

**RAMON A. DIAZ, PETITIONER, VS. THE HON. SANDIGANBAYAN  
(THIRD DIVISION), HON. CONRADO M. VASQUEZ, IN HIS CAPACITY  
AS OMBUDSMAN, AND JOSE J. PAREN-TELA, JR., IN HIS CAPACITY AS  
PR...**

*G.R. No. 101202. March 08, 1993*

Ponente: GRIÑO-AQUINO, J.

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**GRIÑO-AQUINO, J.:**

The petitioner, Ramon Diaz, was chairman of the Presidential Commission on Good Government (PCGG) in 1988, when Solicitor General Frank Chavez, then counsel for the PCGG in "American Inter-Fashion vs. PCGG," G.R. No. 79342, filed a pleading in that case, accusing Chairman Diaz with having lifted the sequestration on American Inter-fashion. Diaz moved to strike out the pleading for being untrue. Chavez called a press conference accusing Diaz of corruption and ineptness. He thereafter withdrew as counsel for the PCGG and Diaz resigned as chairman of the PCGG to become the Philip-pine Ambassador to Canada. President Aquino ordered acting PCGG Chairman Adolf Azcuna to investigate Chavez' charges but apparently the investigation was not pressed.

The Ombudsman ordered the Special Prosecutor, Raul Gonzales, together with Prosecutors Jose J. Parentela, Jr. and Diana L. Dungca, to investigate the charges also.

The Senate likewise called upon the Senate Blue Ribbon Committee to conduct an investigation of the Solicitor General's charges consisting of 8 counts of alleged ineptness and 24 counts of alleged corruption involving 13 sequestered companies, among them Metro Port Service, Inc. (METRO PORT), (subject of G.R. No. 102554) and the American Inter Fashion (AIF), De Soleil Apparel Manufacturing Corporation (DSA) and Glorious Sun Fashion Garment Manufacturing Co., Inc. (GLORIOUS SUN), (subject of G.R. No. 101202). The Senate Blue Ribbon Committee was joined by the Ombudsman panel composed of Special Prosecutor Raul Gonzales and Tanodbayan Deputy Spl. Prosecutors Jose G. De Ferrer, Jose Parentela, Jr. and Diana Dungca in hearing Chavez' evidence consisting of the testimonies of 36 witnesses and volumes of documents. But while the Senate Blue Ribbon Committee of 16 senators in February 1989 issued an official report dismissing all charges against the PCGG and the petitioner, Parentela (the only remaining member of the Ombudsman panel as a result of the suspension of Gonzales from the practice of law and the resignation of Dungca) found probable cause to conduct a preliminary investigation against the petitioner, with the approval of the Ombudsman.

Prosecutor Jose J. Parentela, Jr. submitted a report on the investigation (Annex "1", pp. 222-355, Rollo of G.R. No. 101202) to Ombudsman Conrado M. Vas-quez summarizing the evidence presented by the complain-ant (Chavez). The portions of his report relevant to these cases stated:

"D. AMERICAN INTER-FASHION and DE SOLEIL

"CHARGES:

"xxx xxx xxx

"(2) Impropriety of the PCGG - Nemesio Co contract conceding to Co and/or Glorious Sun disputed ownership of building, machineries and equipment;

"xxx xxx xxx.

#### "FINDINGS AND RECOMMENDATIONS

"(2) Re: Impropriety of the PCGG - Nemesio Co Contract Con-ceding to Co And/Or Glori-ous Sun Disputed Ownership of Buildings, Machineries and Equipment.

"It is an undisputed fact that the first Memorandum of Agreement, dated October 31, 1987 entered into by Commissioner Orlando D. Romero and Fiscal Agent Rogelio Tanjama with Glorious Sun - Nemesio Co, conceding ownership of buildings, machineries and equipment to Glori-ous Sun - Nemesio Co was terminated [by the PCGG] on December 3, 1987. And yet, on December 23, 1987, another Memorandum of Agreement was signed by Chairman Ramon Diaz and Nemesio Co for Glorious Sun which has the same terms and conditions as the first Memorandum of Agreement. Surely, if the first Memorandum of Agreement was found to be anomalous and unlawful which constrained the PCGG to terminate it, the second Memorandum of Agreement containing the same terms and conditions as the first Memorandum of Agreement cannot be cleared of vestiges [sic] of the first Memorandum of Agreement nor can it be said that there were vicissitudes when the second Memo-randum of Agreement was adopted, there being only a gap of twenty days from the period when the first Memorandum of Agreement was termi-nated and when the second Memorandum of Agreement was adopted.

