

**PERFECTO R. YASAY, JR., PETITIONER, VS. HONORABLE
OMBUDSMAN ANIANO A. DESIERTO AND THE FACT-FINDING AND
INVESTIGATION BUREAU, REPRESENTED BY ATTY. RIZALDE F.
LAUDENCIA, RESPOND...**

G.R. No. 134495. December 28, 1998

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is a petition for certiorari^[1] under Rule 65 of the Revised Rules of Court seeking: (1) the nullification of the Order dated July 22, 1998 of the respondent Ombudsman in OMB-ADM-0-98-0365 ("Fact-Finding and Investigation Bureau v. Perfecto R. Yasay, Jr.") where petitioner Perfecto R. Yasay, Jr. was placed under preventive suspension for a period of ninety (90) days without pay; and (2) the dismissal of the administrative charges filed against him.^[2]

Petitioner also filed an Urgent Omnibus Motion dated October 26, 1998 praying of this Court "(a) to lift or set aside the preventive suspension order and order extending the same, and (b) for resolution of the instant petition, with prayer for the issuance of temporary restraining order and/or writ of preliminary injunction" to enjoin the enforcement of the respondent Ombudsman's Extension Order dated October 23, 1998, extending the period of petitioner's preventive suspension for another ninety (90) days following the expiration of the original ninety-day period. We shall consider this Urgent Omnibus Motion as an integral part of the petition and regard it in consolidation with the petition.

We first consider the issues raised in the petition which are: (1) whether the respondent Ombudsman has jurisdiction over the subject matter of the administrative case against petitioner on his contention that what is involved is an "intra-membership dispute in a private condominium corporation and does not involve the exercise of a governmental duty or function;"^[3] (2) whether the respondent Ombudsman gravely abused his discretion in giving due course to the administrative charges against petitioner;^[4] and (3) whether the respondent Ombudsman gravely abused his discretion in issuing the order placing petitioner under preventive suspension.^[5]

The antecedents are as follows:

In a Complaint-Affidavit dated June 17, 1997 filed with the respondent Ombudsman, Donato Teodoro, Sr., as President and Chairman of the Board of Donsol Development & Commercial Corporation and D.B. Teodoro Securities, Inc., charged petitioner with Estafa under the Revised Penal Code and violation of Sec. 3 (e) of R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, which provides thus:

Sec. 3. Corrupt Practice of Public Officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful;

x x x x x x x x

e. Causing any undue injury to any party, including the Government x x x x x in the discharge of his official, administrative or judicial functions through bad faith or gross inexcusable negligence. x x x x x

The complaint reads:

3. At all times, material thereto, DONSOL and D.B. TEODORO are the registered owners of condominium units designated as G-02 and G-03 located at the ground floor of the SEC Building, EDSA, Mandaluyong City, their titles over said units are evidenced by Condominium Certificate of Title Nos. 4074 and 1706 of the Registry of Deeds of Metro Manila, District II, issued in accordance with the provisions of Republic Act No. 47261 as early as 1982 x x x;

4. The condominium units designated as G-03 and portions of G-02 was leased, and occupied by one Mrs. Emily Mendoza, the latter used the area as coffee shop;

5. Before however, the lease of Mrs. Mendoza (on the premises) expired, respondent, acting in representation of the Securities and Exchange Commission and the SEC Building Condominium Corp. which entities he is the President and Chairman, intimated to me (being the President and Board Chairman of DONSOL and DB TEODORO) SEC and SBCC's intention to lease the premises; he represented to me that the premises (G-03 and portion of G-02) will be used exclusively as SEC and SBCC's "display" area;

6. Although problems cropped-up to transfer Mrs. Mendoza (whose lease in the premises has not yet expired) to other units within the building in order to accommodate the respondent, we were able to finally convince Mrs. Mendoza to transfer to unit 208 located at the second floor (of the building) at our expense;

7. Among the conditions of the lease which was agreed upon, are as follows:

7a. as to the period of lease - four (4) months to commence on September 1, 1996 up to December 31, 1996;

7b. as to the amounts of rentals - P14,000.00 every month to be shared by SEC and SBCC at P7,000.00 each;

7c. as to the use of the premises - exclusively for 'display';

It was further, agreed that after the expiration of the lease, the same shall be continued until terminated by the parties;

8. After the premises was vacated by Mrs. Mendoza, respondent caused to demolish the structure (coffee shop) constructed by the former, and thereupon, entered, and occupied the premises.

