

**IGNACIO R. BUNYE, JAIME D. FRESNEDI, LUCIO B. CONSTANTINO,
NOLASCO L. DIAZ, RUFINO J. JOAQUIN, ROGER S. SMITH,
ALEJANDRO L. MARTINEZ, AND ROMAN E. NIEFES, PETITIONERS, VS.
ASSOC...**

G.R. No. 110216. September 10, 1993

Ponente: GRÑO-AQUINO, J.

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GRÑO-AQUINO, J.:

This petition for certiorari and prohibition was filed by the petitioners, who are the municipal mayor, vice-mayor and incumbent councilors or members of the Sangguniang Bayan of Muntinlupa, Metro Manila. The petition seeks to annul the resolution promulgated on May 11, 1993 by the Second Division of the Sandiganbayan preventively suspending them from office pending their trial for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act under an information alleging that:

“That on or about August 1988, in the municipality of Muntinlupa, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused all public officers being the Mayor (Ignacio R. Bunye), Vice-Mayor (Jaime D. Fresnedi), Municipal Attorney (Victor C. Aguinaldo), Municipal Councilors (Carlos C. Tensuan, Alejandro L. Martinez, Epifanio A. Espeleta, Rey E. Bulay, Lucio B. Constantino, Roman E. Niefes, Nemesio Q. Mozo, Rufino J. Joaquin, Nolasco L. Diaz and Roger C. Smith), Barangay Chairman of Putatan (Rufino Ibe) and Barangay Chairman of Alabang (Nestor Santos), all in the municipality of Muntinlupa, Metro Manila, said accused, while in the performance of their official functions, in conspiracy with one another and taking advantage of their official positions, did then and there wilfully, unlawfully and feloniously enact Kapasiyahan Bilang 45 on August 1, 1988, and on the basis thereof, forcibly took possession of the New Public Market in Alabang, Muntinlupa, Metro Manila, and thereafter took over the operation and management of the aforesaid public market starting August 19, 1988, despite the fact that, there was a valid and subsisting lease contract executed on September 2, 1985 for a term of 25 years, renewable for another 25 years, between the Municipality of Muntinlupa, Metro Manila, represented by the former Municipal Mayor Santiago Carlos, Jr. and the Kilusang Bayan sa Paglilingkod ng mga Magtitinda ng Bagong Pamilyan ng Muntinlupa, Inc. (Kilusang Magtitinda for brevity), a Cooperative represented by its General Manager then, Amado G. Perez, and despite also the warnings from COA Chairman Domingo and MMC Governor Cruz ‘that appropriate legal steps be taken by the MMC toward the rescission/annulment of the contract x x x to protect the interest of the Government,’ and ‘x x x to evaluate thoroughly and study further the case to preclude possible damages of financial liabilities which the Court may adjudge against that municipality as an off-shoot of the case,’ which forcible take-over had caused undue injury to the aforesaid Cooperative members, and gave the Municipal Government, and in effect, the herein accused themselves, unwarranted benefits, advantage or preference in the discharge of their official functions as aforesaid, through evident bad faith or gross inexcusable negligence, considering that, the Cooperative members had introduced improvements, including the construction of the ‘KBS’ build-ing, RR Section-Phases I and II, asphalt-ing of the roads surrounding the market place, and for the pur-pose, the cooperative had invested Thirteen Million Four Hundred Seventy Nine Thousand Nine Hundred Pesos (P13,479,900.00) in connection therewith, which had been deposited in trust to the Municipal Govern-ment, and in consideration thereof, the cooperative was extended the above long

term lease to manage and operate the public market and to pay a monthly rental of P35,000.00 only--said offense having been committed by the accused in their performance of official duties." (pp. 34-36, Rollo.)

On motion of the Public Prosecutor, and over the opposition of the accused, the Sandiganbayan issued on May 11, 1993 a resolution suspending them *pendente lite* from public office pursuant to Section 13 of Republic Act No. 3019 which provides:

"Sec. 13. Suspension and loss of benefits. - Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to rein-statement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him."

The petitioners fruitlessly sought a reconsideration of the order of suspension. In due time, they filed this petition for certiorari and prohibition wherein they pray for the issuance of a temporary restraining order or writ of preliminary injunction to stay the implementation of the assailed order or resolution.

Upon receipt of the petition, the Court, without granting the temporary restraining order prayed for, ordered the public respondents to comment on the petition.

After deliberating on the petition, the public respondents' comment thereon, and the petitioners' reply to the comment, the Court is unconvinced that the petition ought to be granted.

