

JOSE C. MIRANDA, PETITIONER, VS. HON. SANDIGANBAYAN, OFFICE OF THE OMBUDSMAN, SEC. JOSE D. LINA, JR., IN HIS CAPACITY AS SECRETARY OF THE DILG, AND FAUSTINO DY, JR. IN HIS CAPAC...*G.R. No. 154098. July 27, 2005*

Ponente: PUNO, J.

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First, the facts.

The Ombudsman placed petitioner Jose C. Miranda (Mayor Miranda) then the mayor of Santiago City, Isabela, under preventive suspension for six months from 25 July 1997 to 25 January 1998 for alleged violations of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees.[1] Subsequently, then Vice Mayor Amelita S. Navarro (Vice Mayor Navarro) filed a Complaint with the Office of the Ombudsman (Ombudsman) on 1 December 1997 which was docketed as OMB-1-97-2312.[2] In the said Complaint, Vice Mayor Navarro alleged that Mayor Miranda committed the following acts on 24 November 1997 despite the continuing effectivity of the Ombudsman's preventive suspension order: (a) issued a memorandum addressed to Navarro advising her that he was assuming his position as City Mayor;[3] (b) gave directives to the heads of offices and other employees;[4] (c) issued Office Order No. 11-021 which authorized certain persons to start work;[5] and (d) insisted on performing the functions and duties of Mayor despite Navarro's requests to desist from doing so without a valid court order and in spite of the order of Department of Interior and Local Government (DILG) Undersecretary Manuel Sanchez directing him to cease from reassuming the position.[6] Vice Mayor Navarro contended that Mayor Miranda committed the felony of usurpation of authority or official functions under Article 177 of the Revised Penal Code (RPC).[7]

In his counter-affidavit, Mayor Miranda asserted that he reassumed office on the advice of his lawyer and in good faith.[8] He contended that under Section 63(b) of the Local Government Code, local elective officials could not be preventively suspended for a period beyond 60 days.[9] He also averred that, on the day he reassumed office, he received a memorandum from DILG Undersecretary Manuel Sanchez instructing him to vacate his office and he immediately complied with the same.[10] Notably, Mayor Miranda's counter-affidavit also stated that he left the mayoralty post after "coercion" by the Philippine National Police.[11]

On 28 October 1998, the Ombudsman filed with the Sandiganbayan an Information against Mayor Miranda for violation of Article 177 of the RPC, penalizing usurpation of authority. On 20 November 1998, the Sandiganbayan ordered the Office of Special Prosecutor to conduct a reinvestigation of the case in light of the manifestations made by prosecution and defense counsel.[12] After reinvestigation, Special Prosecution Officer Rodrigo V. Coquia (Coquia) recommended the dismissal of the case in a Resolution dated 14 September 2000.[13] Coquia held that Miranda reassumed his office in "good faith" and on "mistake of fact" due to the "difficult questions of law" involved.[14]

Then Ombudsman Aniano A. Desierto (Ombudsman Desierto) referred Coquia's resolution to the Ombudsman's

Chief Legal Counsel for review. The Chief Legal Counsel disagreed with Coquia's findings and recommended the filing of the case against Mayor Miranda.[15] He pointed out that Mayor Miranda's invocation of good faith was belied by the fact that he received a memorandum from the DILG informing him that his view of the preventive suspension period was untenable and that he should serve out its remaining period.[16] He further noted that Miranda violated the orders of both the Ombudsman and the DILG.[17] Ombudsman Desierto adopted the Chief Legal Counsel's recommendation,[18] and the case was re-raffled to Special Prosecution Officer Evelyn T. Lucero. Subsequently, the prosecution filed an amended Information with the Sandiganbayan,[19] to which the petitioner interposed a negative plea.[20]

On 28 November 2001, the prosecution filed before the Sandiganbayan a motion to suspend Mayor Miranda pendente lite based on Section 13 of Republic Act No. 3019 (R.A. No. 3019), otherwise known as the Anti-Graft and Corrupt Practices Act.[21] Miranda opposed the motion on the ground that the offense of usurpation of authority or official functions under Article 177 of the RPC is not embraced by Section 13 of R.A. No. 3019 which only contemplates offenses enumerated under R.A. No. 3019, Title VII, Book II of the RPC or which involve "fraud upon government or public funds or property." [22]