9. However, despite the occupancy of the premises, respondent as Chairman and President of SEC and SBCC did not only fail to execute the lease contract with DONSOL and DB SECURITIES, but he also miserably failed and refused to pay the monthly rentals of the premises without justifiable reason and despite verbal and written demands made upon him;

10. DONSOL and DB SECURITIES referred the respondents' failure above-stated to their lawyer who addressed him a letter dated April 11, 1997. In the said letter, the demand for him to execute the lease contract of the premises, and to pay the rentals for the periods, October to December 1996 at P14,000.00 every month, and the rentals for the periods, January to March 1997 to P16,000.00 (20% increase) per month was reiterated x x x;

11. However, instead of complying with the demands, respondent addressed us a letter through our lawyer dated April 24, 1997. In his said letter, he stated that SEC and SBCC will not enter into such contract of lease because allegedly, the premises is a common area. He further stated that the appropriation of the premises to any unit owners is in violation of the Condominium Act x x x;

12. Amazed of the respondent's stand (on our demands), our lawyer addressed him a letter dated May 13, 1997 informing him of DONSOL and DB SECURITIES's title(s) over the premises issued by the Registry of

Deeds of the Province of Rizal in accordance with the provisions of the Condominium Acts as early as 1982. We informed him of the conclusiveness, and finality of our title(s), and his failure to question the same within the prescriptive period, copy of said letter is hereto attached and made part hereof, Annex, 'D';

13. Despite knowledge of the validity, conclusiveness, and finality of DONSOL and DB SECURITIES titles over the premises, respondent with grave abuse of confidence and in bad faith, failed and refused and continue to fail and refuse to heed and/or comply with the demand(s) to the damage and prejudice of DONSOL and DB SECURITIES.[6]

The complaint-affidavit was referred to the Evaluation and Preliminary Investigation Bureau, which required petitioner to file his counter-affidavit.

Petitioner filed his counter-affidavit on October 15, 1997 where he alleged the following, *inter alia*:

4. The truth of the matter is that the area referred to as unit G-03 and portion of G-02 by the complainant, Mr. Teodoro, and which used to be a canteen/coffee shop, is a part of the ground floor lobby/hallway which is held in common by all the condominium unit owners of the SEC Building. The operator/owner of the said canteen at the ground floor lobby, Ms. Melisa Mendoza, was repeatedly directed by the SEC and the SBCC to vacate the premises because of the findings of the Mandaluyong City Fire Department that the structure serving as a canteen is a fire hazard and poses serious and imminent threat to the unit owners of the building and the public in general considering that the majority or a substantial portion of the building is being occupied by the Securities and Exchange Commission (SEC). When said Mrs. Mendoza persistently refused to vacate the premises and remove the illegal structure built therein, the herein affiant, acting in his capacity as Chairman and President of SEC and SBCC, respectively, wrote an official letter requiring Mrs. Mendoza to immediately vacate the premises, as the illegal structure (canteen) built therein was a serious threat to the large number of the people or the public who come and go to the SEC, not to mention the unit owners occupying their respective units. A copy of the said letter is hereto attached and marked as Annex 'C' and made part hereof.

5. The said letter clearly indicates the stand of the SEC and SBCC - that the illegal structure which is being used as a canteen dangerously impedes the egress of the public from the building and that the premises intended as a common area for the comfort and safety of the public. It would therefore be absurd and sheer illogic for herein affiant to 'intimate' to Mr. Teodoro, as the latter would claim, the commission of the illegal act like the lease of the said premises, knowing that the area is part of the ground floor hallway which is held in common by all the units owners of the SEC Building, and such intimation is contrary to law (National Building Code), morals, good custom and public policy.

6. Emily S. Mendoza, in her letter to the SEC dated October 11, 1996, clearly acknowledged that the area she occupied and used as a canteen/coffee shop is part of the ground floor lobby/hallway, as she later on willingly complied with the order to vacate. A copy of the said letter is hereto attached and marked as Annex 'D' and made part hereof.

