

REYNALDO V. TUANDA, MAYOR OF THE MUNICIPALITY OF JIMALALUD, NEGROS ORIENTAL, HERMINIGILDO FABURADA, (FORMER VICE-MAYOR), SANTOS A. VILLANUEVA, INCUMBENT MEMBER OF THE SANGGUNIAN...

G.R. No. 110544. October 17, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Petitioners institute this special civil action for certiorari and prohibition under Rule 65 of the Revised Rules of Court to set aside the resolution of the Sandiganbayan dated 17 February 1992 and its orders dated 19 August 1992 and 13 May 1993 in Criminal Case No. 16936 entitled "People of the Philippines versus Reynaldo Tuanda, et al." denying petitioners' motion for suspension of their arraignment.

The present controversy arose from the following antecedents:

On 9 February 1989, private respondents Delia Estrellanes and Bartolome Binaohan were designated as industrial labor sectoral representative and agricultural labor sectoral representative respectively, for the Sangguniang Bayan of Jimalalud, Province of Negros Oriental by then Secretary Luis T. Santos of the Department of Local Government. Private respondents Binaohan and Estrellanes took their oath of office on 16 February 1989 and 17 February 1989, respectively.

Subsequently, petitioners filed an undated petition with the Office of the President for review and recall of said designations. The latter, however, in a letter dated 20 March 1989, denied the petition and enjoined Mayor Reynaldo Tuanda to recognize private respondents as sectoral representatives.

On 4 May 1990, private respondents filed a petition for mandamus with the Regional Trial Court of Negros Oriental, Branch 35, docketed as Special Civil Action No. 9661, for recognition as members of the Sangguniang Bayan. It was dismissed on 23 July 1991.

Thereafter, on 20 June 1991, petitioners filed an action with the Regional Trial Court of Dumaguete City to declare null and void the designations of private respondents as sectoral representatives, docketed as Civil Case No. 9955 entitled "Reynaldo Tuanda, et al. versus Secretary of the Department of Local Government, et. al."

On 21 July 1991, an information was filed before the Sandiganbayan, docketed as Criminal Case No. 16936 entitled "People of the Philippines versus Reynaldo Tuanda, et. al.," charging petitioners thus:

INFORMATION

The undersigned Special Prosecution Officer of the Special Prosecutor, hereby accuses REYNALDO V. TUANDA, HERMENEGILDO G. FABURADA, MANUEL LIM, NICANOR P. AGOSTO, ERENIETA K. MENDOZA, MAXIMO VIERNES, HACUBINA V. SERILLO, and SANTOS A. VILLANUEVA of Violation

of Section 3(e) of R.A. No. 3019, as amended, committed as follows:

That during the period from February 1989 to February 1991 and subsequent thereto, in the Municipality of Jimalalud, Negros Oriental, and within the jurisdiction of this Honorable Court, accused, all public officers, Mayor REYNALDO V. TUANDA, Vice-Mayor HERMENEGILDO G. FABURADA, Sangguniang Members MANUEL LIM, NICANOR P. AGOSTO, ERENIETA K. MENDOZA, MAXIMO A. VIERNES, HACUBINA V. SERILLO, ILUMINADO D. ESTRELLANES and SANTOS A. VILLANUEVA while in the performance of their official functions and taking advantage of their public positions, with evident bad faith, manifest partiality, and conspiring and confederating with each other did, then and there, willfully and unlawfully cause undue injury to Sectoral Members Bartolome M. Binaohan and Delia T. Estrellanes by refusing to pay despite demand the amount of NINETY FIVE THOUSAND THREE HUNDRED FIFTY PESOS (P95,350.00) and ONE HUNDRED EIGHT THOUSAND NINE HUNDRED PESOS (P108,900.00) representing respectively their per diems, salaries and other privileges and benefits, and such undue injury continuing to the present to the prejudice and damage of Bartolome Binaohan and Delia Estrellanes.