"Besides, said issue of ownership appears to be pending before the Supreme Court and the Sandiganbayan and to concede owner-ship to Glorious Sun of the buildings, equipment and machineries would be tantamount to giving the latter unwarranted benefits which may constitute a violation of Sec. 3, par. (e) of R.A. 3109. Perforce, Commissioner Diaz may be held answerable and accountable." (pp. 238-252, Rollo of G.R. No. 101202.)

As to the second case, G.R. No. 102554, involving METRO PORT, Parentela's Memorandum contains the follow-ing relevant observations:

"L. METRO PORT

"Charges:

"(1) Loaning of P5M belonging to Metro Port which has been sequestered, to a stockholder or officer of said sequestered corporation.

"(2) Failure to collect said P5M.

"xxx xxx xxx.

#### "FINDINGS AND RECOMMENDATIONS

"(1) Re: Loaning of P5M Belonging to Metro Port to Enrique Razon, Jr.

"It is admitted by Commission-er Mary Concepcion Bautista herself that the application for P5M was approved by all the commissioners. Noteworthy is the fact that despite the fact that the P5M was supposedly for the use of METRO PORT, the check was issued in the name of Enrique Razon, Jr., which was allegedly used for the purchase of 100 sewing machines of Cherokee Apparel Corpo-ration.

"The essential elements of Section 3, paragraph (e) [of R.A. 3109] are: (1) that the accused is a public officer; (2) that as such public officer he caused any undue injury to any party, including the government, or gave any

private party unwarranted benefits, advantage, or preference in the discharge of his official administration or judicial functions; (3) that said undue injury to any party, or giving to any party of any unwarranted benefits, advantage or preference was done through manifest partiality, evident bad faith or gross inexcusable negligence.

"Here in the instant case, there is no question that the PCGG Commissioners are public officers, that Enrique Razon, Jr. was given unwarranted benefits and/or advantage by the approval of his application for P5M by the PCGG Commissioners, because Enrique Razon was allowed to use company funds for his personal use and there was evident bad faith, there being actual or constructive fraud because while the application for P5M was approved for the use of Metro Port, the corresponding check was made in the name of Enrique Razon, Jr.

"Perforce, PCGG Commissioners Ramon Diaz and Commissioner Mary Concepcion Bautista, who according to witness Ernesto Baria approved said application must be held accountable and answerable.

"(2) Re: Failure to Collect Said P5M

"The records show that no action has been taken by PCGG to collect the same despite the lapse of the expiry period. This may also fall within the parameters of Section 3, paragraph (e) R.A. 3019, there being undue injury to the Government. Perforce, the same Commissioners must be held accountable and answerable." (pp. 291-303, Rollo of G.R. No. 101202.)

Based on this report, on May 30, 1989, Ombudsman Conrado M. Vasquez issued a Memorandum addressed to the Office of the Special Prosecutor, approving the recommendation to conduct a preliminary investigation against Diaz and others in ten (10) cases including those involving GLORIOUS SUN and METRO PORT:

"(2) against Commissioner Ramon Diaz for conceding to Nemesio Co and/or Glorious Sun the buildings, equipments and machineries which are under sequestration (ID., pp. 30-31);

"xxx xxx xxx.

"(9) against Commissioner Ramon Diaz and Mary Concepcion Bautista for lending P5,000,000.00 belonging to Metro Port to Enrique Razon, Jr. (ID., pp. 81-82);

"xxx xxx xxx.

"I am hereby approving the recommendation that a preliminary investigation be conducted in the above-entitled cases." (p. 356, Rollo of G.R. No. 101202.)

A panel of three (3) prosecutors, later reduced to two (2), with Parentela, Jr. as chairman and Special Prosecution Officer Emmanuel M. Laurenzo as member, was constituted to conduct the preliminary investigation.

On September 29, 1989, the petitioner was served with a subpoena issued by Parentela requiring him to submit his sworn statement in connection with the charges set forth above. Petitioner submitted his counter-affidavit on the charges on December 22, 1989.

In a resolution No. OMB-0-89-02053 dated March 30, 1990, prosecutor Parentela recommended the filing of an information against the petitioner for violation of the Anti-Graft Law in the AIF/DSA/GLORIOUS SUN case. It was approved by the Ombudsman on April 10, 1990. On April 26, 1990, petitioner filed a motion for reinvestigation and to disqualify the Ombudsman.