7. There is no truth to the allegation that there was a contract of lease agreed upon between the corporations of Mr. Teodoro as one party and the SEC and SBCC as the other party. This claim is a bald-face lie and manifestly false in that Mr. Teodoro is evidently imagining a fact that does not exist, as he could not even make up his mind as to the terms of the alleged contract of lease. Prior to the filing of the civil complaint before the Metropolitan Trial Court, he sent to SEC and SBCC for signing an alleged contract of lease purportedly embodying the agreement of the parties. The preparation of the contract and its transmission to the SEC and SBCC was a subterfuge, a devious scheme to lend semblance to the existence of an alleged fact which does not exist and, *per se*, illegal. A copy of the said document is hereto attached and marked as Annex 'E' and made part hereof. The said document stated in paragraph 1 of the alleged terms and conditions the monthly rental of that they call unit G-03 which is P14,000.00, to be shared by the lessees as follows: SEC "P9,800.00 and SBCC - P4,200.00.

8. Compare this with paragraph 7 of the Complaint-Affidavit where it was alleged that monthly rental agreed upon the parties was P14,000.00 to be shared by SEC and SBCC at P7,000.00 each. This glaring discrepancy as to the rental sharing in the alleged contract of lease and the allegation in the complaint-affidavit filed before this Honorable Court is an eloquent proof that there was really no agreement to lease the premises and the alleged contract of lease is just a malicious concoction of a scheming mind. In other words, there is no contract to speak of in the first place.

9. The area where the canteen used to be situated is now being used as a passageway/lobby by the unit owners and their visitors and the public who come and transact business with the SEC. Needless to say, SEC and SBCC is under no obligation to pay any rent, as it is not occupying the area in the first place, and secondly, the area is held in common by all the unit owners of the condominium and, as aforesaid, being used by the public.

10. Mr. Teodoro's claim that 'respondent (has) misappropriated and converted to his own personal use and benefit the amount(s) of rentals due to DONSOL and DB SECURITIES', hence the 'provisions of the Revised Penal Code on Estafa x x x was committed by respondent,' are wild conjectures, speculations and conclusions of law without any factual basis, as the complaint never specified the necessary relevant facts supportive of such very liberal inference. Nowhere in the Complaint-Affidavit was there any narration of facts that proves or even remotely points to any misappropriation or conversion of the monthly rentals. The acts constituting misappropriation or conversion must be clearly alleged, otherwise the complaint must necessarily fall. The refusal to execute the alleged contract of lease, for the reasons aforesaid, cannot even be remotely construed as misappropriation or conversion such refusal was in accord with the law and/or public policy.

11. Sec. 3(e) of RA 3019 cited by complainant does not also apply to herein affiant. Affiant, in the discharge of his official functions, never gave any unwarranted benefit, advantage or preference to any private party. His refusal to sign the alleged contract of lease cannot possibly be construed as bad faith or malice or even gross inexcusable negligence on his part. For one, affiant never misrepresented himself. His stand, as well as that of SEC and SBCC, is consistent from the very start - that the illegal structure at the ground floor lobby must be removed as it is sitting on a common area and is dangerously impeding the egress of the public from the building. Such a structure is a fire hazard and poses serious threat to the unit owners and the public in general. For another, there was really no lease agreement to speak of.[7]

Thereafter, the Fact-Finding and Intelligence Bureau submitted a Report dated June 10, 1998 where the investigators recommended the filing of criminal charges against petitioner for violation of Section 3 (e) of R.A. No. 3019 and administrative charges of dishonesty, gross misconduct, abuse of authority and conduct unbecoming of a public official. The investigators further recommended the preventive suspension of petitioner.[8]

On July 23, 1998, the Ombudsman issued the assailed order.[9]

As a preliminary matter, we must note that petitioner admits he did not file with the Office of the Ombudsman a motion for reconsideration of the assailed order, on the assertion that "[t]here is no plain, adequate and speedy remedy in the course of law available to petitioner against the assailed order and the remedy of a motion for reconsideration of the order has been foreclosed and rendered inadequate and useless, in view of the 'immediately executory' nature of said order." [10]

Such failure to file a motion for reconsideration is fatal.