The petitioners' main argument against their preventive suspension is that it is unjustified or unnecessary for, having admitted repeatedly in no less than four (4) pleadings filed in related proceedings and found in the records of this case, that they did commit the acts constituting the offense charged against them, i.e., that they enacted and approved Kapasiyahan Blg. 45 and wrested the management and operation of the new public market in Alabang from the Kilusang Bayan sa Paglilingkod ng mga Magtitinda ng Bagong Pamilyan ng Muntinlupa, Inc. (or "Cooperative" for brevity) and transferred it to the Municipality of Muntinlupa, the fear of the Court that, unless they are preventively suspended, they may tamper with the records of that transaction, has no more validity. Moreover, the proceedings against the petitioners before the Second Division of the Sandiganbayan involves no factual issue but only the legal question of whether or not the cancellation by the petitioners of the Cooperative's subsisting lease contract over the Muntinlupa Public Market was justified by public interest or general welfare. Consequently, nothing can possibly be compromised or hampered by their remaining in office, since the said proceedings will no longer be for the purpose of receiving evidence on factual issues but only to hear arguments, position papers or memoranda, on the purely legal issue of whether the rescission of the Cooperative's market contract is a valid exercise of police power by the municipality. Absent any need for testimonial and/or documentary evidence, any apprehension that the petitioners might intimidate or coerce prospective witnesses against them, or tamper with office records under their control, is "more imaginary than real" (p. 16, Rollo).

Adverting to this Court's observation in *Ganzon vs. CA*, 200 SCRA 271, 272, that the sole objective of an administrative suspension is "to prevent the accused from hampering the normal course of the investigation with his influence and authority over possible witnesses or to keep him off the records and other evidence" and "to assist prosecutors in firming up a case, if any, against an erring local official," the petitioners insist that as no such reason for their suspension exists, then the order suspending them should be set aside as a grave abuse of the court's discretion.

Another point asserted by the petitioners is that their preventive suspension will "sow havoc and confusion in the government of the Municipality of Muntinlupa, to the certain shattering of the peace and order thereat" (p. 13,

Rollo), for without a mayor, vice-mayor and six (6) councilors, the local government would be paralyzed. Only eight (8) of the present members of the Sangguniang Bayan will remain to discharge the duties and responsibilities of that body. If two of them will be designated to take over the offices of the mayor and vice-mayor, the Sangguniang Bayan will be without a quorum to perform its functions.

The Court finds no merit in those arguments. Section 13 of R.A. No. 3019, as amended, unequivocally provides that the accused public officials "shall be suspended from office" while the criminal prosecution is pending in court.

In *Gonzaga vs. Sandiganbayan*, 201 SCRA 417, 422, 426, this Court ruled that such preventive suspension is mandatory; there are no ifs and buts about it.

"Petitioner at the outset contends that Section 13 of Rep. Act 3019, as amended, is unconstitutional as the suspension provided thereunder partake of a penalty even before a judgment of conviction is reached, and is thus violative of her constitutional right to be presumed innocent.

"We do not accept the contention because: firstly, under Section 13, Rep. Act 3019, suspension of a public officer upon the filing of a valid information is mandatory (*People vs. Albano*, G.R. No. L-45376-77, July 26, 1988, 163 SCRA 511). x x x."

"x x x x x x x x."

"All told, preventive suspension is not violative of the Constitution as it is not a penalty. In fact, suspension particularly under Section 13 of Rep. Act 3019 is mandatory once the validity of the information is determined (*People vs. CA*, 135 SCRA 372)."

Clearly, the Sandiganbayan did not abuse its discretion in ordering the preventive suspension of the petitioners.

There is no merit in the petitioners' argument that because they have repeatedly admitted that they had committed the acts constituting the offense charged against them, there is no cause for apprehension that they might tamper with the records in the offices under their control, or intimidate prospective witnesses against them. The Solicitor General correctly replied that it is not for the petitioners to say that their admissions are all the evidence that the prosecution will need to hold up its case against them. "The prosecution must be given the opportunity to gather and prepare the facts for trial under conditions which would ensure nonintervention and noninterference for ninety (90) straight days from petitioners' camp" (p. 13, Solicitor General's Comment).

The fear of the petitioners that the municipal government of Muntinlupa will be paralyzed for ninety (90) days when they (petitioners) are preventively suspended, is remote. There will still remain eight (8) councilors who can meet as the Sangguniang Bayan. The President or his alter ego, the Secretary of Interior and Local Government, will surely know how to deal with the problem of filling up the temporarily vacant positions of mayor, vice-mayor and six councilors in accordance with the provisions of the Local Government Code, R.A. 7160 (*Samad vs. COMELEC*, et al., G.R. No. 107854 and *Samad vs. Executive Secretary*, et al., G.R. No. 108642, July 16, 1993; *Sanchez vs. COMELEC*, 114 SCRA 454).

WHEREFORE, the petition for certiorari and prohibition is DISMISSED for lack of merit. Costs against the petitioners.

SO ORDERED.

Narvasa, C.J., Cruz, Padilla, Bidin, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Quiason, Puno, and Vitug, JJ., concur.

Feliciano, J., on leave.

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