In a Resolution dated 4 February 2002, the Sandiganbayan preventively suspended Mayor Miranda from office for 90 days.[23] The anti-graft court held that a violation of Article 177 of the RPC involves fraud "which in a general sense is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in damage to another or by which an undue and unconscious advantage is taken of another." [24] It further ruled that Miranda's act fell within the catch-all provision "x x x or for any offense involving fraud upon government." [25] Miranda's motion for reconsideration was denied in the Sandiganbayan's Resolution dated 17 June 2002.[26] Hence, the present petition assailing the Sandiganbayan's orders of preventive suspension. The petitioner contends that the Sandiganbayan gravely abused its discretion when it preventively suspended him on a ground not authorized by law and raises the following issues: (1) whether Section 13 of R.A. No. 3019 applies only to fraudulent acts involving public funds or property; and (2) whether the crime of usurpation of authority or official functions involves "fraud upon government or public funds or property" found in Section 13 of R.A. No. 3019. We rule in the negative.

First. Section 13 of R.A. No. 3019, as amended, provides:

Section 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. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to restitute the same to the Government.

The Sandiganbayan properly construed Section 13 of R.A. No. 3019 as covering two types of offenses: (1) any offense involving fraud on the government; and (2) any offense involving public funds or property. Contrary to the submission of the petitioner, nothing in R.A. No. 3019 evinces any legislative intent to limit Section 13 only to acts involving fraud on public funds or property. The phrase "any offense involving fraud upon government or public funds or property" is clear and categorical. To limit the use of "government" as an adjective that qualifies

"funds" is baseless. The word "public" precedes "funds" and distinguishes the same from private funds. To qualify further "public funds" as "government" funds, as petitioner claims is the law's intent, is plainly superfluous. We are bound by the rule that a statute should be construed reasonably with reference to its controlling purpose and its provisions should not be given a meaning that is inconsistent with its scope and object. R.A. No. 3019, commonly known as the Anti-Graft and Corrupt Practices Act, should be read to protect the State from fraud by its own officials.

Second. We further hold that the Sandiganbayan did not gravely abuse its discretion when it ruled that petitioner's act fell within the catch-all provision "x x x or for any offense involving fraud upon government. The term "fraud" is defined, viz.:

An instance or an act of trickery or deceit esp. when involving misrepresentation: an act of deluding[27]

It is obvious to the eyes that the phrase "fraud upon government" means "any instance or act of trickery or deceit against the government." It cannot be read restrictively so as to be equivalent to malversation of funds as this is covered by the preceding phrase "any offense involving . . . public funds or property." It ought to follow that "fraud upon government" was committed when the petitioner allegedly assumed the duties and performed acts pertaining to the Office of the Mayor under pretense of official position.

The dissent opines that fraud upon government is not necessarily an essential element of the crime of usurpation of authority. The submission may be correct as a general proposition but general propositions hardly decide a case. In the case at bar, the issue is whether the alleged acts of usurpation of authority committed by the petitioner involve "fraud upon government or public funds or property" as the term is understood under Section 13 of R.A. No. 3019. In ruling in the affirmative, the Sandiganbayan held:

Let us take a look at the acts complained of as alleged in the Amended Information dated July 27, 2001:
x x x the above-named accused, a public officer, being then the elected City Mayor of Santiago City, while under preventive suspension did then and there, willfully, unlawfully and knowingly and under pretense of official position, assume the duties and functions of the Office of the Mayor, issue directives and memoranda, and appoint certain persons to various positions in the City Government and perform acts pertaining to an office to which he knowingly was deprived of.

Moreover, in private complainant Amelita S. Navarro's Affidavit of Complaint dated November 26, 1997, she said: "x x x, he proceeded to his office and started giving directives to the various heads of office and other employees, the unexpected acts of respondents had caused serious disruptions in the day to day affairs of the city government."

Accused's acts therefore in assuming the duties and function of the Office of the Mayor despite his suspension from said office resulted to a clear disruption of office and worst, a chaotic situation in the affairs of the government as the employees, as well as the public, suffered confusion as to who is the head of the Office. This actuation of herein accused constitutes fraud which in general sense is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in damage to another or by which an undue and unconscious advantage is taken of another (37 Am. Jur. 2d 19 at Sec. 19). Hence, the act complained of against accused herein falls in the catchall provision "x x x or for any offense involving fraud upon government x x x."

