

**GERARDO R. VILLASEÑOR and RODEL A. MESA, Petitioners, vs.
SANDIGANBAYAN (5th Division) LOUELLA MAE OCO-PESQUERRA
(Office of the Special Prosecutor, Ombudsman), Respondents.**

G.R. No. 180700. March 04, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

DOES preventive suspension in an administrative proceeding bar preventive suspension in a criminal case founded on the same facts and circumstances?

The question is posed in this petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure. Petitioners seek to annul and set aside the Sandiganbayan[1] Resolution[2] of July 3, 2007 in Criminal Case No. 27756 for violation of Section 3, Republic Act (R.A.) No. 3019,[3] as amended, suspending them *pendente lite*. Also assailed is the October 10, 2007 Resolution[4] denying their motion for reconsideration.

Factual Antecedents

On August 18, 2001, disaster struck. In the wee hours of the morning, the Quezon City Manor Hotel went ablaze resulting in the death of seventy-four (74) people and injuries to scores of others. Investigation into the tragedy revealed that the hotel was a veritable fire trap.

Petitioners, together with other officials of the City Engineering Office of Quezon City, are presently facing criminal charges before the 5th Division of the Sandiganbayan for the crime of multiple homicide through reckless imprudence and for violation of Section 3(e) of R.A. No. 3019. They were also charged administratively with gross negligence, gross misconduct and conduct prejudicial to the interest of the service in connection with the Manor Hotel inferno.

In two separate Orders dated August 29, 2001[5] and September 7, 2001[6] in the administrative case, petitioners Villaseñor and Mesa were preventively suspended for a period of six (6) months, effective upon receipt of the suspension order.

On September 20, 2006, during the pendency of the criminal case, respondent special prosecutor Louella Mae Oco-Pesquera filed a motion for suspension *pendente lite*[7] of petitioners.

Petitioners opposed[8] the motion, contending that they had already been suspended for six (6) months relative to the administrative case, based on the same facts and circumstances. They posited that any preventive suspension that may be warranted in the criminal case was already absorbed by the preventive suspension in the administrative case because both the criminal and administrative cases were anchored on the same set of facts.

In the assailed Resolution[9] of July 3, 2007, respondent court granted the prosecution's motion for suspension. It ordered the suspension of petitioners for a period of ninety (90) days. The dispositive portion reads, thus:

WHEREFORE, in light of the foregoing, accused Romeo M. Montallana, Romualdo C. Santos, Gerardo R.

Villaseñor, and Rodel A. Mesa are hereby suspended from their respective public positions as earlier enumerated, and from any other public office which they may now or hereafter be holding for a period of ninety (90) days from receipt of this resolution, unless a motion for reconsideration is seasonably filed. While the prosecution sought to suspend accused Alfredo N. Macapugay, it appears, however, that he was already dismissed from the service, hence, he can no longer be subjected to this suspension order.

Let a copy of this resolution be furnished Honorable Feliciano Belmonte, Quezon City Mayor for implementation of this suspension. He is hereby requested to inform this Court of his action thereon within five (5) days from receipt of this resolution.

The suspension of the accused shall be automatically lifted upon the expiration of the ninety-day period from the time of the implementation of this resolution.

SO ORDERED.[10]

In the equally assailed Resolution[11] of October 10, 2007, petitioners' motion for reconsideration was denied for lack of merit.

Issue

Petitioners have resorted to the present recourse, hoisting the lone issue of "WHETHER OR NOT THE PUBLIC RESPONDENT ACTED IN EXCESS OF JURISDICTION AND/OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ORDERING THE SUSPENSION PENDENTE LITE OF HEREIN PETITIONERS DESPITE THE FACT THAT THEY HAD ALREADY BEEN PREVIOUSLY SUSPENDED ADMINISTRATIVELY BASED ON THE SAME FACTS AND CIRCUMSTANCES.[12]

Our Ruling

Mandatory nature of
preventive suspension

It is well-settled that preventive suspension under Section 13 of R.A. No. 3019 is mandatory. It is evident from the very wording of the law:

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 the government or public funds or property, whether as a simple or as a complex offense and in whatever stage of the execution and mode of participation, is pending in court, shall be suspended from office. x x x (Underscoring supplied)

A whole slew of cases reinforce this provision of law. In *Luciano v. Provincial Governor*,[13] the Court pronounced that suspension of a public officer under Section 13 of R.A. No. 3019 is mandatory. This was reiterated in *Luciano v. Mariano*,[14] *People v. Albano*,[15] *Gonzaga v. Sandiganbayan*[16] and *Bunye v. Escareal*.^[17] In the last mentioned case, the Court said:

Adverting to this Court's observation in *Ganzon v. CA*, 200 SCRA 271, 272, that the sole objective of an administrative suspension is "to prevent the accused from hampering the normal course of the investigation with his influence and authority over possible witnesses or to keep him off the records and other evidence" and "to assist prosecutors in firming up a case, if any, against an erring official," the petitioners insist that as no such reason for their suspension exists, then the order suspending them should be set aside as a grave abuse of the court's discretion.

x x x x

The Court finds no merit in those arguments. Section 13 of R.A. No. 3019, as amended, unequivocally provides that the accused public officials "shall be suspended from office" while the criminal prosecution is

pending in court.

In *Gonzaga v. Sandiganbayan*, 201 SCRA 417, 422, 426, this Court ruled that such preventive suspension is mandatory; there are no ifs and buts about it.[18] (Underscoring supplied)

Again, in *Bolastig v. Sandiganbayan*,[19] the Court stressed the mandatory nature of preventive suspension as follows:

x x x It is now settled that Sec. 13 of Republic Act No. 3019 makes it mandatory for the Sandiganbayan to suspend any public official against whom a valid information charging violation of that law, Book II, Title 7 of the Revised Penal Code, or any offense involving fraud upon government or public funds or property is filed. The court trying a case has neither discretion nor duty to determine whether preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continuing committing malfeasance in office. The presumption is that unless the accused is suspended he may frustrate his prosecution or commit further acts of malfeasance or do both, in the same way that upon a finding that there is probable cause to believe that a crime has been committed and that the accused is probably guilty thereof, the law requires the judge to issue a warrant for the arrest of the accused. The law does not require the court to determine whether the accused is likely to escape or evade the jurisdiction of the court.[20] (Underscoring supplied)

Clearly, there can be no doubt as to the validity of the Sandiganbayan's suspension of petitioners in connection with the pending criminal case before it. It was merely doing what was required of it by law.

Criminal and administrative cases
separate and distinct

Significantly, there are three kinds of remedies that are available against a public officer for impropriety in the performance of his powers and the discharge of his duties: (1) civil, (2) criminal, and (3) administrative. These remedies may be invoked separately, alternately, simultaneously or successively. Sometimes, the same offense may be the subject of all three kinds of remedies.[21]

Defeat of any of the three remedies will not necessarily preclude resort to other remedies or affect decisions reached thereunder, as different degrees of evidence are required in these several actions. In criminal cases, proof beyond reasonable doubt is needed whereas a mere preponderance of evidence will suffice in civil cases.[22] In administrative proceedings, only substantial evidence is required.

It is clear, then, that criminal and administrative cases are distinct from each other.[23] The settled rule is that criminal and civil cases are altogether different from administrative matters, such that the first two will not inevitably govern or affect the third and vice versa.[24] Verily, administrative cases may proceed independently of criminal proceedings.[25]

Socrates v. Sandiganbayan,[26] citing the Court's pronouncements in *Luciano v. Provincial Governor*,[27] recounted:

The Court then hastened to clarify that such a view may not be taken as an encroachment upon the power of suspension given other officials, reiterating in the process that a line should be drawn between administrative proceedings and criminal actions in court, that one is apart from the other. x x x[28] (Underscoring supplied)

Based on the foregoing, criminal actions will not preclude administrative proceedings, and vice-versa, insofar as the application of the law on preventive suspension is concerned.

Preventive suspension not a penalty

Imposed during the pendency of proceedings, preventive suspension is not a penalty in itself. It is merely a measure of precaution so that the employee who is charged may be separated, for obvious reasons, from office. Thus, preventive suspension is distinct from the penalty. While the former may be imposed on a respondent during the investigation of the charges against him, the latter may be meted out to him at the final disposition of the case.[29]

The Court's discussion in *Quimbo v. Gervacio*[30] is enlightening:

Jurisprudential law establishes a clear-cut distinction between suspension as preventive measure and suspension as penalty. The distinction, by considering the purpose aspect of the suspensions, is readily cognizable as they have different ends sought to be achieved.

Preventive suspension is merely a preventive measure, a preliminary step in an administrative investigation. The purpose of the suspension order is to prevent the accused from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him. If after such investigation, the charge is established and the person investigated is found guilty of acts warranting his suspension or removal, then he is suspended, removed or dismissed. This is the penalty.

That preventive suspension is not a penalty is in fact explicitly provided by Section 24 of Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 (Executive Order No. 292) and other Pertinent Civil Service Laws.

Sec. 24. Preventive suspension is not a punishment or penalty for misconduct in office but is considered to be a preventive measure.[31]

The accused public officers whose culpability remains to be proven are entitled to the constitutional presumption of innocence.[32] The law itself provides for the reinstatement of the public officer concerned and payment to him of the salaries and benefits for the duration of the suspension in the event of an acquittal:

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 the government or public funds or property, whether as a simple or as a complex offense and in whatever stage of the 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 and gratuity benefits under the 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.[33] (Underscoring supplied)

Sec. 13 of R.A. No. 3019 not a penal provision but a procedural one

It is petitioners' contention that as a penal statute, the provision on preventive suspension should be strictly construed against the State and liberally in their favor.