The rule is that the special civil action of certiorari will not lie unless the aggrieved party has no other plain, speedy and adequate remedy in the ordinary course of law.[11] The Rules of Procedure of the Office of the Ombudsman[12] allows a party to file a motion for reconsideration of an approved order or resolution within fifteen (15) days in criminal cases, or ten (10) days in administrative cases, from notice thereof, on specified grounds.[13] Such is the plain, speedy and adequate remedy which petitioner should have availed of.[14] Verily, the motion for reconsideration is intended to afford the Ombudsman an opportunity to re-examine his order and to

correct whatever if any mistakes or errors he may have committed, without the intervention of a higher court.[15]

That the assailed order was stated to be "immediately executory" cannot mean that the remedy of filing a motion for reconsideration is foreclosed to petitioner. An order for preventive suspension need be "immediately executory" considering that it is a preliminary step in an administrative investigation,[16] and considering further its purpose, which is to prevent the respondent from using the position or office to influence prospective witnesses or tamper with the records which may be vital in the prosecution of the case against him.[17]

On the substantive issues, we find no merit in petitioner's stance.

Petitioner first argues that the Ombudsman has no jurisdiction over the subject matter of the administrative case because the subject thereof pertains to a private intra-membership dispute in a private condominium corporation and does not involve the exercise of a governmental duty or function.[18] He asserts that "[h]e acted in representation of the Securities and Exchange Commission as a unit owner in the SEC building and member of SBCC, not in his capacity as Chairman of the Securities and Exchange Commission as a government agency." [19]

Petitioner's effort to make a distinction between his being the Chairman of the Securities and Exchange Commission and the President of the SEC Building Condominium Corporation is vacuous. The Solicitor General points out, and we agree that:

[p]etitioner cannot make a distinction between his position as chairman of the SEC as a government agency and chairman of the SEC but this time as condominium unit owner in the building owned by SEC as a government agency. The distinction is simply hairsplitting, a sterile attempt to make a difference where there is none. His being the president or chairman of the SEC Building Condominium Corporation (BCC) is inseparable and completely appendant to his title as chairman of the government agency. He cannot become the president of the SBCC unless he is the chairman, or at least an officer, of the SEC. Differently stated, his standing as SBCC president arises from or is the necessary effect of his being the chairman of the SEC, and not because of anything else. Consequently, his acts or omissions as SBCC president must also be viewed in the light of his powers and functions as SEC chairman.[20]

It is worthy of note that in petitioner's counter-affidavit filed with the Evaluation and Preliminary Investigation Bureau, he asserted that he was "acting in his capacity as Chairman and President of SEC and SBCC, respectively, [when he] wrote an official letter [dated October 23, 1996] requiring Ms. Mendoza to immediately vacate the premises,"[21] that "said letter clearly indicates the stand of the SEC and SBCC,"[22] and further, as a matter of defense, that "affiant, in the discharge of his official functions, never gave any unwarranted benefit, advantage or preference to any private party." [23] Also, the letter dated October 23, 1996 referred to by petitioner bore the Securities and Exchange Commission letterhead and was signed by petitioner as "Chairman." [24]

The second argument raised by petitioner is that the respondent Ombudsman gravely abused his discretion in giving due course to the administrative charges against petitioner because he contends that the evidence on record does not support the finding of grave misconduct and gross dishonesty.

Petitioner raises matters of defense, for example, that he acted as a member of a collegial body,[25] which are best ventilated in the Office of Ombudsman, the proper investigative authority.[26]

Furthermore, the arguments raised are not proper in a certiorari proceeding. We cannot, as petitioner prays, go over the evidence on record and make the determination of whether such evidence supports the administrative charges against him. Under Section 14 of R.A. No. 6770, otherwise known as An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes, "[n]o court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law."

Petitioner next assails the respondent Ombudsman's order placing him under preventive suspension.

The power of the Ombudsman to place under preventive suspension a public officer or employee pending investigation is provided for in R. A. No. 6770, thus:

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 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.

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.

The companion provision in the Rules of Procedure of the Office of the Ombudsman reads:

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; 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.

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 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.

