

GOVERNOR JOSIE CASTILLO-CO, PETITIONER, VS. HONORABLE ROBERT BARBERS, DEPUTY OMBUDSMAN JESUS GUERRERO, EMILIO GONZALES, III AND CONGRESSMAN JUNIE CUA, RESPONDENTS.

G.R. No. 129952. June 16, 1998

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Petitioner Governor Josie Castillo-Co of Quirino, through this special civil action for certiorari and prohibition, with prayer for temporary restraining order/writ of preliminary injunction, seeks to nullify the Order of the Deputy Ombudsman directing her preventive suspension.

On 27 June 1997, Quirino Congressman Junie Cua filed a complaint before the Office of the Ombudsman against Governor Castillo-Co and Provincial Engineer Virgilio Ringor. Congressman Cua alleged that in the course of its investigation in aid of legislation, the House of Representatives Committee on Good Government chaired by him uncovered irregularities in the purchase of heavy equipment by the Governor and the Provincial Engineer. Congressman Cua charged that the equipment purchased was “reconditioned” instead of “brand new” as required by resolutions of the province’s Sanggunian authorizing such purchase. Other irregularities claimed to have been committed included overpricing, lack of public bidding, lack of inspection, advance payment prior to delivery in violation of Section 338 of the Local Government Code, and an attempt to cover up such irregularities. Congressman Cua thus accused Governor Castillo-Co and Provincial Engineer Ringor of violating Sections 3(e) and 3(g) of the Anti-Graft and Corrupt Practices Act,[1] as amended, and Articles 213[2] and 217[3] of the Revised Penal Code.

In an Order[4] dated 4 July 1997, that is, a week after the complaint was filed, Governor Castillo-Co and Provincial Engineer Ringor were placed under preventive suspension for a period of six (6) months. Said order was signed by Emilio A. Gonzalez III, Director, and approved by Jesus Guerrero, Deputy Ombudsman for Luzon.

Governor Castillo-Co and Provincial Engineer Ringor thereafter filed separate motions for reconsideration. Both motions were denied in a “Joint Order”[5] dated 1 August 1997 signed by Director Gonzales and approved by Deputy Ombudsman Guerrero.

On 12 August 1997, Governor Castillo-Co filed the present petition. Petitioner imputes grave abuse of discretion upon the Deputy Ombudsman for issuing the order of preventive suspension against her. As may be deduced from the petition, the grounds invoked in support thereof are:

- The Deputy Ombudsman is not authorized to sign the order of preventive suspension;
- The issuance of such order was hasty and selective, and deprived petitioner of due process; and
- The conditions required to sustain petitioner’s preventive suspension have not been met and that, at any rate,

the duration thereof is excessive.

In a Resolution dated 26 August 1997,[6] this Court resolved, among others, to grant petitioner's prayer for a temporary restraining order.

The petition has no merit.

I

Petitioner claims that under Republic Act No. 7975,[7] only the Ombudsman has the authority to sign the order placing officials with a 27 salary grade or above, like petitioner-governor, under preventive suspension.[8] In this case, the suspension order was neither signed nor approved by Ombudsman Aniano Desierto. Rather, said order was signed by Director Emilio Gonzales III and approved by Deputy Ombudsman for Luzon Jesus Guerrero.

There is nothing in RA 7975, however, that would remotely suggest that only the Ombudsman, and not his Deputy, may sign an order preventively suspending officials occupying positions classified as grade 27 or above.

On the other hand, Section 24 of Republic Act No. 6770[9] 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 gross misconduct, or neglect in the performance of duty; or (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 the 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. (Underscoring supplied.)

Similarly, Section 9, Rule III of the Rules of Procedure of the Office of Ombudsman[10] provides:

SEC. 9. Preventive suspension. – Pending investigation, the respondent may be preventively suspended without pay for a period of not more than six (6) months, if, in the judgment of the Ombudsman or his proper deputy, the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or gross 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.

If the administrative investigation is not terminated within the period the respondent is suspended, the respondent shall be automatically reinstated unless the delay in the disposition of the case is due to the fault, negligence or any cause attributable to the respondent, in which case the period of such delay shall not be counted in computing the period of suspension. (Underscoring supplied.)

Under these provisions, there cannot be any doubt that the Ombudsman or his Deputy may preventively suspend an officer or employee, where appropriate, as indicated by the word "or" between the "Ombudsman" and "his Deputy." The word "or" is a disjunctive term signifying disassociation and independence of one thing from each of the other things enumerated.[11] The law does not require that only the Ombudsman himself may sign the order of suspension.

