

**DRA. BRIGIDA S. BUENASEDA, LT. COL. ISABELO BANEZ, JR. ENGR. CONRADO REY MATIAS, MS. CORA S. SOLIS AND MS. ENYA N. LOPEZ, PETITIONERS, VS. SECRETARY JUAN FLAVIER, OMBUDSMAN CONR...**

*G.R. No. 106719. September 21, 1993*

Ponente: QUIASON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-106719/>

---

**QUIASON, J.:**

This is a Petition for Certiorari, Prohibition and Mandamus, with Prayer for Preliminary Injunction or Temporary Restraining Order, under Rule 65 of the Revised Rules of Court.

Principally, the petition seeks to nullify the Order of the Ombudsman dated January 7, 1992, directing the preventive suspension of petitioners, Dr. Brigida S. Buenaseda, Chief of Hospital III; Isabelo C. Banez, Jr., Administrative Officer III; Conrado Rey Matias, Technical Assistant to the Chief of Hospital; Cora C. Solis, Accountant III; and Enya N. Lopez, Supply Officer III, all of the National Center for Mental Health. The petition also asks for an order directing the Ombudsman to disqualify Director Raul Arnaw and Investigator Amy de Villa-Rosero, of the Office of the Ombudsman, from participation in the preliminary investigation of the charges against petitioner (Rollo, pp. 2-17; Annexes to Petition, Rollo, pp. 19-21).

The questioned order was issued in connection with the administrative complaint filed with the Ombudsman (OBM-ADM--0-91-0151) by the private respondents against the petitioners for violation of the Anti-Graft and Corrupt Practices Act.

According to the petition, the said order was issued upon the recommendation of Director Raul Arnaw and Investigator Amy de Villa-Rosero, without affording petitioners the opportunity to controvert the charges filed against them. Petitioners had sought to disqualify Director Arnaw and Investigator Villa-Rosero for manifest partiality and bias (Rollo, pp. 4-15).

On September 10, 1992, this Court required respondents' Comment on the petition.

On September 14 and September 22, 1992, petitioners filed a "Supplemental Petition (Rollo, pp. 124-130; Annexes to Supplemental Petition; Rollo, pp. 140-163) and an "Urgent Supplemental Manifestation" (Rollo, pp. 164-172; Annexes To Urgent Supplemental Manifestation; Rollo, pp. 173-176), respectively, averring developments that transpired after the filing of the petition and stressing the urgency for the issuance of the writ of preliminary injunction or temporary restraining order.

On September 22, 1992, this Court "x x x Resolved to REQUIRE the respondents to MAINTAIN in the meantime, the STATUS QUO pending filing of comments by said respondents on the original supplemental manifestation" (Rollo, p. 177).

On September 29, 1992, petitioners filed a motion to direct respondent Secretary of Health to comply with the Resolution dated September 22, 1992 (Rollo, pp. 182-192, Annexes, pp. 192-203). In a Resolution dated October 1, 1992, this Court required respondent Secretary of Health to comment on the said motion.

On September 29, 1992, in a pleading entitled "Omnibus Submission," respondent NCMH Nurses Association submitted its Comment to the Petition, Supplemental Petition and Urgent Supplemental Manifestation. Included in said pleadings were the motions to hold the lawyers of petitioners in contempt and to disbar them (Rollo, pp. 210--267). Attached to the "Omnibus Submission" as annexes were the orders and pleadings filed in Administrative Case No. OBM-ADM-0-91-0151 against petitioners (Rollo, pp. 268-480).

The Motion for Disbarment charges the lawyers of petitioners with: (1) "unlawfully advising or otherwise causing or inducing their clients - petitioners Buenaseda, et al., to openly defy, ignore, disregard, disobey or otherwise violate, maliciously evade their preventive suspension by Order of July 7, 1992 of the Ombudsman x x x"; (2) "unlawfully interfering with and obstructing the implementation of the said order (Omnibus Submission, pp. 50-52; Rollo, pp. 259-260); and (3) violation of the Canons of the Code of Professional Responsibility and of unprofessional and unethical conduct "by foisting blatant lies, malicious falsehood and outrageous deception" and by committing subornation of perjury, falsification and fabrication in their pleadings (Omnibus Submission, pp. 52-54; Rollo, pp. 261-263).