We cannot agree. Section 13 of R.A. No. 3019 on preventive suspension is not a penal provision. It is procedural in nature. Hence, the strict construction rule finds no application. The Court expounded on this point in *Buenaseda v. Flavie*r:[34]

Penal statutes are strictly construed while procedural statutes are liberally construed (Crawford, *Statutory Construction, Interpretation of Laws*, pp. 460-461; *Lacson v. Romero*, 92 Phil. 456 [1953]). The test in determining if a statute is penal is whether a penalty is imposed for the punishment of a wrong to the public or for the redress of an injury to an individual (59 *Corpus Juris*, Sec. 658; Crawford, *Statutory Construction*, pp. 496-497). A Code prescribing the procedure in criminal cases is not a penal statute and is to be interpreted

liberally (*People v. Adler*, 140 N.Y. 331; 35 N.E. 644).[35] (Underlining supplied)

As We have already established, preventive suspension is not, in actual fact, a penalty at all. It is a procedural rule.

Automatic lift of suspension after
ninety (90) days

It must be borne in mind that the preventive suspension of petitioners will only last ninety (90) days, not the entire duration of the criminal case like petitioners seem to think. Indeed, it would be constitutionally proscribed if the suspension were to be of an indefinite duration or for an unreasonable length of time. The Court has thus laid down the rule that preventive suspension may not exceed the maximum period of ninety (90) days, in consonance with Presidential Decree No. 807,[36] now Section 52 of the Administrative Code of 1987.[37]

Even the dispositive portion itself of the assailed July 3, 2007 Resolution[38] could not be any clearer:

WHEREFORE, x x x.

x x x x

The suspension of the accused shall be automatically lifted upon the expiration of the ninety-day period from the time of the implementation of this resolution.

SO ORDERED.[39]

In fine, the preventive suspension against petitioners must be upheld, as the Sandiganbayan committed no grave abuse of discretion.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

[1] 5th Division.

[2] Penned by Associate Justice Ma. Cristina G. Cortez-Estrada, with Associate Justices Roland B. Jurado and Teresita V. Diaz-Baldos, concurring; rollo, pp. 62-69.

[3] The Anti-Graft and Corrupt Practices Act, August 17, 1960.

[4] Rollo, pp. 73-75.

[5] Id. at 41.

[6] Id. at 46.

[7] Id. at 50-57.

[8] Id. at 58-61.

[9] Id. at 62-69.

[10] Id. at 68.

[11] Id. at 73-75.

- [12] Id. at 6.
- [13] G.R. No. L-30306, June 20, 1969, 28 SCRA 517.
- [14] G.R. No. L-32950, July 30, 1971, 40 SCRA 187.
- [15] G.R. Nos. L-45376-77, July 26, 1988, 163 SCRA 511.
- [16] G.R. No. 96131, September 6, 1991, 201 SCRA 417.
- [17] G.R. No. 110216, September 10, 1993, 226 SCRA 332.
- [18] Id. at 336.
- [19] G.R. No. 110503, August 4, 1994, 235 SCRA 103.
- [20] Bolastig v. Sandiganbayan, id. at 108.
- [21] Sobremente v. Enrile, G.R. No. L-60602, September 30, 1982, 117 SCRA 618, 625, citing Villaber v. Diego, G.R. No. L-58064, October 23, 1981, 108 SCRA 468, 472.
- [22] Cruz, C.L., The Law of Public Officers, 1999 ed., p. 161.
- [23] Morono v. Lomeda, A.M. No. MTJ-90-400, July 14, 1995, 246 SCRA 69, 80-81, citing Icasiano v. Sandiganbayan, G.R. No. 95642, May 28, 1992, 209 SCRA 377, 383.
- [24] Suzuki v. Tiamson, A.M. No. 6542, September 30, 2005, 471 SCRA 129, 141.
- [25] Bejarasco, Jr. v. Buenconsejo, A.M. No. MTJ-02-1417, May 27, 2004, 429 SCRA 212, 221.
- [26] G.R. Nos. 116259-60, February 20, 1996, 253 SCRA 773.
- [27] Supra note 13.
- [28] Socrates v. Sandiganbayan, supra at 804.
- [29] Beja, Sr. v. Court of Appeals, G.R. No. 97149, March 31, 1992, 207 SCRA 689, 694-695.
- [30] G.R. No. 155620, August 9, 2005, 466 SCRA 277.
- [31] Quimbo v. Gervacio, id. at 281-282.
- [32] Berona v. Sandiganbayan, G.R. No. 142456, July 27, 2004, 435 SCRA 303, 309.
- [33] Republic Act No. 3019, Sec. 13.
- [34] G.R. No. 106719, September 21, 1993, 226 SCRA 645.
- [35] Buenaseda v. Flavier, id. at 652-653.
- [36] The Civil Service Decree.
- [37] Segovia v. Sandiganbayan, G.R. No. 124967, March 27, 1998, 288 SCRA 328, 339.
- [38] Rollo, pp. 62-69.
- [39] Id. at 68.

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