In the assailed order, the Ombudsman concluded that "the essential elements that must concur to impose preventive suspension of [petitioner] exist." He noted that "the evidence is strong showing acts of grave misconduct and gross dishonesty on the part of [petitioner]" and that "the offenses are serious which call for a penalty of dismissal from the service if [petitioner] is found guilty thereof," and further that "the preventive suspension is urgent considering that the continued exercise of authority on the part of [petitioner] may affect an impartial investigation of the administrative charges."

In support of the above conclusions, the Ombudsman made the following findings in the assailed order:

Based on the evidence on record, it is clear that a deceptive scheme or subterfuge was employed by Respondent [petitioner herein] in the following manner:

1) Respondent made representations with complainant Teodoro and agreed to lease the premises being occupied by Mrs. Mendoza. This matter was discussed during the SEC Meeting and Meeting of the SEC Building Condominium Corporation (SBCC) (Minutes of the Meeting pp. 017 and 035, Record) and corroborated by the Affidavits of SEC Commissioner Edijer Martinez (p. 069) and Mr. Pacifico So (p. 071);

2) The tricky scheme is very obvious because Respondent never questioned the complainant's titles of ownership over the area occupied by the canteen before the demolition and while the negotiation for the lease of the subject premises was going on. But after taking possession of the premises, Respondent assumed that the premises constitute a common area not subject to ownership by any one unit owner. That DONSOL and D.B. TEODORO Securities, Inc., represented by complainant Donato B. Teodoro, Sr., are the registered owners of the condominium units G-02 and G-03 is evidenced by Condominium Certificates of Title Nos. 4074 and 1706

of the Register of Deeds for Metro Manila, District II issued in 1986 and 1982, respectively (pp. 012 and 014);

3) The contemplated lease agreement between Teodoro and SEC enabled Respondent Yasay to effect his occupancy and the demolition of the canteen with little resistance because of his assurance that the SEC and SBCC would lease the premises from Complainant Teodoro after termination of the lease agreement with Mrs. Mendoza. To accommodate Respondent's request, Mr. Teodoro convinced Mrs. Mendoza to vacate the premises alleging that her canteen is a fire hazard. He also threatened to demolish her structure if she failed to dismantle her canteen (Letter of P. Yasay dated October 23, 1996, p. 060, Record)

In other words, what constitutes the deception and dishonesty is the employment by Respondent of an apparent scheme to take possession of the premises and effect the demolition under the guise of entering into a lease contract with complainant Teodoro. In so doing, Respondent impliedly recognized ownership of the complainant but when he had acquired possession thereof, he started claiming that the premises constituted a common area and that the SEC and SBCC would not enter into a lease contract with complainant because the appropriation of a common area to any unit owner was in violation of the Condominium Act. The apparent misconduct is aggravated by the demolition of the canteen of Complainant's lessee, Mrs. Mendoza, even before the expiration of the latter's lease agreement with Complainant.

The rule is that whether the evidence of guilt is strong, as required in Section 24 of R.A. No. 6770, is left to the determination of the Ombudsman by taking into account the evidence before him.[27] In the very words of Section 24, the Ombudsman may preventively suspend a public official pending investigation if "in his judgment" the evidence presented before him tends to show that the official's guilt is strong and if the further requisites enumerated in Section 24 are present. The Court cannot substitute its own judgment for that of the Ombudsman on this matter, absent clear showing of grave abuse of discretion.[28] Petitioner has failed to show such grave abuse of discretion on the part of respondent Ombudsman.

Petitioner also asserts that by making the findings and conclusions in the assailed order justifying the preventive suspension, the Ombudsman was "clearly laying the basis for petitioner's eventual dismissal" and that he had "already prejudged the case." [29]

We find that there is no prejudging of the merits of the case at this stage of the proceedings. As pointed out by the Solicitor General, an order of preventive suspension is not a demonstration of a public official's guilt, which can be pronounced only after trial on the merits.[30]

We now consider the Urgent Omnibus Motion dated October 26, 1988 filed by petitioner seeking to enjoin respondent Ombudsman's Extension Order dated October 23, 1998, reproduced in its entirety hereunder:

Considering that the respondent [herein petitioner] opted for a formal hearing which could not be terminated within the 90-day preventive suspension period, and it appearing that the complexion of the case has not been changed, accordingly, pursuant to Section 24 of R.A. 6770 the preventive suspension of herein respondent is hereby extended for another ninety (90) days without pay from date of expiration of the July 22, 1998 Order of this Office, effective immediately upon receipt of this Order.

