

ANTONIO M. BOLASTIG, PETITIONER, VS. HON. SANDIGANBAYAN (THIRD DIVISION) AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 110503. August 04, 1994

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari to set aside the resolution, dated March 18, 1993, of the Sandiganbayan, granting the motion of the Special Prosecution Officer to suspend the accused from office *pendente lite* and the resolution, dated March 29, 1993, denying reconsideration of the first resolution.

Petitioner Antonio M. Bolastig is governor of Samar. On August 31, 1989, an information was filed against him and two others for alleged overpricing of 100 reams of onion skin paper in violation of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019). The Information alleged:

That on or about June 24, 1986, in the Municipality of Catbalogan, Samar, Philip-pines, and within the jurisdiction of this Honorable Court, the above-named accused ANTONIO M. BOLASTIG, PEDRO ASON and PRUDENCIO MACABENTA, all public officers, duly appointed and qualified as such, being the OIC Governor, Provincial Treasurer and Property Officer respectively, all of the Province of Samar, and being members of Bids and Awards Committee responsible for the purchase of office sup-plies for the Provincial Government of Samar and while in the performance of their respec-tive positions, confederating and mutually helping one another and through manifest partiality and evident bad faith, did then and there wilfully and unlawfully enter into a purchase contract with REYNALDO ESPARAGUERRA, a private citizen, for this purchase of certain office supplies, namely: one hundred (100) reams of Onion Skin size 11" x 17" at a unit price of Five Hundred Fifty pesos (P550.00) or a total price of Fifty-Five Thousand Pesos (P55,000.00), which contract was manifestly and grossly disadvantageous to the government as the prevailing unit price for said item was only Fifty-Five Pesos (P55.00) or a total price of Five Thousand Five Hundred Pesos (P5,500.00), thereby causing undue injury to the government in the total amount of Forty-Nine Thousand Five Hundred Pesos (P49,500.00).

CONTRARY TO LAW.

Petitioner was arraigned on January 5, 1993, whereupon he entered a plea of "not guilty."

On January 25, 1993, Special Prosecution Officer III Wilfredo Orenca moved for petitioner's suspension, citing sec. 13 of Republic Act No. 3019 which provides in part:

Sec. 13. Suspension and loss of bene-fits. - Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property, whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office.

Petitioner opposed the motion, arguing inter alia that:

2. Upon a bare invocation of the fore-going provision, the prosecution would have this Honorable Court issue an Order suspending the accused, as if suspension of a public officer is a mindless and meaningless exercise, and is imposed without regard to the spirit and intent of the law upon which it is based.
3. Indeed, it cannot be simply assumed that laws are enacted and followed without a particular purpose to be served, especially when a mechanical application shall injure not only the public official concerned, but the entire electorate as well.[1]

The Sandiganbayan rejected petitioner's argument and ordered the suspension of petitioner from office for a period of 90 days. It held that preventive suspension is mandatory under sec. 13, of Rep. Act No. 3019, pursuant to which all that is required is for the court to make a finding that the accused stands charged under a valid information "for any of the above-described crimes for the purpose of granting or denying the sought for suspension." [2]

Implementation of the resolution was held in abeyance to allow petitioner to file a motion for reconsideration, which the Sandiganbayan, however, eventually denied on March 29, 1993.

Hence, this petition. It is contended that the Sandiganbayan committed a grave abuse of its discretion in issuing its resolution

(a) despite the failure of the prosecution to show any public interest to be served, or injury to be prevented, or any other compelling factual circumstance which justifies the preventive suspension of petitioner; and

(b) despite the injury not only upon petitioner but also upon the people of Samar whose political rights are trampled upon by the suspension for no valid reason of their duly elected Governor.

To the Solicitor General's contention that upon the filing of a valid information suspension pendente lite is mandatory as held in several decisions of this Court,[3] petitioner replies that, while the Sandiganbayan has the power to order preventive suspension, there is a "need [for the Sandiganbayan] to go further, beyond the filing of the information, to a determination of the necessity of the preventive suspension in accordance with the spirit and intent of the Anti-Graft Law." Petitioner explains:

In other words, when the Anti-Graft Law gave the courts the authority to order the preventive suspension of the accused, it never intended to impose a mindless and meaningless exercise. The exercise of such authority must always be within the confines of the legislative intent, for to go beyond it would be to exceed the bounds of the law. Preventive suspension should therefore be ordered only when the legislative purpose is achieved, that is, when "the suspension order x x x prevent(s) the accused from using his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him." Corollarily, when the legislative purpose is not achieved, preventive suspension is improper and should not be decreed." [4]

