apparent."[50] MORESCO II has miserably failed to discharge the onus of proving the validity of Cagalawan's transfer.

---

47 *Travelaire and Tours Corp. v. National Labor Relations Commission*, 355 Phil. 932, 937-938 (1998).
48 *Functional, Inc. v. Granfil*, G.R. No. 176377, November 16, 2011.
49 *Coastal Safeway Marine Services, Inc. v. Esguerra*, G.R. No. 185352, August 10, 2011, 655 SCRA 300, 309.
50 *Jebsens Maritime Inc. v. Undag*, G.R. No. 191491, December 14, 2011.

Clearly, not only was the delay in the submission of MORESCO II's evidence not explained, there was also failure on its part to sufficiently support its allegation that the transfer of Cagalawan was for a legitimate purpose. This being the case, MORESCO II's plea that its evidence be admitted in the interest of justice does not deserve any merit.

Ke-e and Subrado, as corporate officers, could not be held personally liable for Cagalawan's monetary awards.

In the Decision of the Labor Arbiter, the manager of MORESCO II was held to have acted in an arbitrary manner in effecting Cagalawan's transfer such that moral and exemplary damages were awarded in the latter's favor. However, the said Decision did not touch on the issue of bad faith on the part of MORESCO II's officers, namely, Ke-e and Subrado. Consequently, no pronouncement was made as to whether the two are also personally liable for Cagalawan's money claims arising from his constructive dismissal.

Still, we hold that Ke-e and Subrado cannot be held personally liable for Cagalawan's money claims.

"[B]ad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud."[51] Here, although we agree with the Labor Arbiter that Ke-e acted in an arbitrary manner in effecting Cagalawan's transfer, the same, absent any showing of some dishonest or wrongful purpose, does not amount to bad faith. Suffice it to say that bad faith must be established clearly and convincingly as the same is never presumed.[52] Similarly, no bad faith can be presumed from the fact that Subrado was the opponent of Cagalawan's father-in-law in the election for

---

51 *Andrade v. Court of Appeals*, 423 Phil. 30, 43 (2001).
52 *Harpoon Marine Services, Inc. v. Francisco*, G.R. No. 167751, March 2, 2011, 644 SCRA 394, 409.

directorship in the cooperative. Cagalawan's claim that this was one of the reasons why he was transferred is a mere allegation without proof. Neither does Subrado's alleged instruction to file a complaint against Cagalawan bolster the latter's claim that the former had malicious intention against him. As the Chairman of the Board of Directors of MORESCO II, Subrado has the duty and obligation to act upon complaints of its clients. On the contrary, the Court finds that Subrado had no participation whatsoever in Cagalawan's illegal dismissal; hence, the imputation of bad faith against him is untenable.

WHEREFORE, the petition is **DENIED**. The Decision dated July 26, 2005 of the Court of Appeals in CA-G.R. SP No. 84991 and its Resolution dated September 6, 2006, are **AFFIRMED**.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice