

MARCELINO C. LIBANAN, PETITIONER, VS. SANDIGANBAYAN AND AGUSTIN B. DOCENA, RESPONDENTS.

G.R. No. 112386. June 14, 1994

Ponente: VITUG, J.

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VITUG, J.:

Petitioner Marcelino C. Libanan, the incumbent Vice-Governor of Eastern Samar, was a member of the Sangguniang Panlalawigan of that province prior to the 11 May 1992 elections. He was among those charged before the Sandiganbayan, on 25 May 1992, with having violated Section 3(e) of Republic Act No. 3019 in an information, docketed Criminal Case No. 17756, stating -

"That on or about 08 January 1991, and for sometime thereafter, in Borongan, Eastern Samar, and within the jurisdiction of this Honorable Court, accused Lutgardo B. Barbo, Governor of Eastern Samar; Camilo A. Camenforte, Vice-Governor of same province; Sangguniang Panlalawigan Members Marcos B. Alido, Nonato A. Gerna, Ismael G. Kho, Marcelino C. Libanan, Nicolas O. Pimentel, and Generoso A. Yu, of the same province, conspiring with one another, did then and there, wilfully and unlawfully, through evident bad faith and manifest partiality, prevent and exclude Agustin B. Docena, a duly appointed and Qualified replacement of deceased Sangguniang Panlalawigan member Luis A. Capito, from exercising his rights and prerogatives as a member of the said body, by promulgating in their official capacities Sangguniang Panlalawigan Resolution No. 01, Series of 1991, wherein accused expressed their recognition of Atty. Socrates B. Alar as the official replacement of aforesaid deceased member, notwithstanding the recall of his appointment by the Department of Local Government, to the damage and prejudice of Agustin B. Docena.

"CONTRARY TO LAW."[1]

On motion of the prosecution for the suspension of the accused public officials *pendente lite*, and finding that said accused were charged under a valid information, the Second Division of the Sandiganbayan issued a resolution, dated 26 July 1993, to the following effect:

"WHEREFORE, premises considered, accused Gov. Lutgardo Barbo, Vice-Gov. Marcelino C. Libanan, and Sangguniang Panlalawigan members Nonato A. Gerna and Generoso A. Yu are hereby suspended from their respective public positions, or from any other public office that they may be holding, the same to commence upon their receipt hereof and for a period of ninety (90) days thereafter.

"Let copies of this Resolution be furnished the Hon. Secretary, Department of Interior and Local Government, and the Hon. Commissioner, Civil Service Commission, for their information and guidance and they are hereby directed to inform this Court within ten (10) days from receipt hereof of any action they have undertaken on the matter.

"SO ORDERED."[2]

Accused Barbo and Libanan filed their respective motions for reconsideration, which the Sandiganbayan denied in its resolution of 30 September 1993. From the orders, Libanan appealed.

Petitioner presents three grounds to support his appeal, to wit: That -

I. THE ORDER OF SUSPENSION IF EXECUTED WOULD CONSTITUTE AN AFFRONT ON PETITIONER(S) CONSTITUTIONAL RIGHT TO DUE PROCESS.

II. THE ORDER OF SUSPENSION ONCE IMPLEMENTED WOULD AMOUNT TO AN ASSAULT OF THE SACRED COVENANT REPOSED ON PETITIONER VICE-GOVERNOR, MARCELINO C. LIBANAN BY THE PEOPLE OF EASTERN SAMAR.

III. THE REASONS SOUGHT TO BE PREVENTED BY THE SUSPENSION ORDER PENDENTE LITE NO LONGER EXIST.

The petition is without merit.

The amendatory provision of Section 13, Republic Act No. 3019, here applicable, provides:

"SEC. 13. Suspension and Loss of Benefits. -- 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. x x x"

Petitioner contends that the order of suspension, being predicated on his acts supposedly committed while still a member of the Sangguniang Bayan, can no longer attach to him now that he is the duly elected and incumbent Vice-Governor of Eastern Samar. The implementation of the suspension order, he further claims, would amount to a deprivation of property without due process of law.

In *Deloso vs. Sandiganbayan*,^[3] this Court rejected a similar argument advanced by Governor Deloso who, at the time of issuance of the suspension order, was already occupying the office of governor and not the position of municipal mayor that he held previously when charged with having violated the Anti-Graft Law. Prior to *Deloso*, in *Bayot vs. Sandiganbayan*,^[4] the suspension of then Cavite mayor Bayot was also sustained even as he was charged for acts committed as a government auditor of the Commission on Audit. In both instances, this Court ruled that the term "office" used in the law could apply to any office which the officer charged might currently be holding and not necessarily the particular office under which he was charged.

Obviously, the suspension order cannot amount to a deprivation of property without due process of law. Public office is "a public agency or trust,"^[5] and it is not the property envisioned by the Constitutional provision^[6] which petitioner invokes.

Libanan's second contention neither holds water. His so-called "covenant" with the people of Eastern Samar is far from being synonymous to, or the equivalent of, license, and it is not one that can cut athwart the long arm of the law. In *Oliveros vs. Villaluz*,^[7] we have said:

"Since the criminal prosecution against petitioner-accused is concededly not abated by the fact of his reelection, the pendency of such criminal case under a valid information under Republic Act 3019 may clearly be and supplies the legal basis for his suspension from office in a subsequent term in the event of his reelection by virtue of the provisions of section 13 of the Act."

The third assigned error raised by petitioner need not be delved into. When the statute is clear and explicit, there is hardly room for any extended court ratiocination or rationalization of the law. Republic Act No. 3019 unequivocally mandates the suspension of a public official from office pending a criminal prosecution against him. This Court has repeatedly held that such preventive suspension is mandatory,^[8] and there are no "ifs" and "buts" about it.^[9]

WHEREFORE, the petition is DISMISSED. The assailed resolution of respondent Sandiganbayan is AFFIRMED in toto.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Rollo, pp. 46-47.

[2] Rollo, pp. 30-31.

[3] 173 SCRA 409.

[4] 128 SCRA 383.

[5] Sibal, The Law on Public Offices and Officers, 1993 ed., p. 3, citing 42 Am. Jur. 881.

[6] Martin and Martin, Administrative Law, Law of Public Officers and Election Law, 1987 ed., p. 138.

[7] 57 SCRA 163.

[8] Bunye, et al. vs. Associate Justices Escareal, et al., G.R. No. 110216, 10 September 1993; Gonzaga vs. Sandiganbayan, 201 SCRA 417; People vs. Albano, 163 SCRA 511, People vs. Court of Appeals, 135 SCRA 372.

[9] Bunye, et al. vs. Associate Justices Escareal, et al., supra.

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