The petitioner's contention has no merit. It is now settled that sec. 13 of Republic Act No. 3019 makes it mandatory for the Sandiganbayan to suspend any public officer against whom a valid information charging violation of that law, Book II, Title 7 of the Revised Penal Code, or any offense involving fraud upon government or public funds or property is filed.[5] The court trying a case has neither discretion nor duty to determine whether preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continue committing malfeasance in office. The presumption is that unless the accused is suspended he may frustrate his prosecution or commit further acts of malfeasance or do both, in the same way that upon a finding that there is probable cause to believe that a crime has been committed and that the accused is probably guilty thereof, the law requires the judge to issue a warrant for the arrest of the accused. The law does not require the court to determine whether the accused is likely to escape or evade the jurisdiction of the court.

It is indeed true that in some of our decisions^[6] the expression "the maximum period of ninety (90) days" is used. But that is only for the purpose of emphasizing that the preventive suspension therein involved, which were for more than ninety (90) days, were excessive and unreasonable. It is to be noted that the ninety-day period of preventive suspension is not found in sec. 13 of Republic Act No. 3019 but was adopted from sec. 42 of the Civil Service Decree (P.D. No. 807),^[7] which is now sec. 52 of the Administrative Code of 1987. This latter provision states:

Sec. 52. Lifting of Preventive Suspension Pending Administrative Investigation. - When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: Provided, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.

The duration of preventive suspension is thus coeval with the period prescribed for deciding administrative disciplinary cases. If the case is decided before ninety days, then the suspension will last less than ninety days, but if the case is not decided within ninety days, then the preventive suspension must be up to ninety days only. Similarly, as applied to criminal prosecutions under Republic Act No. 3019, preventive suspension will last for less than ninety days only if the case is decided within that period; otherwise, it will continue for ninety days.

The duration of preventive suspension will, therefore, vary to the extent that it is contingent on the time it takes the court to decide the case but not on account of any discretion lodged in the court, taking into account the probability that the accused may use his office to hamper his prosecution.

Indeed, were the Sandiganbayan given the discretion to impose a shorter period of suspension, say, 80, 70 or 60 days, as petitioner asserts, it would lie in its power not to suspend the accused at all. That, of course, would be contrary to the command of sec. 13 of Republic Act No. 3019.

Our holding that, upon the filing of a valid information charging violation of Republic Act No. 3019, Book II, Title 7 of the Revised Penal Code, or fraud upon government or public property, it is the duty of the court to place the accused under preventive suspension disposes of petitioner's other contention that since the trial in the Sandiganbayan is now over with respect to the presentation of evidence for the prosecution there is no longer any danger that petitioner would intimidate prosecution's witnesses. The fact is that the possibility that the accused would intimidate witnesses or otherwise hamper his prosecution is just one of the grounds for preventive suspension. The other one is, as already stated, to prevent the accused from committing further acts of malfeasance while in office.

Finally, the fact that petitioner's preventive suspension may deprive the people of Samar of the services of an official elected by them, at least temporarily, is not a sufficient basis for reducing what is otherwise a mandatory period prescribed by law. The vice governor, who has likewise been elected by them, will act as governor.^[8] Indeed, even the Constitution authorizes the suspension for not more than sixty days of members of Congress found guilty of disorderly behavior,^[9] thus rejecting the view expressed in one case^[10] that members of the legislature could not be suspended because in the case of suspension, unlike in the case of removal, the seat remains filled but the constituents are deprived of representation.

For the foregoing reasons, we hold that in ordering the preventive suspension of petitioner, the Sandiganbayan acted according to law.

WHEREFORE, the Petition for Certiorari is DISMISSED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

[1] Rollo, p. 19.

[2] Rollo, p. 27.

[3] Bunye v. Escareal, G.R. No. 110216, Sept. 10, 1993, 226 SCRA 332; Gonzaga v. Sandiganbayan, G.R. No. 96131, Sept. 6, 1991, 201 SCRA 417 (1991); People v. Albano, G.R. No. L-45376-77, July 26, 1988, 163 SCRA 511 (1988).

[4] Rollo, p. 65.

[5] Supra note 3.

[6] E.g., Gonzaga v. Sandiganbayan, supra; Doromal v. Sandiganbayan, G.R. No. 85468, Sept 7, 1989, 177 SCRA 354 (1989).

[7] Gonzaga v. Sandiganbayan, supra note 3.

[8] The Local Government Code of 1991, sec. 46(a).

[9] Art. VI, sec. 16 (3).

[10] Alejandrino v. Quezon, 46 Phil. 83, 96 (1924).

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