CONTRARY TO LAW.[1]

On 9 September 1991, petitioners filed a motion with the Sandiganbayan for suspension of the proceedings in Criminal Case No. 16936 on the ground that a prejudicial question exists in Civil Case No. 9955 pending before the Regional Trial Court of Dumaguete City.[2]

On 16 January 1992, the Regional Trial Court rendered a decision declaring null and void ab initio the designations issued by the Department of Local Government to the private respondents as sectoral representatives for having been done in violation of Section 146 (2) of B.P. Blg. 337, otherwise known as the Local Government Code.[3]

The trial court expounded thus:

The Supreme Court in the case of Johnny D. Supangan Jr. v. Luis T. Santos, et al., G.R. No. 84663, along with 7 companion cases of similar import, (G.R. Nos. 05012, 87601, 87602, 87792, 87935, 88072, and 90205) all promulgated on August 24, 1990, ruled that:

B.P. Blg. 337 explicitly required that before the President (or the Secretary of the Department of Local Government) may appoint members of the local legislative bodies to represent the Industrial and Agricultural Labor Sectors, there must be a determination to be made by the Sanggunian itself that the said sectors are of sufficient number in the city or municipality to warrant representation after consultation with associations and persons belonging to the sector concerned.

The Supreme Court further ruled -

For that matter, the Implementing Rules and Regulations of the Local Government Code even prescribe the time and manner by which such determination is to be conducted by the Sanggunian.

Consequently, in cases where the Sanggunian concerned has not yet determined that the Industrial and Agricultural Labor Sectors in their particular city or municipality are of sufficient number to warrant representation, there will absolutely be no basis for the designation/appointments.

In the process of such inquiry as to the sufficiency in number of the sector concerned to warrant representation, the Sanggunian is enjoined by law (B.P. Blg. 337) to consult with associations and persons belonging to the sector concerned. Consultation with the sector concerned is made a pre-requisite. This is so considering that those who belong to the said sector are the ones primarily interested in being represented in the Sanggunian. In the same aforecited case, the Supreme Court considers such prior determination by the Sanggunian itself (not by any other person or body) as a condition sine qua non to a valid appointment or designation.

Since in the present case, there was total absence of the required prior determination by the Sangguniang Bayan of Jimalalud, this Court cannot help but declare the designations of private defendants as sectoral representatives null and void.

This verdict is not without precedence. In several similar cases, the Supreme Court invariably nullified the designations where the requirements of Sec. 146 (2), B.P. Blg. 337 were not complied with. Just to cite one case, the Supreme Court ruled:

There is no certification from the Sangguniang Bayan of Valenzuela that the sectors concerned are of sufficient number to warrant representation and there was no consultation whatsoever with the associations and persons belonging to the Industrial and Agricultural Labor Sectors. Therefore, the appointment of private respondents Romeo F. Bularan and Rafael Cortez are null and void (Romeo Llanado, et al. v. Hon. Luis Santos, et al., G.R. No. 86394, August 24, 1990).[4]

Private respondents appealed the aforesaid decision to the Court of Appeals, docketed as CA--G.R. CV No. 36769, where the same is currently pending resolution.

Meanwhile, on 17 February 1992, respondent Sandiganbayan issued a resolution denying the motion for suspension of proceedings filed by petitioners. Said respondent Sandiganbayan:

Despite the pendency of Civil Case No. 9955 of the Regional Trial Court of Negros Oriental, it appears, nevertheless, that the private complainants have been rendering services on the basis of their respective appointments as sectoral members of the Sangguniang Bayan of the Municipality of Jimalalud, Negros Oriental; and that their said appointments enjoy the presumption of regularity. Having rendered such services, the private complainants are entitled to the salaries attached to their office. Even assuming arguendo that the said Regional Trial Court shall later decide that the said appointments of the private complainants are null and void, still the private complainants are entitled to their salaries and compensation for service they have actually rendered, for the reason that before such judicial declaration of nullity, the private complainants are considered at least de facto public officers acting as such on the basis of apparently valid appointments issued by competent authorities. In other words, regardless of the decision that may be rendered in Civil Case No. 9955, the private complainants are entitled to their withheld salaries for the services they have actually rendered as sectoral representatives of the said Sangguniang Bayan. Hence, the decision that may be rendered by the Regional Trial Court in Civil Case No. 9955 would not be determinative of the innocence or guilt of the accused.

WHEREFORE, the subject Petition for the Suspension of Proceedings in Virtue of Prejudicial Question filed by the accused through counsel, is hereby DENIED for lack of merit.