On November 11, 1992, petitioners filed a "Manifestation and Supplement to 'Motion to Direct Respondent Secretary of Health to Comply with 22 September 1992 Resolution'" (Manifestation attached to Rollo without pagination between pp. 613 and 614 thereof).

On November 13, 1992, the Solicitor General submitted its Comment dated November 10, 1992, alleging that: (a) "despite the issuance of the September 22, 1992 Resolution directing respondents to maintain the status quo, respondent Secretary refuses to hold in abeyance the implementation of petitioners' preventive suspension; (b) the clear intent and spirit of the Resolution dated September 22, 1992 is to hold in abeyance the implementation of petitioners' preventive suspension, the status quo obtaining the time of the filing of the instant petition; (c) respondent Secretary's acts in refusing to hold in abeyance implementation of petitioners' preventive suspension and in tolerating and approving the acts of Dr. Abueva, the OIC appointed to replace petitioner Buenaseda, are in violation of the Resolution dated September 22, 1992; and (d) therefore, respondent Secretary should be directed to comply with the Resolution dated September 22, 1992 immediately, by restoring the status quo ante contemplated by the aforesaid resolution" (Comment attached to Rollo without paginations between pp. 613-614 thereof).

In the Resolution dated November 26, 1992, this Court required respondent Secretary to comply with the aforestated status quo order, stating inter alia, that:

"It appearing that the status quo ante litem motan, or the last peaceable uncontested status which preceded the present controversy was the situation obtaining at the time of the filing of the petition at bar on September 7, 1992 wherein petitioners were then actually occupying their respective positions, the Court hereby ORDERS that petitioners be allowed to perform the duties of their respective positions and to receive such salaries and benefits as they may be lawfully entitled to, and that respondents and/or any and all persons acting under their authority desist and refrain from performing any act in violation of the aforementioned Resolution of September 22, 1992 until further orders from the Court" (Attached to Rollo after p. 615 thereof).

On December 9, 1992, the Solicitor General, commenting on the Petition, Supplemental Petition and Supplemental Manifestation, stated that: (a) "The authority of the Ombudsman is only to recommend suspension and he has no direct power to suspend;" and (b) "Assuming the Ombudsman has the power to directly suspend a government official or employee, there are conditions required by law for the exercise of such powers; [and] said conditions have not been met in the instant case" (Attached to Rollo without pagination).

In the pleading filed on January 25, 1993, petitioners adopted the position of the Solicitor General that the

Ombudsman can only suspend government officials or employees connected with his office. Petitioners also refuted private respondents' motion to disbar petitioners' counsel and to cite them for contempt (Attached to Rollo without pagination).

The crucial issue to resolve is whether the Ombudsman has the power to suspend government officials and employees working in offices other than the Office of the Ombudsman, pending the investigation of the administrative complaints filed against said officials and employees.

In upholding the power of the Ombudsman to preventively suspend petitioners, respondents (Urgent Motion to Lift Status Quo, etc, dated January 11, 1993, pp. 10-11), invoke Section 24 of R.A. No. 6770, which provides:

"Sec. 24. Preventive Suspension. - The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charge would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided."

Respondents argue that the power of preventive suspension given the Ombudsman under Section 24 of R.A. No. 6770 was contemplated by Section 13 (8) of Article XI of the 1987 Constitution, which provides that the Ombudsman shall "exercise such other power or perform such functions or duties as may be provided by law."

On the other hand, the Solicitor General and the petitioners claim that under the 1987 Constitution, the Ombudsman can only recommend to the heads of the departments and other agencies the preventive suspension of officials and employees facing administrative investigation conducted by his office. Hence, he cannot order the preventive suspension himself.

They invoke Section 13(3) of the 1987 Constitution which provides that the Office of the Ombudsman shall have inter alia the power, function, and duty to:

"Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure or prosecution, and ensure compliance therewith."