We must set aside the extension order and direct the lifting of the second ninety-day period of preventive suspension imposed upon petitioner.

On the matter of the period of preventive suspension, Section 24 of R.A. No. 6770 and Section 9, Rule III of the Rules of Procedure must be read together, the former being couched in general terms, with the latter categorically providing that the respondent must be automatically reinstated at the end of the period of preventive suspension. The rules of procedure were promulgated by the Office of the Ombudsman itself, in the form of subordinate legislation, "for the effective exercise or performance of its powers, functions, and duties" by virtue of delegated

power in Section 18 of R.A. No. 6770.

The second paragraph of Section 9, Rule III of the Rules of Procedure of the Office of the Ombudsman provides that "[I]f the administrative investigation is not terminated within the period the respondent is suspended, the respondent shall automatically be 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."

Petitioner reported for work on October 22, 1998, the day following the last days of the period of his preventive suspension.[31] At this time, the investigation of his case was still pending before the Ombudsman's office. Respondent Ombudsman issued the extension order the following day, on October 23, 1998.

The import of Section 9, Rule III of the Rules of Procedure is that the respondent must be reinstated to work at the end of the period of suspension even if the investigation of his case is still pending. The period of suspension is "extended" only if respondent causes a delay in the investigation, with the actual days delay tolling the period of suspension. There is in actuality, no additional or second period, but merely that the original period seems longer because the interruptions in the investigation caused by the respondent's delay is "not counted in computing the period of suspension." [32]

The reason given by the Ombudsman for the second ninety-day period of preventive suspension, reading from the assailed extension order, was that "petitioner opted for a formal investigation."

We find that this is not the delay "due to the fault, negligence, or any cause attributable to the respondent" contemplated by Section 9 of the Rules of Procedure. Petitioner's having availed of the procedure allowed by Section 5, Rule III of the Rules of Procedure can in no way be construed as "fault" or "negligence" or even as a cause analogous to these two causes. Examples of such fault or cause are the respondent's own absences from scheduled hearings, the filing of motions for postponement and the filing of requests to transfer venue.[33]

It is the contention of the Solicitor General that petitioner caused the delay of the investigation, first, when he filed the instant petition for certiorari; second, when he filed criminal and administrative cases against the Ombudsman before his own office; third, when he filed a motion for inhibition dated September 8, 1998 against the panel of investigators hearing his case; and fourth, when he filed a motion to suspend proceedings dated September 15, 1998.

We disagree.

Petitioner's filing of the instant petition cannot, as the Solicitor General says "weigh down the administrative proceeding." [34] The rule is that the filing of an original action for certiorari is an independent action and does not interrupt the course of the principal action.[35] No temporary restraining order was issued by this Court to arrest the course of the proceedings below.[36]

We also do not see how petitioner's having filed administrative and criminal cases against the Ombudsman can delay the investigation of his (petitioner's) own administrative case. Though related by virtue of the *dramatis personae* involved, these cases, however, are independent of each other.

Anent the motion to suspend proceedings and motion for inhibition filed by petitioner, these were resolved and denied by the Fact-Finding & Intelligence Board through an Order dated October 12, 1998, within the ninety-day period of petitioner's preventive suspension. We see no reason why proceedings need be halted pending resolution of these motions. Furthermore, resolution of these motions, certainly common to such a body as the Office of the Ombudsman, is a matter simple enough as not to entail much research and require extensive

man-hours.

Notably, the proceedings of the formal investigation is within the control of the Hearing Panel constituted by the Administrative Adjudication Bureau of the Ombudsman's office to hear petitioner's case. The Hearing Panel had, under Section 5, Rule III of the Rules of Procedure, at its command, processes which are aimed at expediting proceedings before it, such as the preliminary conference - "to determine the nature of the charge, [arrive at a] stipulation of facts, a definition of the issues, [for the] identification and marking of exhibits, limitation of witnesses and such other matters as would expedite the proceedings," and the issuance of a preliminary conference order. Consequently, any delay from any cause whatsoever can be averted and forestalled and the course of the proceedings scheduled judiciously.