Moreover, the firmly entrenched doctrine which was held by the Highest Tribunal in a long line of cases is that "x x x under Section 13 of the Anti-Graft and Corrupt Practices Law, the suspension of a public officer is mandatory after a determination has been made of the validity of the Information x x x." In fact, as early as 1984 in the case of Bayot v. Sandiganbayan, 128 SCRA 383, the Honorable Supreme Court speaking thru Justice Relova said:

Once the information is found to be sufficient in form and substance, then the Court must issue the order of suspension as a matter of course. There are no ifs and buts about it. x x x

After a perusal of the amended information herein, it clearly appeared that the same was apparently valid for it conforms to the requirements laid down under Section 6[,] Rule 110 of the Rules of Court. In fact, accused herein interposed a negative plea thereto thereby tacitly acquiescing to the validity of the said Information.

There being no valid ground raised by the accused sufficient enough to warrant denial of the prayer of the prosecution in its Motion to Suspend Accused Pende[n]te Lite (sic) and in consonance with the imperious mandate of the law, the said prayer should be accorded affirmative relief.[28] (Citations omitted)

In denying petitioner's Motion for Reconsideration, the Sandiganbayan further held:

Accused in his motion substantially alleged that Article 177 (Usurpation of Authority and Official Function) of the Revised Penal Code, which is the charge against herein accused, does not fall under the catchall provision of Section 13 of Republic Act No. 3019 "x x x or for any offense involving fraud upon government or public funds or property x x x." He said that the acts complained of as alleged in the Information do not constitute fraud upon government or public fund or property.

Though the argument by the accused seems plausible, this Court is still inclined to uphold its ruling suspending accused pendente lite. The accused argued that the fraud contemplated in the law is one involving (1) government funds or property; and (2) public funds or property. This is precisely availing in the case at bar. The Information in herein case, says: "x x x accused x x x assume the duties and functions of the Office of the Mayor, issue directives and memoranda and appoint certain persons to various positions in the city government, and perform acts pertaining to an office to which he knowingly was deprived of." When accused-mayor appointed persons in various positions, he indirectly dealt with the city's funds as those persons appointed will be given their respective salaries, benefits and other monetary consideration which will be paid wholly or mainly out of the city's funds. Additionally, when he performed acts pertaining to the Office of the Mayor, i.e.[,] approval of vouchers, and payment of other expenses which is subject to proof, he likewise indirectly dealt with the funds of the city.

Moreover, as the prosecution said, "when accused Miranda, willfully and knowingly, during the effectivity of his suspension barged into the City Hall, issued orders and directives and performed functions as City Mayor, he was sending the unwritten yet visible message that he was authorized to do and function as such. x x x." We hold this as a fraud upon government resulting in the chaos or confusion albeit temporary, as the employees would be in a quandary whom to follow or obey.

Hence, considering that the charge herein evidently falls within the compass of the suspension provision invoked by the prosecution, there is no cogent reason for this Court to depart from its previous ruling. Further, considering the mandatory tenor of Section 13[,] Republic Act No. 3019, the motion for reconsideration is hereby denied.

Accordingly, the Motion for Reconsideration is denied for lack of merit.[29]

This Court finds no reason to disagree with the Sandiganbayan. Its conclusions are amply supported by the record. Additionally, the issue of whether petitioner committed fraud upon the government or public funds or property is essentially factual. In a special civil action for certiorari, the only question that may be raised is whether or not the respondent acted without or in excess of jurisdiction or with grave abuse of discretion. The Court cannot correct errors of fact or law which do not amount to grave abuse of discretion.[30]

The dissenting opinion, however, says there was no fraud. It holds that "it would be fraud of public funds if these public officials just collected their salaries without rendering service to the government." It further asserts that "fraud upon government" must be read so as to require that malversation of funds was committed.[31] This is a

complete volte face from its claim that Section 13 of R.A. No. 3019 covers two types of offenses: (1) any offense involving fraud upon the government; and (2) any offense involving public funds or property.[32] What is more, adopting the dissenting opinion's line of reasoning would render superfluous the phrase "fraud upon government" as malversation is subsumed by "any offense involving public funds or property."