The Solicitor General argues that under said provision of the Constitution, the Ombudsman has three distinct powers, namely: (1) direct the officer concerned to take appropriate action against public officials or employees at fault; (2) recommend their removal, suspension, demotion fine, censure, or prosecution; and (3) compel compliance with the recommendation (Comment dated December 3, 1992, pp. 9-10).

The line of argument of the Solicitor General is a siren call that can easily mislead, unless one bears in mind that what the Ombudsman imposed on petitioners was not a punitive but only a preventive suspension.

When the Constitution vested on the Ombudsman the power "to recommend the suspension" of a public official or employees (Sec. 13 [3]), it referred to "suspension," as a punitive measure. All the words associated with the word "suspension" in said provision referred to penalties in administrative cases, e.g. removal, demotion, fine, censure. Under the rule of *Noscitur a sociis*, the word "suspension" should be given the same sense as the other words with which it is associated. Where a particular word is equally susceptible of various meanings, its correct construction may be made specific by considering the company of terms in which it is found or with which it is

associated (Co Kim Chan v. Valdez Tan Keh, 75 Phil. 371 [1945]; Caltex (Phils.) Inc. v. Palomar, 18 SCRA 247 [1966]).

Section 24 of R.A. No. 6770, which grants the Ombudsman the power to preventively suspend public officials and employees facing administrative charges before him, is a procedural, not a penal statute. The preventive suspension is imposed after compliance with the requisites therein set forth, as an aid in the investigation of the administrative charges.

Under the Constitution, the Ombudsman is expressly authorized to recommend to the appropriate official the discipline or prosecution of erring public officials or employees. In order to make an intelligent determination whether to recommend such actions, the Ombudsman has to conduct an investigation. In turn, in order for him to conduct such investigation in an expeditious and efficient manner, he may need to suspend the respondent.

The need for the preventive suspension may arise from several causes, among them, the danger of tampering or destruction of evidence in the possession of respondent; the intimidation of witnesses, etc. The Ombudsman should be given the discretion to decide when the persons facing administrative charges should be preventively suspended.

Penal statutes are strictly construed while procedural statutes are liberally construed (Crawford, Statutory Construction, Interpretation of Laws, pp. 460-461; Lacson v. Romero, 92 Phil. 456 [1953]). The test in determining if a statute is penal is whether a penalty is imposed for the punishment of a wrong to the public or for the redress of an injury to an individual (59 Corpuz Juris, Sec. 658; Crawford, Statutory Constructive, pp. 496-497). A Code prescribing the procedure in criminal cases is not a penal statute and is to be interpreted liberally (People v. Adler, 140 N.Y. 331; 35 N.E. 644).

The purpose of R.A. No. 6770 is to give the Ombudsman such powers as he may need to perform efficiently the task committed to him by the Constitution. Such being the case, said statute, particularly its provisions dealing with procedure, should be given such interpretation that will effectuate the purposes and objectives of the Constitution. Any interpretation that will hamper the work of the Ombudsman should be avoided.

A statute granting powers to an agency created by the Constitution should be liberally construed for the advancement of the purposes and objectives for which it was created (Cf. Department of Public Utilities v. Arkansas Louisiana Gas. Co., 200 Ark. 983, 142 S.W. (2d) 213 [1940]; Wallace v. Feehan, 206 Ind. 522, 190 N.E., 438 [1934]).

In *Nera v. Garcia*, 106 Phil. 1031 [1960], this Court, holding that a preventive suspension is not a penalty, said:

"Suspension is a preliminary step in an administrative investigation. If after such investigation, the charges are established and the person investigated is found guilty of acts warranting his removal, then he is removed or dismissed. This is the penalty."

To support his theory that the Ombudsman can only preventively suspend respondents in administrative cases who are employed in his office, the Solicitor General leans heavily on the phrase "suspend any officer or employee under his authority" in Section 24 of R.A. No. 6770.

The origin of the phrase can be traced to Section 694 of the Revised Administrative Code, which dealt with preventive suspension and which authorized the chief of a bureau or office to "suspend any subordinate or employee in his bureau or under his authority pending an investigation x x x."