On June 27, 1990, the panel issued Resolution No. OMB-0-89-02060 in the METRO PORT case, finding a prima facie case of violation of R.A. 3019, Section 3, Paragraph (e), and recommending the filing of an information against petitioner Diaz and Commissioner Mary Concepcion Bautista. This was approved by Ombudsman Conrado M. Vasquez on July 9, 1990.

On August 4, 1990, the petitioner and his co-accused, Mary Concepcion Bautista, filed a motion for reinvestigation and a second motion to disqualify or inhibit the Ombudsman, Conrado Vasquez, for alleged partiality.

The motion for reinvestigation of the METRO PORT case was denied on August 12, 1991 by Special Prosecution Officer Luz L. Quiñones-Marcos (Annex "H", pp. 72--74, Rollo of G.R. No. 102554) for the reason that:

"The undersigned, after pains-takingly going over the evidence submitted in this case, finds no cogent reason to disturb the previous findings of Prosecutor Parentela, Jr.

"The Commission's decision allowing Metro Port to withdraw P5M defeated the purpose of sequestration. The role of the Commission as an overseer is to see to it that funds of Metro Port are properly used and preserved. It is the undersigned's view that in the instant case, the Commission has not complied with its duty as an overseer of the funds of Metro Port and has acted with manifest partiality and evident bad faith when it allowed the said withdrawal, knowing fully well that the same will be used for a purpose not germane to the business of Metro Port.

"The defense interposed by respondents that the withdrawal of P5M was secured by a collateral is highly preposterous because the collaterals put up by Enrique Razon, Jr. to secure the said release are assets, the ownership of which remains unsettled and still the subject of controversy. Respondents should have outrightly rejected these collaterals, as the same could not secure anything. Thus, respondents acted with evident bad faith and manifest partiality in the withdrawal aforementioned.

"Undoubtedly, the said withdrawal has given Razon, Jr. unwarranted benefit and has caused the government undue injury considering that even up to this date, the same (loan) has remained outstanding." (p. 73, Rollo of G.R. No. 102554.)

On September 7, 1990, the Ombudsman issued a resolution inhibiting himself from taking part in the cases against the petitioner.

An information in the METRO PORT case was filed on October 1, 1991 against the petitioner and Commissioner Bautista for violation of R.A. No. 3019, Sec. 3, par. (e). It was docketed as Crim. Case No. 17087 in the Second Division of the Sandiganbayan.

On November 5, 1991, petitioner filed a petition for certiorari and prohibition in this Court (G.R. No. 102554) alleging that respondent Ombudsman acted with grave abuse of discretion in finding a prima facie case and filing an information for graft and corrupt practices against him on account of his actuations in the METRO PORT case.

Another information charging the petitioner with violation of the Anti-Graft Law in the AIF/DSA/GLORIOUS SUN case was filed by Parentela in the Sandiganbayan (SB Crim. Case No. 16198). When petitioner's motions to quash the information and for reinvestigation were denied by the Sandiganbayan, he also sought relief through a petition for certiorari and prohibition in this Court (G.R. No. 101202) alleging that:

1. His right to due process was violated because the preliminary investigation was made by the same persons who gathered the evidence against him, hence, they did not possess the "cold neutrality of an impartial judge" (p. 9, Rollo); and
2. No formal sworn written complaint had been filed by Solicitor General Chavez against him.

On December 5, 1991, the two petitions were consolidated.

There is no merit in both petitions. Petitioner's allegation that he was denied due process because the preliminary investigation was conducted by the same persons who "gathered" the evidence against him is not correct.

On the basis of the charges made by Chavez and the evidence which he presented at the joint investigation conducted by the Senate Blue Ribbon Committee and the Ombudsman panel, Parentela, with the approval of the Ombudsman, decided to conduct a preliminary investigation to enable the petitioner to refute the charges against him. He subpoenaed the petitioner. Petitioner submitted his counter-affidavit and Chavez filed a reply. Only after the investigating panel recommended the filing of informations, which the Ombudsman approved, did the petitioner and Commissioner Bautista ask for a reinvestigation which Special Prosecution Officer Quiñones-Marcos denied. He then filed a motion to quash the information on the theory that the preliminary investigation that was conducted by Special Prosecutor Parentela was null and void for not having followed the procedure prescribed in Section 3, Rule 112 of the 1985 Rules of Criminal Procedure and the doctrine in *Cojuangco vs. PCGG*, 190 SCRA 226 that: "the law enforcer who conducted the criminal investigation, gathered the evidence, and thereafter filed the complaint for the purpose of preliminary investigation, cannot be allowed to conduct the preliminary investigation of his own complaint."