Third. We are not a bit persuaded by the posture of the petitioner that he reassumed office under an honest belief that he was no longer under preventive suspension. Petitioner's pretense cannot stand scrutiny. Petitioner's own affidavit states:[33]

- That on November 24, 1997, at that time, (sic) I had already served my single preventive suspension for a total number of ONE HUNDRED TWENTY (120) days more or less counted from July 24, 1997, which far exceeds the allowable period of 60 days as maximum preventive suspension, for a single suspension for a local elective official like me as provided for under the Local Government Code of 1991 (sic) on the same date, November 24, 1997 in good faith and upon the advise (sic) of my lawyers, I notified both the Ombudsman and DILG of my intention to assume my office as the duly elected City Mayor of Santiago City;

- That earlier on November 24, 1997 I started to reassume my office and functions as City Mayor of Santiago City; surprisingly on the same date, November 24, 1997 I received a memorandum issued by Undersecretary Manuel R. Sanchez of DILG instructing me to cease and desist from my plan to reassume the functions and duties of my office;

- For less than a week, after November 24, 1997 Vice-Mayor AMELITA NAVARRO relentlessly harassed and threatened me and my constituents with bodily harm using the strong arm of the law thru the brute force of the PNP courtesy (sic) of Undersecretary Manuel R. Sanchez I was constrained to ceased (sic) from performing my duties and functions to avoid any possible unfortunate incident that may happen to me and any constituents; x x x.[34] (Emphases supplied)

By petitioner's own admission, he refused to leave his position despite the memorandum of Undersecretary Sanchez and left only a few days after receipt thereof due to the coercion of the Philippine National Police. This contradicts his assertion that he immediately complied with the memorandum of Undersecretary Sanchez.[35] Petitioner cannot escape from his own admission.

To be sure, petitioner's honest belief defense is old hat. In the 1956 case of *People v. Hilvano*,[36] the facts are:

When Mayor Fidencio Latorre of Villareal, Samar, departed for Manila on official business early in the morning of September 22, 1952, he designated the herein defendant Francisco Hilvano, councilor, to discharge the duties of his office. Later, during office hours on that same day, Vice-Mayor Juan Latorre went to the municipal building; and having found Hilvano acting in the place of the Mayor, he served written notices to the corresponding municipal officers, including Hilvano, that he (Juan Latorre) as Vice-Mayor was assuming the duties of the absent mayor. However, Hilvano refused to yield, arguing that he had been designated by the Mayor. Whereupon the Vice-Mayor sent a telegram to the Executive Secretary informing the latter of the controversy. And the said Secretary replied by letter, that under sec. 2195 of the Revised Administrative Code it was the Vice-Mayor who should discharge the duties of the Mayor during the latter's temporary absence. Shown this official pronouncement, Hilvano still refused to surrender the position. Again the Vice-Mayor sought the opinion of the Provincial Fiscal, who by letter (Exhibit D), replied that the Vice-Mayor had the right to the office. Notwithstanding such opinion which was exhibited to him - Hilvano declined to vacate the post, which he held for about a month, appointing some policemen, solemnizing marriages and collecting the corresponding salary for mayor.

Wherefore Francisco Hilvano was prosecuted - and after trial - was convicted of usurpation of public authority under Republic Act No. 10. He appealed in due time.

In rejecting the defense of the accused Hilvano, we ruled:[37]

There is no excuse for defendant-appellant. In the beginning he might have pleaded good faith, invoking the designation by the Mayor; but after he had been shown the letter of the Executive Secretary and the opinion of the provincial fiscal, he had no right thereafter stubbornly to stick to the position. He was rightfully convicted.

Petitioner's excuse for violating the order of preventive suspension is too flimsy to merit even a side-glance. He alleged that he merely followed the advice of his lawyer. If petitioner and his counsel had an iota of respect for the rule of law, they should have assailed the validity of the order of suspension in court instead of taking the law into their own hands.

Fourth. It should be stressed that petitioner was suspended by the Sandiganbayan. Under Section 13 of R.A. No. 3019, this suspension is mandatory if the information is sufficient. Understandably, the dissent argues that the Amended Information is insufficient in form as it should have "expressly and clearly stated that Miranda re-assumed office to defraud the government or that in re-assuming office Miranda committed acts that defrauded the government"[38] and that it is improper to take into account the petitioner's admissions in his affidavit for this purpose.