Section 34 of the Civil Service Act of 1959 (R.A. No. 2266), which superseded Section 694 of the Revised Administrative Code also authorized the chief of a bureau or office to "suspend any subordinate officer or

employees, in his bureau or under his authority."

However, when the power to discipline government officials and employees was extended to the Civil Service Commission by the Civil Service Law of 1975 (P.D. No. 805), concurrently with the President, the Department Secretaries and the heads of bureaus and offices, the phrase "subordinate officer and employee in his bureau" was deleted, appropriately leaving the phrase "under his authority." Therefore, Section 41 of said law only mentions that the proper disciplining authority may preventively suspend "any subordinate officer or employee under his authority pending an investigation x x x" (Sec. 41).

The Administrative Code of 1987 also empowered the proper disciplining authority to "preventively suspend any subordinate officer or employee under his authority pending an investigation" (Sec. 51).

The Ombudsman Law advisedly deleted the words "subordinate" and "in his bureau," leaving the phrase to read "suspend any officer or employee under his authority pending an investigation x x x." The conclusion that can be deduced from the deletion of the word "subordinate" before and the words "in his bureau" after "officer or employee" is that the Congress intended to empower the Ombudsman to preventively suspend all officials and employees under investigation by his office, irrespective of whether they are employed "in his office" or in other offices of the government. The moment a criminal or administrative complaint is filed with the Ombudsman, the respondent therein is deemed to be "in his authority" and he can proceed to determine whether said respondent should be placed under preventive suspension.

In their petition, petitioners also claim that the Ombudsman committed grave abuse of discretion amounting to lack of jurisdiction when he issued the suspension order without affording petitioners the opportunity to confront the charges against them during the preliminary conference and even after petitioners had asked for the disqualification of Director Arnaw and Atty. Villa-Rosero (Rollo, pp. 6-13). Joining petitioners, the Solicitor General contends that assuming *arguendo* that the Ombudsman has the power to preventively suspend erring public officials and employees who are working in other departments and offices, the questioned order remains null and void for his failure to comply with the requisites in Section 24 of the Ombudsman Law (Comment dated December 3, 1992, pp. 11-19).

Being a mere order for preventive suspension, the questioned order of the Ombudsman was validly issued even without a full-blown hearing and the formal presentation of evidence by the parties. In *Nera, supra*, petitioner therein also claimed that the Secretary of Health could not preventively suspend him before he could file his answer to the administrative complaint. The contention of petitioners herein can be dismissed perfunctorily by holding that the suspension meted out was merely preventive and therefore, as held in *Nera*, there was "nothing improper in suspending an officer pending his investigation and before the charges against him are heard x x x (*Nera v. Garcia, supra*).

There is no question that under Section 24 of R.A. No. 6770, the Ombudsman cannot order the preventive suspension of a respondent unless the evidence of guilt is strong and (1) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (2) the charge would warrant removal from the service; or (3) the respondent's continued stay in office may prejudice the case filed against him.

The same conditions for the exercise of the power to preventively suspend officials or employees under investigation were found in Section 34 of R.A. No. 2260.

The import of the *Nera* decision is that the disciplining authority is given the discretion to decide when the evidence of guilt is strong. This fact is bolstered by Section 24 of R.A. No. 6770, which expressly left such

determination of guilt to the "judgment" of the Ombudsman on the basis of the administrative complaint. In the case at bench, the Ombudsman issued the order of preventive suspension only after: (a) petitioners had filed their answer to the administrative complaint and the "Motion for the Preventive Suspension" of petitioners, which incorporated the charges in the criminal complaint against them (Annex 3, Omnibus Submission, Rollo, pp. 288-289; Annex 4, Rollo, pp. 290-296); (b) private respondent had filed a reply to the answer of petitioners, specifying 23 cases of harassment by petitioners of the members of private respondent (Annex 6, Omnibus Submission, Rollo, pp. 309-333); and (c) a preliminary conference wherein the complainant and the respondents in the administrative case agreed to submit their list of witnesses and documentary evidence.

