

**EDILBERTO M. RAMOS, PACIANO CAPALONGAN, VICTORINO REYES,  
CONSORCIA JOVEN, JOSEFINA COLOMA, JOSE JOAQUIN,  
PETITIONERS-APPELLANTS, VS. HON. BENJAMIN H. AQUINO,  
PROVINCIAL FISCAL, ...**

*G.R. No. L-28594. June 30, 1971*

Ponente: FERNANDO, J.

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**FERNANDO, J.:**

A constitutional question with an element of novelty is raised in this appeal from a lower court order dismissing an action for certiorari and prohibition against the then respondent Fiscal of Rizal, Benjamin H. Aquino, to prevent him from conducting a preliminary investigation. It is whether there is an encroachment on the constitutional prerogatives of the Auditor General if, after the final approval of certain vouchers by him without an appeal being made, an inquiry by a provincial fiscal to determine whether criminal liability for malversation through falsification of public, official and commercial documents based thereon could lawfully be conducted. The lower court answered that it could validly be undertaken. We agree that a prosecutor could, without offending the constitutional grant of authority to the Auditor General, do so. We therefore affirm.

In the certiorari and prohibition proceeding filed with the lower court on June 6, 1967, petitioners,[1] now appellants, assailed the jurisdiction of respondent Benjamin Aquino, then Provincial Fiscal of Rizal, to conduct the preliminary investigation of the alleged commission of malversation through falsification of public, official and commercial documents imputed to them by the other respondent, then the Commanding General, Philippine Army, Fort Bonifacio, Rizal, Romeo Espino. The basis for such a petition was that under the Constitution, the Auditor General is not only vested with the duty to examine or audit all expenditures of funds of the Government, but also to audit or investigate and "bring to the attention of the proper administrative officer expenditures of funds or property which in his opinion are irregular, unnecessary, excessive, or extravagant." It is their contention that under the above, it is incumbent on the Auditor General to determine whether criminal responsibility for the anomaly discovered in the course of his audit or examination of the accounts lies. It was further contended that the decisions of the Auditor General on the correctness of the vouchers on which the alleged offenses were based having become final and irrevocable, not even the courts could substitute its findings. Otherwise the provision of law that vouchers, claims or accounts "once finally settled shall in no case be opened or reviewed except as herein provided" would be meaningless if the army authorities and respondent Fiscal were permitted to proceed with the preliminary investigation to determine whether criminal cases could be filed.[2]

The above legal objections were brought to the attention of the then respondent Provincial Fiscal by petitioners in a motion to quash which was denied by him in a resolution of May 23, 1967 on this ground: "The exclusive jurisdiction of the Auditor General on matters now raised by respondents refer to auditorial requirements and approval but not to the criminal liability, if any, of the persons involved in an alleged irregular or anomalous disbursement of public funds. The authority of the Fiscal to investigate whether a criminal act has been committed or not in the disbursement of public funds, and finally of the Courts to try any person involved in the alleged

malversation of public funds is not curtailed or in any way divested by the administrative findings of the Auditor General. To hold otherwise would be to arrogate unto the Office of the Auditor General the power which pertains to the judicial branch of the government." [3]

Then came this petition before the lower court, petitioners praying for a judgment annulling the aforesaid resolution of respondent Provincial Fiscal denying their motion to quash, rendering judgment that he was without jurisdiction to conduct such preliminary investigation and prohibiting him from further proceeding on the matter. [4] On November 2, 1967, there was a motion to dismiss by respondent Provincial Fiscal based on the argument that the amounts subject to the criminal cases were not closed and settled accounts and that even if they were such, respondent Fiscal could still institute the appropriate criminal action, there being no need for a certification by the Auditor General as to any irregularity in the settlement of accounts as an essential element for a criminal prosecution in malversation cases.

After an opposition was filed by petitioner to the aforesaid motion to dismiss on November 21, 1967, the lower court, in an order of December 20, 1967, dismissed the petition. In support of such an order, it was set forth in such order of dismissal: "The Provincial Fiscal is only studying whether or not, as complained of, from these accounts or vouchers which have already been passed in audit by the Auditor General or his representatives more than three years ago, there is a crime to be prosecuted in which the petitioners are answerable." [5] It was further emphasized: "Were the theory of the petitioners to prevail, then the Auditor General will be arrogating unto himself duties which pertain to the judicial branch of the government." [6] The last ground on which the plea that the petition be dismissed was sustained is the principle that one "cannot restrain the Fiscal, by means of injunction, from prosecuting [this] case \* \* \*." [7]

The matter was duly elevated on appeal to this Court on January 3, 1968. The brief for petitioners as appellants was filed on March 6 of that year. With the submission of the brief for respondents as appellees on May 3, 1968, the appeal was deemed submitted. As set forth at the outset, there is no legal ground for reversing the lower court.