There is no merit in that argument.

Parentela did not "gather" evidence for Chavez to use against the petitioner. He and Special Prosecution Officer Lorenzo merely received Chavez' evidence, and the petitioner's as well.

The Sandiganbayan, in its Resolution of June 3, 1991, found that the preliminary investigation conducted by Parentela substantially complied with Section 3, Rule 112 of the Rules of Criminal Procedure.

"x x x. During the hearings jointly held by the Senate Blue Ribbon Committee and the Office of the Ombudsman/Special Prosecutor, complainant Chavez was afforded all the opportunities to state, under oath, facts and circumstances of his own personal knowledge regarding the contract entered into between the PCGG, as represented by herein accused, and Nemesio Co. x x x. The testimony and/or complaint of Chavez that are/is made the basis of the Information for this case, can be found in pages 17 to 26 of the Memorandum marked as Annex 'C' of the prosecution's Opposition to Omnibus Motion. After Prosecutor Parentela had found ample basis to continue on with the inquiry, he then issued the corresponding Sub-poena to accused-movant Diaz, with the aforesaid Memorandum attached. This shows beyond question that the accused-movant has been informed of the charges levelled against him by Chavez. That he was indeed apprised of such charges may be deduced from the fact that he was able to file a Counter-Affidavit, wherein he answered the accusations made against him. After complainant Chavez had submitted his Reply to said Counter-Affidavit, Prosecutor Parentela came up with his finding of a prima facie case against the accused-movant and consequently recommended the filing of an Information against him.

"Verily, the above-stated circumstances attest to the conclusion that accused-movant Diaz was given his proverbial day in court, at least at the level of preliminary inquiry. In its barest form, giving a person his day in court is affording him the opportunity to be heard. It is an element sine qua non to the guaranty of due process so zealously enshrined in the fundamental law which, as aptly distilled by Mr. Justice Frankfurter, is 'merely an embodiment of the sporting idea of fair play' (*I Tañada and Fernando*, Constitution of the Philippines, 4th Ed., p. 85). Applied, to judicial proceedings, due process demands, as an irreducible minimum requirement, that a party thereto be given reasonable notice of trial or contest; it contemplates an opportunity to be heard and the fullest opportunity to prove his allegations; and judgment to be rendered must follow a lawful hearing (*Lopez vs. The Director of Lands*, 47 Phil. 23, 32; *The City of Manila vs. Posadas, et al.*, 48 Phil. 309, 334). Short of that reasonable opportunity, a party would be denied his day in court and proceedings taken against him in his absence would suffer from an inherent infirmity for being a denial of his constitutional right (*Insurance Co. of North America vs. Philippine Ports Terminal, Inc.*, 107 Phil. 626). Judging from the events that transpired in the present case, it is indubitably established that accused-movant's right to be heard had been satisfactorily

protected.

"We also note that prior to the filing of his Counter-Affidavit, accused-movant Diaz did not raise any objection as to the manner by which the preliminary investigation was being held, as he does now after an adverse resolution. x x x." (pp. 148-150, Rollo.)

Petitioner's reliance on this Court's ruling in *Cojuangco vs. PCGG* is misplaced, for the factual milieu of that case is entirely different from this case. The preliminary investigation of Eduardo Cojuangco by the PCGG was held null and void because previous thereto, the PCGG itself had gathered evidence against him to support its order for the sequestration of Cojuangco's assets and the filing of civil complaints to recover them as ill-gotten wealth. On the basis of the same evidence, the Solicitor General, as counsel for the PCGG, filed criminal complaints against Cojuangco with the PCGG. The latter, exercising its power to investigate and prosecute ill-gotten wealth cases against President Marcos, his relatives and associates, under Sections 2(b) and 3(a) of Executive Order No. 1 and Sections 1 and 2 of Executive Order No. 14, conducted a preliminary investigation of the criminal charges. Cojuangco questioned the PCGG's authority to conduct the preliminary investigation, alleging that he was denied due process.