Petitioners herein submitted on November 7, 1991 their list of exhibits (Annex 8 of Omnibus Submission, Rollo, pp. 336-337) while private respondents submitted their list of exhibits (Annex 9 of Omnibus Submission, Rollo, pp. 338-348).

Under these circumstances, it can not be said that Director Raul Arnaw and Investigator Amy de Villa-Rosero acted with manifest partiality and bias in recommending the suspension of petitioners. Neither can it be said that the Ombudsman had acted with grave abuse of discretion in acting favorably on their recommendation.

The Motion for Contempt, which charges the lawyers of petitioners with unlawfully causing or otherwise inducing their clients to openly defy and disobey the preventive suspension as ordered by the Ombudsman and the Secretary of Health can not prosper (Rollo, pp. 259-261). The Motion should be filed, as in fact such a motion was filed, with the Ombudsman. At any rate, we find that the acts alleged to constitute indirect contempt were legitimate measures taken by said lawyers to question the validity and propriety of the preventive suspension of their clients.

On the other hand, we take cognizance of the intemperate language used by counsel for private respondents hurled against petitioners and their counsel (Consolidated: (1) Comment on Private Respondent's "Urgent Motions, etc.,"; (2) Adoption of OSG's Comment; and (3) Reply to Private Respondent's Comment and Supplemental Comment, pp. 4-5).

A lawyer should not be carried away in espousing his client's cause. The language of a lawyer, both oral or written, must be respectful and restrained in keeping with the dignity of the legal profession and with his behavioral attitude toward his brethren in the profession (*Lubiano v. Gordolla*, 115 SCRA 459 [1982]). The use of abusive language by counsel against the opposing counsel constitutes at the same time a disrespect to the dignity of the court of justice. Besides, the use of impassioned language in pleadings, more often than not, creates more heat than light.

The Motion for Disbarment (Rollo, p. 261) has no place in the instant special civil action, which is confined to questions of jurisdiction or abuse of discretion for the purpose of relieving persons from the arbitrary acts of judges and quasi-judicial officers. There is a set of procedure for the discipline of members of the bar separate and apart from the present special civil action.

WHEREFORE, the petition is DISMISSED and the status quo ordered to be maintained in the Resolution dated September 22, 1992 is LIFTED and SET ASIDE.

### **SO ORDERED.**

Narvasa, C.J., Cruz, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Melo, Puno, and Vitug, JJ., concur.

Bellosillo, J., with concurring opinion.

Feliciano, J., on leave.

---

Buenaseda vs Flavier : 106719 : September 21, 1993 : J. Bellosillo : En Banc : Concurring Opinion 6 pt 6 pt 0 3

### **CONCURRING OPINION**

#### **BELLOSILLO, J.:**

I agree that the Ombudsman has the authority, under Sec. 24 of R.A. No. 6770, to preventively suspend any government official or employee administratively charged before him pending the investigation of the complaint, the reason being that respondent's continued stay in office may prejudice the prosecution of the case.

However, in the case before us, I am afraid that the facts thus far presented may not provide adequate basis to reasonably place petitioners under preventive suspension. For, it is not enough to rule that the Ombudsman has authority to suspend petitioners preventively while the case is in progress before him. Equally important is the determination whether it is necessary to issue the preventive suspension under the circumstances. Regretfully, I cannot see any sufficient basis to justify the preventive suspension. That is why, I go for granting oral argument to the parties so that we can truthfully determine whether the preventive suspension of respondents are warranted by the facts. We may be suspending key government officials and employees on the basis merely of speculations which may not serve the ends of justice but which, on the other hand, deprive them of their right to due process. The simultaneous preventive suspension of top officials and employees of the National Center for Mental Health may just disrupt the hospital's normal operations, much to the detriment of public service. We may safely assume that it is not easy to replace them in their respective functions as those substituting them may be taking over for the first time. The proper care of mental patients may thus be unduly jeopardized and their lives and limbs imperilled.

I would be amenable to holding oral argument to hear the parties if only to have enough factual and legal bases to justify the preventive suspension of petitioners.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.