SO ORDERED.[5]

Petitioners filed a motion for reconsideration of the aforementioned resolution in view of the decision promulgated by the trial court nullifying the appointments of private respondents but it was, likewise, denied in an order issued by respondent Sandiganbayan on 19 August 1992 on the justification that the grounds stated in the said motion were a mere rehash of petitioners' original motion to hold the case in abeyance.[6] The dispositive portion of its order reads as follows:

WHEREFORE, in view of the foregoing, the arraignment of the accused which was scheduled today is cancelled. Mayor Reynaldo Tuanda, Hermenegildo Faburada, Nicanor P. Agosto, Erenieta K. Mendoza, Hacubina V. Serillo and Iluminado Estrellanes are, however, hereby ordered to show cause in writing within ten (10) days from service hereof why they should not be cited for contempt of court for their failure to appear in court today for arraignment.

In case of an adverse resolution on the motion to quash which is to be filed by the counsel for the defense, set this case for arraignment, pre-trial and trial on January 4 & 5, 1993, on all dates the trial to start at 8:30 o'clock in the morning.

SO ORDERED.[7]

On 19 February 1993, respondent Sandiganbayan issued an order holding consideration of all incidents pending the issuance of an extended resolution.[8]

No such resolution, however, was issued and in its assailed order dated 13 May 1992, respondent Sandiganbayan set the arraignment of petitioners on 30 June 1993. The dispositive portion of the order reads:

WHEREFORE, considering the absence of the accused from the scheduled hearing today which We deem to be excusable, reset this case for arraignment on June 30, 1993 and for trial on the merits on June 30 and July 1 and 2, 1993, on all dates the trial to start at 8:30 o'clock in the morning.

Give proper notice to the accused and principal counsel, Atty. Alfonso Briones. Considering that the accused come all the way from Himalalud, Negros Oriental, no postponement will be allowed.

SO ORDERED.[9]

Hence, this special civil action for certiorari and prohibition where petitioners attribute to respondent Sandiganbayan the following errors:

A. The Respondent Court committed grave abuse of discretion in denying petitioners' motions for the suspension of the proceedings in Criminal Case No. 16936 in spite of the pendency of a prejudicial issue before the Court of Appeals in CA-G.R. CV No. 36769;

B. The Respondent Court acted without or in excess of jurisdiction in refusing to suspend the proceedings that would entail a retrial and rehearing by it of the basic issue involved, i.e., the validity of the appointments of private respondents and their entitlement to compensation which is already pending resolution by the Court of Appeals in C.A. G.R. CV No. 36769; and

C. The Respondent Court committed grave abuse of discretion and/or acted without or in excess of jurisdiction in effectively allowing petitioners to be prosecuted under two alternative theories that private respondents are de jure and/or de facto officers in violation of petitioners' right to due process.[10]

In sum, the only issue in the case at bench is whether or not the legality or validity of private respondents' designation as sectoral representatives which is pending resolution in CA-G.R. No. 36769 is a prejudicial question justifying suspension of the proceedings in the criminal case against petitioners.

A prejudicial question is one that must be decided before any criminal prosecution may be instituted or before it may proceed (see Art. 36, Civil Code) because a decision on that point is vital to the eventual judgment in the criminal case. Thus, the resolution of the prejudicial question is a logical antecedent of the issues involved in said criminal case.[11]

A prejudicial question is defined as that which arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. The prejudicial question must be determinative of the case before the court but the jurisdiction to try and resolve the question must be lodged in another court or tribunal.[12] It is a question based on a fact distinct and separate from "the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the

criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined. It comes into play generally in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because howsoever the issue raised in the civil action is resolved would be determinative juris et de jure of the guilt or innocence of the accused in the criminal case." [13]

The rationale behind the principle of prejudicial question is to avoid two conflicting decisions. [14] It has two essential elements:

- (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and
- (b) the resolution of such issue determines whether or not the criminal action may proceed. [15]

Applying the foregoing principles to the case at bench, we find that the issue in the civil case, CA-G.R. CV No. 36769, constitutes a valid prejudicial question to warrant suspension of the arraignment and further proceedings in the criminal case against petitioners.

All the elements of a prejudicial question are clearly and unmistakably present in this case. There is no doubt that the facts and issues involved in the civil action (No. 36769) and the criminal case (No. 16936) are closely related. The filing of the criminal case was premised on petitioners' alleged partiality and evident bad faith in not paying private respondents' salaries and per diems as sectoral representatives, while the civil action was instituted precisely to resolve whether or not the designations of private respondents as sectoral representatives were made in accordance with law.