With due respect, the dissent is way off-line. The records will show that petitioner did not file a motion to quash the information or a motion for bill of particulars before pleading to the information. It is basic that entering a plea waives any objection the petitioner may have to the validity of the information except on the following grounds: (1) the information charges no offense; (2) the trial court has no jurisdiction over the offense charged; (3) the penalty or the offense has been extinguished; and (4) double jeopardy has attached.[39] Objections to the sufficiency of the allegations in the Amended Information do not fall among the exceptions to the rule. They fall under the objection that the information "does not conform substantially to the prescribed form." [40] Needless to state, the petitioner has by his acts acquiesced to the validity and sufficiency of the Amended Information. It is, thus, incorrect for the dissenting opinion to peddle the proposition that the petitioner has been deprived of his constitutional right to be apprised of the nature and cause of the accusation against him. Worse, it is improper for the dissenting opinion to raise this issue *motu proprio*. Under our Rules of Court, it is the petitioner who should raise this objection in a motion to quash or motion for bill of particulars before entering his plea.[41] The irregular procedure followed by the dissent would encourage the pernicious practice of "sandbagging" where counsel foregoes raising a pleading defect before trial where it can be easily corrected only to raise the defect later in the hope of obtaining an arrest of judgment or new trial from a sympathetic magistrate.[42] It is precisely this evil that is addressed by Rule 117, Section 9 of our Revised Rules of Criminal Procedure.

Even assuming for the nonce, that the objection to the sufficiency of the information was raised in a timely fashion by the petitioner, the dissenting opinion's arguments still do not convince. The validity or sufficiency of allegations in an information is determined according to the provisions of Section 9 of the Revised Rules of Criminal Procedure, viz:

SECTION 9. Cause of the Accusation. - The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.[43]

The test is whether the crime is described in intelligible terms with such particularity as to apprise the accused, with reasonable certainty, of the offense charged. The *raison d'être* of the rule is to enable the accused to suitably prepare his defense.[44] A perusal of the Amended Information will bear out that it has hurdled this legal bar. We quote its contents:

That on or about 24 November 1997, in the City of Santiago, Isabela, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the elected City Mayor of Santiago City, while under preventive suspension, did, then and there, willfully, unlawfully, and knowingly and under pretense of official position, assume the duties and function of the Office of the Mayor, issue directives and memoranda, and appoint certain persons to various positions in the city government, and perform acts pertaining to an office to which he knowingly was deprived of.[45]

Using this test, it cannot be said that the Amended Information failed to properly apprise the petitioner of the charge against him. The information charged the petitioner with assuming the duties and performing acts pertaining to the office of Mayor willfully, unlawfully and knowingly under the pretense of official position. Moreover, it states some of the specific acts which constitute usurpation of official functions, namely, issuing directives and memoranda and appointing certain persons to various positions in the city government. These allegations are clear enough for a layman to understand. Indeed, even the petitioner does not complain about their ambiguity. Only the dissent does.

Fifth. The dissenting opinion also contends that the Ombudsman's authority to preventively suspend local elective officials for 6 months is limited by Section 63(b) of the Local Government Code. Under the latter law, petitioner can only be suspended for a maximum period of 60 days. It then jumps to the conclusion that petitioner could not have usurped authority because he reassumed office after 60 days.[46]

With due respect, the dissent fails to focus on the proper issue. The issue before this Court is whether the Sandiganbayan committed a grave abuse of discretion in suspending the petitioner for 90 days. The validity of the Ombudsman's order of preventive suspension of the petitioner for 6 months is not the one assailed in the case at bar. The irrelevance of the suspension order of the Ombudsman notwithstanding, the reliance of the dissenting opinion on *Garcia v. Mojica* is inapropos. In *Garcia*, we held:

Given these findings, we cannot say now that there is no evidence sufficiently strong to justify the imposition of preventive suspension against petitioner. But considering its purpose and the circumstances in the case brought before us, it does appear to us that the imposition of the maximum period of six months is unwarranted.