1. Appellants, in their brief, reiterate their principal argument that the order of the lower court dismissing their petition and thus allowing their investigation by respondent Fiscal to proceed, did amount to an encroachment on the constitutional prerogatives of the Auditor General. Such a contention lacks merit. It betrays on its face a lack of understanding of the constitutional provision relied upon. The Auditor General, as noted, is vested with the power to examine, audit and settle all accounts pertaining to the revenues and receipts from whatever source, and to audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the government as well as the provinces or municipalities thereof. [8] That is one thing. The ascertainment of whether a crime is committed and by whom is definitely another.

There is thus a manifest failure on the part of appellants to appreciate correctly the constitutional objective in the conferment of authority on the Auditor General. It is based on the fundamental postulate that in the division of powers, the control over the purse remains with the legislative branch. There is the explicit requirement then that there be no expenditure of public funds except in pursuance of an appropriation made by law. [9] There is need, therefore, for an enactment to permit disbursements from the public treasury. Nor does fidelity to this constitutional mandate end there. There must be compliance with the terms of the statute. If it were not so, to the extent that there is a deviation, there is a frustration of the legislative will. It is obvious that Congress itself is not in a position to oversee and supervise the actual release of each and every appropriation. That is where the Auditor General comes in. It is the responsibility of his office to exact obedience to any law that allows the expenditure of public funds. He serves as the necessary check to make certain that no department of the government, especially its main spending arm, the Executive, exceeds the statutory limits of the appropriations to which it is entitled. That is the purpose and end calling for the creation of such an office, certainly not the

enforcement of criminal statutes.

So it has been made clear by the then Delegate, later President, Manuel Roxas in the Constitutional Convention of 1934. To the question as to the method or means to determine whether public funds are spent in accordance with the congressional will, this was his answer: "The only means provided in our Constitution, as in the constitutions in other countries, is the office of the auditor; therefore, if the auditor is a check on the Executive, it is not wise to make the auditor depend on the Executive. For another ways, the Executive, if he is able to influence the auditor, may prevent the proper checking of the expenditures of the public money." [10] For such a dignitary to live up to such grave responsibility, he must, according to Delegate Roxas, be independent, not only of the President but even of Congress, even if he were in a true and vital sense fulfilling a task appertaining to it. Thus: "In the United States, while the auditor is appointed by the President with the advice and consent of the United States Senate, the office is kept as an independent office — independent [of] the Executive and independent [of] the Legislature, because he has not only to check the accounts of the Executive, but also the accounts of the Legislature. \* \* \*." [11]

It could be that appellants were not completely oblivious to the force of the above observations. They therefore did seek to lend plausibility to their contention with the reminder that there is likewise included in the constitutional provision in question the task incumbent on the Auditor General to "bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant." From which, by a process of construction rather latitudinarian in character, they would imply that on the Auditor General alone rests the determination of whether or not criminal liability is incurred for any anomaly discovered in the course of his audit or examination. Such a conclusion is at war with the controlling doctrine. As construed in *Guevara v. Gimenez*, [12] at most such a duty goes no further than requiring him to call the attention of the proper administrative officer of the existence of such a situation but does not even extend to the power "to refuse and disapprove payment of such expenditures, \* \*." [13] Much less then could it justify the assertion devoid of any legal justification that even the ascertainment of any possible criminal liability is likewise a part and parcel of such constitutional competence of the Auditor General. How, then, can it be said that their plea is thereby strengthened?