In setting aside the preliminary investigation of Cojuangco by the PCGG, this Court observed that, as the PCGG itself previously found a *prima facie* case against Cojuangco and caused the sequestration of his properties, "it is difficult to imagine how in the conduct of such preliminary investigation, the PCGG could even make a turn about and take a position contradictory to its earlier finding of a *prima facie* case against the petitioner and intervenors" (*Cojuangco vs. PCGG*, 190 SCRA 226, 227). The Court held:

"x x x. In our criminal justice system, the law enforcer who conducted the criminal investigation, gathered the evidence and thereafter filed the complaint for the purpose of preliminary investigation cannot be allowed to conduct the preliminary investigation of his own complaint. It is, to say the least, arbitrary and unjust. It is in such instances that We say one cannot be 'a prosecutor and judge at the same time.' Having gathered the evidence and filed the complaint as a law enforcer, he cannot be expected to handle with impartiality the preliminary investigation of his own complaint, this time as a public prosecutor. The circumstances of the instant petition are even worse. To repeat, the PCGG and the Solicitor General, finding a *prima facie* basis filed a civil complaint against petitioner and intervenors alleging substantially the same illegal or criminal acts subject of the subsequent criminal complaints the Solicitor General filed with the PCGG for preliminary investigation. While ostensibly, it is only the Solicitor General who is the complainant in the criminal cases filed with the PCGG, in reality the PCGG is an unidentified co-complainant. Moreover, when the PCGG issued the sequestration and freeze orders against petitioner's properties, it was on the basis of a *prima facie* finding that the same were ill-gotten and/or were acquired in relation to the illegal disposition of coconut levy funds. Thus, the Court finds that the PCGG cannot possibly conduct the preliminary investigation of said criminal complaints with the 'cold neutrality of an impartial judge,' as it has prejudged the matter." (Ibid. pp. 227-228.)

In this case, unlike the *Cojuangco* case, Parentela was not the accuser and investigator rolled into one. Chavez was the accuser. Parentela preliminarily investigated the charges, evaluated the evidence which Chavez produced, and filed the information in the Sandiganbayan. As pointed out by that court, the differences between Cojuangco's case and the petitioner's case are the following:

"x x x. While in *Cojuangco*, it may be said that both the complainant and preliminary investigating officer were the PCGG, the same is not true in the present case. It is readily discernible that Chavez is the complainant, while the Office of the Ombudsman/Special Prosecutor is the investigating body in the instant complaint, thereby barring any probability of partiality that would require inhibition. It is Chavez who came up with the evidence, while Prosecutor Parentela evaluated the same to find out if he could make out a *prima facie* case." (pp. 151- 152, Rollo.)

Clearly, both the preliminary investigation which Parentela conducted and the information which he filed in the Sandiganbayan are valid.

There is no merit in the petitioner's contention that the preliminary investigation of Chavez' charges was invalid because Chavez' charges had not been made in writing nor under oath. In his pleadings in *American Inter-fashion Corp., et al. vs. PCGG*, G.R. No. 79342, Chavez accused Diaz of conspiracy to defraud the government of its rights to the ill-gotten 100% dividends of Eastern Telecommunications Phils., Inc. (p. 134, Rollo, Vol. IV), and of "gross misconduct and gross violation of his sworn duty as PCGG chairman to discharge his functions in accordance with law" (p. 337, Rollo, Vol. IV). His testimony at the joint fact-finding investigation conducted by the Senate Blue Ribbon Committee and the Ombudsman panel was given under oath. His sworn testimony, as transcribed, provided a sufficient basis for the Ombudsman to investigate his charges for the Ombudsman may investigate "complaints filed in any form or manner," even complaints not drawn up in the usual form. Section 12, Article X of the 1987 Constitution provides:

"Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof." (Underscoring supplied.)

Section 3, Rule I of Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman), issued on April 10, 1990 similarly provides:

"Sec. 3. Form of complaints, grievances or requests for assistance. - Complaints may be in any form, either verbal or in writing. For a speedier disposition of the complaint, however, it is preferable that it be in writing and under oath. A complaint which does not disclose the identity of the complainant will be acted upon only if it merits appropriate consideration, or contains sufficient leads or particulars to enable the taking of further action."

In the light of all the foregoing, the Court finds no legal ground to set aside the preliminary investigation conducted by respondent Special Prosecutor Jose Parentela of the charges against the petitioner, or to annul the informations filed against him in SB Cases Nos. 16198 and 17087, and stop the Sandiganbayan from further proceeding in those cases.

WHEREFORE, the petitions for certiorari and prohibition are DENIED for lack of merit.  
SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Campos, Jr., and Quiason, JJ., concur.  
Gutierrez, Jr., J., on leave.

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