II

Petitioner next questions the manner by which the suspension order was issued. She claims that she was denied due process because she was not afforded the opportunity to controvert the evidence against her before the order

of preventive suspension was issued.[12] A preventive suspension, however, can be decreed on an official under investigation after charges are brought and even before the charges are heard since the same is not in the nature of a penalty,[13] but merely a preliminary step in an administrative investigation. Thus, in *Lastimosa vs. Vasquez*,^[14] we quoted with favor our pronouncement in *Nera vs. Garcia*:^[15]

In connection with the suspension of petitioner before he could file his answer to the administrative complaint, suffice it to say that the suspension was not a punishment or penalty for the acts of dishonesty and misconduct in office, but only as a preventive measure. 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. There is, therefore, nothing improper in suspending an officer pending his investigation and before the charges against him are heard and be given an opportunity to prove his innocence.

The fact that the said order was issued seven days after the complaint was filed did not constitute grave abuse of discretion. The immediate issuance of such order is required in order to prevent the subject of the suspension from committing further irregularities. Such prompt action, moreover, is in consonance with Section 15 of RA 6770 which exhorts the Ombudsman to:

xxx give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offenses as well as complaints involving large sums of money and/or properties.

We do not give much credence to petitioner's suggestions of a malicious conspiracy between the Deputy Ombudsman Guerrero and Congressman Cua, reputedly petitioner's political adversary, to harass her. The Deputy Ombudsman and the Congressman, being public officials, enjoy the presumption of regularity of performance of duties. Such presumption can be overcome only by strong and convincing evidence.^[16] No such evidence exists in this case.

III

Contrary to petitioner's contention, the conditions required to sustain her preventive suspension have been met in this case. These conditions are:

- (1) That the evidence of guilt is strong; and
- (2) That any of the following circumstances are present:
 - (a) the charge against such officer or employee involves dishonesty, oppression, or grave misconduct or neglect in the performance of duty;
 - (b) the charges would warrant removal from the service; or
 - (c) the respondent's continued stay in office may prejudice the case filed against him.^[17]

The first requisite rests upon the determination of the disciplining authority, the Office of the Ombudsman in this case:

As held in *Buenaseda v. Flavie*, however, whether the evidence of guilt is strong is left to the determination of the Ombudsman by taking into account the evidence before him. A preliminary hearing as in bail petitions in cases involving capital offenses is not required. In rejecting a similar argument as that made by petitioner in this case, this Court said in that case:

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 . .
.[18]

We find no reason to disturb such determination in this case.

All the circumstances enumerated in the second requisite are likewise present. Petitioner is charged with, among others, fraud against the public treasury and malversation, offenses indubitably involving dishonesty and grave misconduct. These charges, if proven true, also constitute grounds for her removal upon order of the proper court. Section 60(c) of the Local Government Code states:

SEC. 60. Grounds for Disciplinary Actions. – An elective official may be disciplined, suspended or removed from office on any of the following grounds:

x x x;

c) Dishonesty, oppression, misconduct in office, gross negligence, or an offense punishable by at least prison mayor.

x x x. (Underscoring supplied).

Petitioner’s high position likewise gives her access to public records and the clout to influence possible witnesses. Her continued stay in office may thus prejudice the prosecution of the case filed against her. It is immaterial that, as petitioner contends, no evidence has been adduced to prove that petitioner may influence possible witnesses or may tamper with the public records. It is sufficient that there exists such a possibility.

Finally, the duration of petitioner’s suspension is not excessive. Petitioner’s suspension for six (6) months is within the limits prescribed by Section 24 of R.A. 6770. The length of the period of suspension within such limits, like the evaluation of the strength of the evidence, lies in the discretion of the Ombudsman.

WHEREFORE, this petition is hereby DISMISSED. The temporary restraining order issued by this Court per its Resolution dated 26 August 1997 is hereby LIFTED with immediate effect.

SO ORDERED.

Narvasa C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Martinez, and Quisumbing, JJ., concur.

Purísima, J., on leave.

[1] Republic Act No. 3019.

[2] Frauds against the public treasury and similar offenses.

[3] Malversation of public funds or property.

[4] Rollo, pp. 24-26.

[5] Id., at 412-413.

[6] Id., at 144.

[7] An Act To Strengthen The Functional And Standard Organization Of The Sandiganbayan, Amending For That Purpose Presidential Decree No. 1606, As Amended.

[8] Rollo, p. 4.

[9] An Act Providing For The Functional And Structural Organization Of The Office Of The Ombudsman, And For Other Purposes

[10] Administrative Order No. 07.

[11] People vs. Martin, 39 SCRA 430 (1971).

[12] Rollo, p. 5.

[13] Hagad vs. Gozo-Dadole, 251 SCRA 242 (1995).

[14] Lastimosa vs. Vasquez, 243 SCRA 497 (1995).

[15] 106 Phil. 1031 (1960).

[16] Tatad vs. Garcia, 243 SCRA 436 (1995).

[17] Section 24, RA 6770.

[18] Lastimosa vs. Vasquez, *supra*, note 14.

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