There is likewise an invocation by appellants of alleged statutory support for their untenable view. It is likewise in vain. All that appellants have to go on is the concluding paragraph of section 657 of the Revised Administrative Code: "Accounts once finally settled shall in no case be opened or reviewed except as herein provided." The paragraph immediately preceding should have disabused the minds of appellants of any cause for optimism. All that it provides for is that in case any settled account "appears to be infected with fraud, collusion or error of calculation or when new and material evidence is discovered, the Auditor General may, within three years after original settlement, open such account, and after a reasonable time for his reply or appearance, may certify thereon a new balance." The official given the opportunity for a reply or appearance is the provincial auditor, for under the first paragraph of this particular section, the Auditor General at any time before the expiration of three years after the making of any settlement by a provincial auditor, may, of his own motion, review and revise the same and certify a new balance. Nowhere does it appear that such a statutory grant of authority of the Auditor General to open revised settled accounts carries with it the power to determine who may be prosecuted in the event that in the preparation thereof a crime has been committed. The conclusive effect of the finality of his decision on the executive branch of the government thus relates solely to the administrative aspect of the matter. [14]

From the constitutional, no less than the statutory standpoint then, this claim of appellants finds no support. It has nothing but novelty to call for any attention being paid to it. It is singularly unpersuasive. To repeat, it would be to

stretch to unwarranted limits the constitutional power thus conferred on the Auditor General to accede to such a plea. Nothing is better settled than that, broad and comprehensive as it is, it does not include a participation in the investigation of charges to determine whether or not a criminal prosecution should be instituted.[15] Thus, the first two errors of the appellants which would impugn the order of dismissal for reaching a similar conclusion are disposed of.

2. The third assigned error by appellants would find fault with the lower court's reliance on the well-settled doctrine that as a general principle, no action lies to enjoin fiscals from conducting investigations to ascertain whether an offense has been committed. To demonstrate its equally groundless character, it suffices to refer to *Ramos v. Torres*,[16] dismissing an original action for prohibition instituted by five of the six petitioners, now appellants,[17] to cut short further proceedings based on an information accusing them of malversation through falsification of public and commercial documents. In the opinion of the present Chief Justice, it is emphatically affirmed: "Upon a review of the record, we are satisfied that petitioners herein have not established their right to the writ prayed for. Indeed, it is well-settled that, as a matter of general rule, the writ of prohibition will not issue to restrain criminal prosecution." [18] An excerpt from the opinion of Justice Sanchez in *Hernandez v. Albano*[19] was then quoted. Thus: "Agreeably to the foregoing, a rule — now of long standing and frequent application — was formulated that ordinarily criminal prosecution may not be blocked by court prohibition or injunction. Really, if at every turn investigation of a crime will be halted by a court order, the administration of criminal justice will meet with an undue setback. Indeed, the investigative power of the Fiscal may suffer such a tremendous shrinkage that it may end up in hollow sound rather than as a part and parcel of the machinery of criminal justice." [20] Nor is the accused person thereby left unprotected for, as was noted by the Chief Justice, referring to *Gorospe v. Peñaflorida*,[21] he could defend him-self from any possible prosecution by establishing that he did not commit the act charged or that the statute or ordinance on which the prosecution is based is invalid or in the event of conviction, he could appeal. While the general rule admits of exceptions, no showing has been made that petitioners can appropriately invoke them. As they failed in their previous action of prohibition in *Ramos v. Torres*, so they must now.

WHEREFORE, the appealed order of the lower court of December 20, 1967 dismissing petitioners' action for certiorari and prohibition is affirmed. With costs against petitioners-appellants.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Teehankee, Villamor, and Makasiar, JJ., concur. Ruiz Castro and Barredo, JJ., did not take part.

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[1] Except for petitioner Andres Ascueta, who is not a party, the other petitioners were identified in a previous case *Ramos v. Torres*, L-23454, Oct. 25, 1968, 25 SCRA 557 thus: "Petitioners herein are Edilberto M. Ramos, Paciano Capalongan, Victorino B. Reyes, Andres Atienza, Consorcia Joven, Jose Joaquin and Andres Ascueta. All of them are army personnel, working, with the exception of the last, in the Finance Service of the Philippine Army, the first as Colonel and Chief of said service, the second as Major and Chief of the Audit and Fiscal Branch thereof, the third as Captain and Officer-in-Charge of its Audit Section, the fourth as Captain, in charge of pre-auditing and processing commercial vouchers, the fifth as Audit Examiner, and the sixth as Clerk in charge of processing vouchers." At p. 558. Andres Atienza is not a petitioner in this suit.

[2] For the requisite statutory support for the above view, petitioners invoke Section 657 of the Administrative Code which reads: "Power of Auditor to open and revise settled accounts. - At any time before the expiration of three years after the making of any settlement by a provincial auditor, the Auditor General may, on his own motion, review and revise the same and certify a new balance. For such purpose he may require any account, vouchers, or other papers connected with the matter to be forwarded to him. When any settled account appears to

be infected with fraud, collusion, or error of calculation, or when new and material evidence is discovered, the Auditor General may, within three years after original settlement, open such account, and after a reasonable time for his reply or appearance, may certify thereon a new balance. A provincial auditor may exercise the same power in respect to settled accounts pertaining to the branches of the Government under his jurisdiction. Accounts once finally settled shall in no case be opened or reviewed except as herein provided." Cf. Petition before the lower court, pars. 5 and 8.