On behalf of respondents, the Solicitor General stated during his oral argument at the hearing that the documents mentioned in respondents' comment (such as purchase orders, purchase requests, and disbursement vouchers), documents that show petitioner's guilt, were obtained after petitioner had been suspended. Even if an afterthought, he claimed they strengthen the evidence of respondents against petitioner. If the purpose of the preventive suspension was to enable the investigating authority to gather documents without intervention from petitioner, then, from respondents' submission, we can only conclude that this purpose was already achieved, during the nearly month-long suspension of petitioner from June 25 to July 19, 1999. Granting that now the evidence against petitioner is already strong, even without conceding that initially it was weak, it is clear to us that the maximum six-month period is excessive and definitely longer than necessary for the Ombudsman to make its legitimate case against petitioner. We must conclude that the period during which petitioner was already preventively suspended, has been sufficient for the lawful purpose of preventing petitioner from hiding and destroying needed documents, or harassing and preventing witnesses who wish to appear against him.

We reach the foregoing conclusion, however, without necessarily subscribing to petitioner's claim that the Local Government Code, which he averred should apply to this case of an elective local official, has been violated. True, under said Code, preventive suspension may only be imposed after the issues are joined, and only for a maximum period of sixty days. Here, petitioner was suspended without having had the chance to refute first the charges against him, and for the maximum period of six months provided by the Ombudsman Law. But as respondents argue, administrative complaints commenced under the Ombudsman Law are distinct from those initiated under the Local Government Code. Respondents point out that the shorter period of

suspension under the Local Government Code is intended to limit the period of suspension that may be imposed by a mayor, a governor, or the President, who may be motivated by partisan political considerations. In contrast the Ombudsman, who can impose a longer period of preventive suspension, is not likely to be similarly motivated because it is a constitutional body. The distinction is valid but not decisive, in our view, of whether there has been grave abuse of discretion in a specific case of preventive suspension.[47] (Emphases supplied)

Nowhere in Garcia is it stated that the limits provided in the Local Government Code apply to the Ombudsman. In fact, the Court expressly stated that its decision was rendered without subscribing to the petitioner's claim that the Local Government Code had been violated. In fine, the Court only ruled that the Ombudsman acted with grave abuse of discretion in imposing a 6-month preventive suspension since it was admitted that the documents required were already obtained by 19 July 1999 or 24 days after the imposition of the preventive suspension. Therefore, the purpose for which the suspension was imposed was already served.

The dissenting opinion also cites the case of Rios v. Sandiganbayan[48] as basis for assailing the Ombudsman's order of preventive suspension. Rios is neither here nor there since the powers of the Sandiganbayan were at issue in that case, not those of the Ombudsman. It is also worth noting that Rios cited Section 63 of the Local Government Code as its legal basis. This provision provides:

SECTION 63. Preventive Suspension. -

(a)

Preventive suspension may be imposed:

(1)

By the President, if the respondent is an elective official of a province, a highly urbanized or an independent component city;

(2)

By the governor, if the respondent is an elective official of a component city or municipality; or

(3)

By the mayor, if the respondent is an elective official of the barangay.

(b)

Preventive suspension may be imposed at any time after the issues are joined, when the evidence of guilt is strong, and given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence: Provided, That, any single preventive suspension of local elective officials shall not extend beyond sixty (60) days: Provided, further, That in the event that several administrative cases are filed against an elective official, he cannot be preventively suspended for more than ninety (90) days within a single year on the same ground or grounds existing and known at the time of the first suspension.

(c)

Upon expiration of the preventive suspension, the suspended elective official shall be deemed reinstated in office without prejudice to the continuation of the proceedings against him, which shall be terminated within one hundred twenty (120) days from the time he was formally notified of the case against him. However, if the delay in the proceedings of the case is due to his fault, neglect, or request, other than the appeal duly filed, the duration of such delay shall not be counted in computing the time of termination of the case.

It is plain that the provision was only meant as a cap on the discretionary power of the President, governor and mayor to impose excessively long preventive suspensions. The Ombudsman is not mentioned in the said provision and was not meant to be governed thereby. Indeed, the reason is not hard to distill. The President, governor and mayor are political personages. As such, the possibility of extraneous factors influencing their decision to impose preventive suspensions is not remote. The Ombudsman, on the other hand, is not subject to political pressure given the independence of the office which is protected by no less than the Constitution. This view was embraced by the Court in *Hagad v. Gozo-Dadole*[49] and *Garcia v. Mojica*.^[50] In *Hagad*, we held:

Respondent local officials contend that the 6-month preventive suspension without pay under Section 24 of the Ombudsman Act is much too repugnant to the 60-day preventive suspension provided by Section 63 of the Local Government Code to even now maintain its application. The two provisions govern differently. In order to justify the preventive suspension of a public official under Section 24 of R.A. No. 6770, the evidence of guilt should be strong, and (a) the charge against the officer or employee should involve dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) that the charges should warrant removal from the service; or (c) the respondent's continued stay in office would prejudice the case filed against him. The Ombudsman can impose the 6-month preventive suspension to all public officials, whether elective or appointive, who are under investigation. Upon the other hand, in imposing the shorter period of sixty (60) days of preventive suspension prescribed in the Local Government Code of 1991 on an elective local official (at any time after the issues are joined), it would be enough that (a) there is reasonable ground to believe that the respondent has committed the act or acts complained of, (b) the evidence of culpability is strong, (c) the gravity of the offense so warrants, or (d) the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence.^[51]

In the same vein, we made the following observations in *Garcia*, viz.:

Respondents may be correct in pointing out the reason for the shorter period of preventive suspension imposable under the Local Government Code. Political color could taint the exercise of the power to suspend local officials by the mayor, governor, or President's office. In contrast the Ombudsman, considering the constitutional origin of his Office, always ought to be insulated from the vagaries of politics, as respondents would have us believe. x x x

It was also argued in *Hagad*, that the six-month preventive suspension under the Ombudsman Law is "much too repugnant" to the 60-day period that may be imposed under the Local Government Code. But per J. Vitug, "the two provisions govern differently."^[52] (Emphases supplied)

There is no reason to reverse this ruling. Our above ruling is in accord with the intent of the law. It bears emphasis that Senator Pimentel^[53] explained during the Senate deliberations that the purpose of Section 63 of the Code is to prevent the abuse of the power of preventive suspension by members of the executive branch, to wit:

The President.^[54] I recall that in the case of Iloilo City Mayor Ganson, he challenged the right of the President, acting through the Secretary of Local Government, I think, Luis Santos, to suspend him - -

Senator Pimentel. That is true, Mr. President.

The President. - - contending that under the new Constitution, even the President does not have that right.

Senator Pimentel. Now, as far as we are concerned, the Senate Committee is ready to adopt a more stringent rule regarding the power of removal and suspension by the Office of the President over local government officials, Mr. President. We would only wish to point out that in a subsequent section, we have provided for the power of suspension of local government officials to be limited only to 60 days and not more than 90 days in any one year, regardless of the number of administrative charges that may be filed against a local government official. We, in fact, had in mind the case of Mayor Ganson of Iloilo where the Secretary of Local

Government sort of serialized the filing of charges against him so that he can be continuously suspended when one case is filed right after the other, Mr. President.

The President. Can that be done under this new Code?

Senator Pimentel. Under our proposal, that can no longer be done, Mr. President.[55]

Verily, Section 63 of the Local Government Code does not govern preventive suspensions imposed by the Ombudsman, which is a constitutionally created office and independent from the Executive branch of government.[56] The Ombudsman's power of preventive suspension is governed by Republic Act No. 6770,[57] otherwise known as "The Ombudsman Act of 1989," which provides:

SECTION 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.[58] (Emphasis supplied)

The six-month period of preventive suspension imposed by the Ombudsman[59] was indubitably within the limit provided by its enabling law. This enabling law has not been modified by the legislature.

The dissenting opinion submits that providing for a six-month limit for the Ombudsman while keeping the limit for executive officials at sixty days violates the constitutional proscription against equal protection of the law. In essence, it avers that there is no substantial distinction between preventive suspensions handed down by the Ombudsman and those imposed by executive officials. On the contrary, there is a world of difference between them. The Constitution has endowed the Ombudsman with unique safeguards to ensure immunity from political pressure. Among these statutory protections are fiscal autonomy,[60] fixed term of office[61] and classification as an impeachable officer.[62] This much was recognized by this Court in the earlier cited case of *Garcia v. Mojica*. [63] Moreover, there are stricter safeguards for imposition of preventive suspension by the Ombudsman. The Ombudsman Act of 1989 requires that the Ombudsman determine: (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.[64]

The dissenting opinion finally points out the possibility of abuse by the Ombudsman in imposing preventive suspensions. The short reply is that all powers are susceptible of abuse but that is no reason to strike down the grant of power. Suffice it to say that the proper remedies against abuse in the exercise of power are a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure or amendment of the Ombudsman's enabling law by the legislature, not a contortionist statutory interpretation by this Court.