We must add that it is axiomatic that before the respondent Ombudsman made the initial determination as to the period of preventive suspension to be imposed upon a respondent, he considered all pertinent matters such as the nature of the charge, the issues involved and the evidence of the parties. Needless to say, the Ombudsman had sufficient evidence before him to make such a determination as to the period of preventive suspension, as he had sufficient evidence to establish that the evidence of guilt was strong as to warrant the issuance itself of the order for preventive suspension.

CONSIDERING the foregoing, the Court RESOLVED to:

- (a) DISMISS the petition insofar as it assails the Order dated July 22, 1998 of the Ombudsman in OMB-ADM-0-98-0365 and prays for the dismissal of the administrative case against petitioner Perfecto R. Yasay, Jr., on the ground that no grave abuse of discretion was committed by respondent Ombudsman; and
- (b) SET ASIDE the Extension Order dated October 23, 1998 thereby lifting the preventive suspension imposed upon petitioner by virtue of said order. This directive is IMMEDIATELY EXECUTORY.

SO ORDERED.

Romero (Chairman), Purisima, and Pardo, JJ., concur.

[1] Filed July 28, 1998.

[2] Petition, pp. 2, and 14.

[3] Id., at 7.

[4] Ibid.

[5] Ibid.

[6] Annex "A-3" of the Petition.

[7] Annex "A-8" of the Petition.

[8] Annex "A-1" of the Petition.

[9] Annex "A" of the Petition.

[10] Petition, p. 3.

[11] Tan v. The Honorable Sandiganbayan (Third Division), G.R. No. 128764, July 10, 1998 citing cases.

[12] Administrative Order No. 07 dated April 10, 1990.

[13] Section 7, Rule II and Section 8, Rule III of the Rules of Procedure.

[14] See Philippine National Construction Corporation (PNCC) v. National Labor Relations Commission, 245 SCRA 668 (1995).

[15] Philippine National Construction Corporation, supra; Tan, Jr. v. The Honorable Sandiganbayan, G.R. No. 128764, July 10, 1998; Zapata v. National Labor Relations Commission, 175 SCRA 56 (1989); Labudahon v. National Labor Relations Commission, 251 SCRA 129 (1995); Darama v. National Labor Relations Commission, 236 SCRA 280 (1994)/

[16] Alonzo v. Capulong, 244 SCRA 80 (1995).

[17] Ibid.; Pimentel v. Gartichorena, 208 SCRA 122 (1992); Lacson v. Roque, 92 Phil. 450 (1953).

[18] Petition, p. 7.

[19] Ibid.

[20] Comment, pp. 18-19.

[21] Paragraph 4.

[22] Paragraph 5.

[23] Id., at 11.

[24] Annex "A-11" of the Petition.

[25] Petition, p. 13.

[26] Section 15 of R.A. No. 6770; See Deloso v. Domingo, 191 SCRA 545 (1990).

[27] Buenaseda v. Flavie, 226 SCRA 645 (1993); Lastimosa v. Vasquez, 243 SCRA 497 (1995).

[28] See Castillo-Co v. Barbers, G.R. No. 129952, June 16, 1998.

[29] Petition, p. 12.

[30] Comment, p. 2.

[31] Urgent Omnibus Motion, p. 2.

[32] See the following similar provisions"

Section 27, Rule XIV of the Omnibus Rules Implementing Rule V of Executive Order No. 292 and Other Pertinent Civil Service Laws provides thus:

When the administrative case against a non-presidential 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 his preventive suspension, he 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 should not be included in the counting of the ninety (90) calendar day-period of preventive suspension.

Section 42 of P.D. No. 807, otherwise known as the Civil Service Decree of the Philippines provides thus:

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.

See also *Layug v. Quisumbing*, 182 SCRA 46 (1990).

[33] *Layug*, *supra*.

[34] Comment on the Urgent Omnibus Motion, p.6.

[35] *Reyes v. Commission on Elections*, 254 SCRA 514 (1996) citing *Palomares v. Jimenez*, 90 Phil. 773 (1952).

[36] *Id.*.

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