More importantly, the resolution of the civil case will certainly determine if there will still be any reason to proceed with the criminal action.

Petitioners were criminally charged under the Anti-Graft & Corrupt Practices Act [RA 3019, sec. 3(e)] due to their refusal, allegedly in bad faith and with manifest partiality, to pay private respondents' salaries as sectoral representatives. This refusal, however, was anchored on petitioners' assertion that said designations were made in violation of the Local Government Code (B.P. Blg. 337) and thus, were null and void. Therefore, should the Court of Appeals uphold the trial court's decision declaring null and void private respondents' designations as sectoral representatives for failure to comply with the provisions of the Local Government Code [B.P. Blg. 337, sec. 146(2)], the charges against petitioners would no longer, so to speak, have a leg to stand on. Petitioners cannot be accused of bad faith and partiality there being in the first place no obligation on their part to pay private respondents' claims. Private respondents do not have any legal right to demand salaries, per diems and other benefits. In other words, the Court of Appeals' resolution of the issues raised in the civil action will ultimately determine whether or not there is basis to proceed with the criminal case.

Private respondents insist that even if their designations are nullified, they are entitled to compensation for actual services rendered. [16] We disagree. As found by the trial court and as borne out by the records, from the start, private respondents' designations as sectoral representatives have been challenged by petitioners. They began with a petition filed with the Office of the President copies of which were received by private respondents on 26 February 1989, barely eight (8) days after they took their oath of office. [17] Hence, private respondents' claim that they have actually rendered services as sectoral representatives has not been established.

Finally, we find unmeritorious respondent Sandiganbayan's thesis that even in the event that private respondents' designations are finally declared invalid, they may still be considered de facto public officers entitled to

compensation for services actually rendered.

The conditions and elements of de facto officership are the following:

- 1) There must be a de jure office;
- 2) There must be color of right or general acquiescence by the public; and
- 3) There must be actual physical possession of the office in good faith.[18]

One can qualify as a de facto officer only if all the aforesaid elements are present. There can be no de facto officer where there is no de jure office, although there may be a de facto officer in a de jure office.[19]

WHEREFORE, the resolution dated 17 February 1992 and orders dated 19 August 1992 and 13 May 1993 of respondent Sandiganbayan in Criminal Case No. 16936 are hereby SET ASIDE. Respondent Sandiganbayan is enjoined from proceeding with the arraignment and trial of petitioners in Criminal Case No. 16936 pending final resolution of CA-G.R. CV. No. 36769.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., and Bellosillo, JJ., concur.
Hermosisima, Jr., J., no part.

[1] Rollo, pp. 36-37.

[2] Id., at 38-50.

[3] Id., at 51-60.

[4] Id., at 59-61.

[5] Id., at 34-35.

[6] Id., at 30.

[7] Id., at 31.

[8] Id., at 82.

[9] Id., at 29.

[10] Id., at 13-14.

[11] Edgardo C. Paras, Rules of Court Annotated Vol. Three, 1990, citing *People v. Aragon*, L-5930, 17 Feb. 1954.

[12] *Yap v. Paras*, 205 SCRA 625 (1994); *Quiambao v. Osorio*, 158 SCRA 674 (1988); *Donato v. Luna*, 160 SCRA 441 (1988); *Ras v. Rasul*, 100 SCRA 125 (1980).

[13] *Librodo v. Coscolluela, Jr.*, 116 SCRA 303 (1982); see also *Apa, et al. v. Fernandez, et al.*, G.R. No. 112381, March 20, 1995.

[14] *Developments In The Law On Prejudicial Questions*, 44 SCRA 208 (1972).

[15] Sec. 5, Rule III of Revised Rules of Court; *Yap v. Paras*, supra, *Umali v. IAC*, 186 SCRA 680 (1990).

[16] Rollo, p. 92.

[17] *Id.*, at 52-53.

[18] Hector S. De Leon and Hector M. De Leon, Jr., *Law on Public Officers and Election Law*, 1990 ed., pp. 87-88;

[19] *Government of the Philippine Islands v. Springer*, 50 Phil. 259.

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