[3] Ibid, par. 6, referring to Annex B thereof.

[4] Ibid, petitory part.

[5] Order, Record on Appeal, pp. 77-78.

[6] Ibid, p. 78.

[7] Ibid.

[8] The constitutional provision reads in full: "The Auditor General shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source, including trust funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds of property pertaining to or held in trust by the Government or the provinces or municipalities thereof. He shall keep the general accounts of the Government and preserve the vouchers pertaining thereto. It shall be the duty of the Auditor General to bring to the attention of the proper administrative officer expenditures of funds or property which in his opinion, are irregular, unnecessary, excessive, or extravagant. He shall also perform such other functions as may be prescribed by law." Art. XI, Sec. 2, Constitution.

[9] According to the Constitution: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." Art. VI, sec. 23, par. 2.

[10] V Laurel, Proceedings of the Philippine Constitutional Convention, 636 (1967).

[11] Ibid, p. 637.

[12] L-17115, Nov. 30, 1962, 6 SCRA 807.

[13] Ibid, p. 813. The authoritative excerpt from the opinion of the present Chief Justice reads as follows: "Under our Constitution, the authority of the Auditor General, in connection with expenditures of the Government is limited to the auditing of expenditures of funds or property pertaining to, or held in trust by, the Government or the provinces or municipalities thereof (Article XI, section 2, of the Constitution). Such function is limited to a determination of whether there is a law appropriating funds for a given purpose; whether a contract, made by the proper officer, has been entered into in conformity with said appropriation law; whether the goods or services covered by said contract have been delivered or rendered in pursuance of the provisions thereof, as attested to by the proper officer; and whether payment therefor has been authorized by the officials of the corresponding department or bureau. If these requirements have been fulfilled, it is the ministerial duty of the Auditor General to approve and pass in audit the voucher and treasury warrant for said payment. He has no discretion or authority to disapprove said payment upon the ground that the aforementioned contract was unwise or that the amount stipulated thereon is unreasonable. If he entertains such belief, he may do no more than discharge the duty imposed upon him by the Constitution (Article XI, section 2), 'to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive or extravagant'. This duty implies a negation of the power to refuse and disapprove payment of such expenditures, for its disapproval, if he had authority therefor, would bring to the attention of the aforementioned

administrative officer the reasons for the adverse action thus taken by the General Auditing Office, and, hence, render the imposition of said duty unnecessary."

[14] Section 655 of the Administrative Code reads as follows: "Finality of decision made by Auditor. - A decision of the Auditor General or of a provincial auditor upon any matter within their respective powers shall be conclusive upon the executive branches of the Government, subject to appeal or review as hereinafter provided."

[15] Cf. *Guevara v. Gimenez*, L-17115, Nov. 30, 1962, 6 SCRA 807; *Villegas v. Auditor General*, L-21352, Nov. 29, 1966, 18 SCRA 877; *Resins, Inc. v. Auditor General*, L-17888, Oct. 29, 1968, 25 SCRA 754.

[16] L-23454, Oct. 25, 1968, 25 SCRA 557.

[17] *Vide fn.*

[18] *Ibid*, p. 563. Six cases were referred to by the Chief Justice, starting from *Kwong Sing v. City of Manila*, 41 Phil. 103 (1920); where the doctrine was first announced through Justice Malcolm. The other cases follow: *Gorospe v. Peñaflorida*, 101 Phil. 886 (1957); *University of the Philippines v. City Fiscal of Quezon City*, L-18562, July 31, 1961, 2 SCRA 980; *Tadeo v. Provincial Fiscal*, L-16474, January 31, 1962, 4 SCRA 235; *Griñen v. Consolacion*, L-16050, July 31, 1962, 5 SCRA 722; *Lava v. Gonzalez*, L-23084, July 31, 1964, 11 SCRA 650. *People v. Mencias*, L-19633, Nov. 28, 1966, 18 SCRA 807, may also be cited.

[19] L-19272, January 25, 1967, 19 SCRA 95.

[20] *Ibid*, p. 98.

[21] 101 Phil. 886 (1957).

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