IN VIEW WHEREOF, the instant petition is DISMISSED there being no showing that the Sandiganbayan gravely abused its discretion in issuing its Resolution of 4 February 2002, preventively suspending the petitioner for 90 days.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Callejo, Sr., Tinga, Chico-Nazario, and Garcia, JJ., concur.

Carpio, J., see dissenting opinion.

Carpio-Morales, J., concur in the result of J. Carpio dissent opinion.

Azcuna, J., concur in the dissent of Justice Antonio T. Carpio.

Corona, J., on official leave. I hereby certify that he voted in the majority.

[1]Rollo, pp. 79, 85.

[2]Id., pp. 76-78.

[3] Id., p. 78.

[4]Id., p. 77.

[5] Ibid.

[6] Id., pp. 77-78.

[7] Id., p. 78.

[8]Id., p. 81.

[9]Ibid.

[10]Id., pp. 10-11.

[11]Id., pp. 81-82.

[12]Id., p. 88.

[13] Id., pp. 89-95.

[14] Ibid.

[15]Id., pp. 96-97.

[16]Id., p. 96.

[17] Ibid.

[18] Id., p. 97.

[19]Id., pp. 100-102.

[20] Rollo, pp. 36-37.

[21]Id., pp. 43-45.

[22]Id., pp. 46-48.

[23] Id., pp. 37-38.

[24]Id., p. 36.

[25] Ibid.

[26] Id., pp. 41-42.

[27] Webster's Third New International Dictionary of the English Language Unabridged, p. 904 (1993).

[28] Rollo, pp. 36-37.

[29] Rollo, pp. 40-41.

[30] Elks Club v. Rovira, 80 Phil. 272 (1948).

[31] Dissenting Opinion, p. 16.

[32] Dissenting Opinion, pp. 9-10.

[33] Rollo, pp. 79, 81; Petitioner's "Counter-Affidavit," pp. 1, 3.

[34] Rollo, pp. 81-82; Petitioner's "Counter-Affidavit," pp. 3-4.

[35] Rollo, pp. 10-11; Petitioner's "Petition," pp. 8-9.

[36] 99 Phil. 655-656.

[37] Id., pp. 657-658.

[38] Dissenting Opinion, p. 16.

[39] The Revised Rules of Criminal Procedure, Rule 117, Section 9 (2000); The rule provides as follows:

SECTION 9. Failure to Move to Quash or to Allege Any Ground Therefor. - The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.

[40] The Revised Rules of Criminal Procedure, Rule 117, Section 3(e) (2000).

[41] The Revised Rules of Criminal Procedure, Rule 117, Sections 1, 3 and 9, and Rule 116, Section 9 (2000).

[42] Kamisar, Israel, and LaFave, Modern Criminal Procedure - Cases, Comments and Questions, pp. 1037-1038 (8th ed).

[43] The Revised Rules of Criminal Procedure, Rule 110, Section 9 (2000).

[44] Matilde, Jr. v. Jabson, 68 SCRA 456 (1975).

[45] Rollo, p. 127.

[46] Dissenting Opinion, p. 22.

[47] Garcia v. Mojica, 314 SCRA 207, 223-224 (1999).

[48] 279 SCRA 581 (1997).

[49] 251 SCRA 242 (1995).

[50] 314 SCRA 207 (1999).

[51] Hagad v. Gozo-Dadole, 251 SCRA 242, 253-254 (1995).

[52] Garcia v. Mojica, 314 SCRA 207 (1999).

[53] Principal author of the Local Government Code.

[54] Senate President Jovito R. Salonga.

[55] Record of the Senate, Vol. 1, No. 3, pp. 68-69 (1990).

[56] Const., Article XI, Sections 5, 11-14 (1987).

[57] Garcia v. Mojica, 314 SCRA 207 (1999); Castillo-Co v. Barbers, 290 SCRA 717 (1998); Hagad v. Gozo-Dadole, 251 SCRA 242 (1995); Lastimosa v. Vasquez, 243 SCRA 497 (1995).

[58] Republic Act No. 6770, Section 24 (1989).

[59] Rollo, pp. 79, 85.

[60] Const., Article XI, Section 14 (1987).

[61] Const., Article XI, Section 11 (1987).

[62] Const., Article XI, Sections 2-3 (1987).

[63] 314 SCRA 207 (1999).

[64] Ibid.

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