

KILUSANG BAYAN SA PAGLILINGKOD NG MGA MAGTITINDA NG BAGONG PAMILIHANG BAYAN NG MUNTINLUPA, INC., (KBMBPM), TERESITA A. FAJARDO, NADYESDA B. PONSONES, MA. FE V. BOMBASE, LOIDA D....

G.R. No. 85439. January 13, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

These cases have been consolidated because they are closely linked with each other as to factual antecedents and issues.

The first case, G.R. No. 85439 (hereinafter referred to as the Kilusang Bayan case), questions the validity of the Order of 28 October 1988 of then Secretary of Agriculture Hon. Carlos G. Dominguez which ordered: (1) the take-over by the Department of Agriculture of the management of the petitioner Kilusang Bayan sa Paglilingkod Ng Mga Magtitinda Ng Bagong Pamilihang Bayan ng Muntinlupa, Inc. (KBMBPM) pursuant to the Department's regulatory and supervisory powers under Section 8 of P.D. No. 175, as amended, and Section 4 of Executive Order No. 13, (2) the creation of a Management Committee which shall assume the management of KBMBPM upon receipt of the order, (3) the disbandment of the Board of Directors, and (4) the turn over of all assets, properties and records of the KBMBPM to the Management Committee.

The second case, G.R. No. 91927 (hereinafter referred to as the Bunye case), seeks the nullification of the Resolution of 4 January 1990 of the Sandiganbayan admitting the Amended Information against petitioners in Criminal Case No. 13966 and denying their motion to order or direct preliminary investigation, and its Resolution of 1 February 1990 denying the motion to reconsider the former.

The procedural and factual antecedents are not disputed.

On 2 September 1985, the Municipal Government of Muntinlupa (hereinafter, Municipality), Metro Manila, thru its then Mayor Santiago Carlos, Jr., entered into a contract with the KILUSANG BAYAN SA PAGLILINGKOD NG MGA MAGTITINDA SA BAGONG PAMILIHANG BAYAN NG MUNTINLUPA, INC. (KBMBPM) represented by its General Manager, Amado Perez, for the latter's management and operation of the new Muntinlupa public market. The contract provides for a twenty-five (25) year term commencing on 2 September 1985, renewable for a like period, unless sooner terminated and/or rescinded by mutual agreement of the parties, at a monthly consideration of Thirty-Five Thousand Pesos (P35,000) to be paid by the KBMBPM within the first five (5) days of each month which shall, however, be increased by ten percent (10%) each year during the first five (5) years only.[1]

The KBMBPM is a service cooperative organized by and composed of vendors occupying the New Muntinlupa Public Market in Alabang, Muntinlupa, Metro Manila pursuant to Presidential Decree No. 175 and Letter of Implementation No. 23; its articles of incorporation and by-laws were registered with the then Office of the

Bureau of Cooperatives Development (thereafter the Bureau of Agricultural Cooperatives Development or BACOD and now the Cooperative Development Authority).[2]

Following his assumption into office as the new mayor succeeding Santiago Carlos, Jr., petitioner Ignacio Bunye, claiming to be particularly scandalized by the "virtual 50-year term of the agreement, contrary to the provision of Section 143, paragraph 3 of Batas Pambansa Blg. 337," and the "patently inequitable rental," directed a review of the aforesaid contract.[3] He sought opinions from both the Commission on Audit and the Metro Manila Commission (MMC) on the validity of the instrument. In separate letters, these agencies urged that appropriate legal steps be taken towards its rescission. The letter of Hon. Elfren Cruz of the MMC even granted the Municipality authority "to take the necessary legal steps for the cancellation/rescission of the above cited contract and make representations with KBMBPM for the immediate transfer/takeover of the possession, management and operation of the New Muntinlupa Market to the Municipal Government of Muntinlupa." [4]

Consequently, upon representations made by Bunye with the Municipal Council, the latter approved on 1 August 1988 Resolution No. 45 abrogating the contract. To implement this resolution, Bunye, together with his co-petitioners and elements of the Capital Command of the Philippine Constabulary, proceeded, on 19 August 1986, to the public market and announced to the general public and the stallholders thereat that the Municipality was taking over the management and operation of the facility, and that the stallholders should thenceforth pay their market fees to the Municipality, thru the Market Commission, and no longer to the KBMBPM.[5]

On 22 August 1988, the KBMBPM filed with Branch 13 of the Regional Trial Court of Makati a complaint for breach of contract, specific performance and damages with prayer for a writ of preliminary injunction against the Municipality and its officers, which was docketed as Civil Case No. 88-1702.[6] The complaint was premised on the alleged illegal take-over of the public market effected "in excess of his (Bunye's) alleged authority" and thus "constitutes breach of contract and duty as a public official."

The writ applied for having been denied,[7] the KBMBPM officers resisted the attempts of Bunye and company to complete the take-over; they continued holding office in the KBS building, under their respective official capacities. The matter having been elevated to this Court by way of certiorari.[8] We remanded the same to the Court of Appeals which docketed it as C.A.-G.R. No. L-16930.[9]

On 26 August 1988, Amado Perez filed with the Office of the Ombudsman a letter-complaint charging Bunye and his co-petitioners with oppression, harassment, abuse of authority and violation of the Anti-Graft and Corrupt Practices Act[10] for taking over the management and operation of the public market from KBMBPM.[11]

In a subpoena dated 7 October 1988, prosecutor Mothalib C. Onos of the Office of the Special Prosecutor directed Bunye and his co-petitioners to submit within ten (10) days from receipt thereof counter-affidavits, affidavits of their witnesses and other supporting documents.[12] The subpoena and letter-complaint were received on 12 October 1988.

On 20 October 1988, two (2) days before the expiration of the period granted to file said documents, Bunye, et al. filed by mail an urgent motion for extension of "at least fifteen (15) days from October 22, 1988" within which to comply[13] with the subpoena.

Thereafter, the following transpired which subsequently gave rise to these petitions:

G. R. NO. 85439

In the early morning of 29 October 1988, a Saturday, respondent Madriaga and Coronado, allegedly accompanied by Mayor Bunye and the latters' heavily armed men, both in uniform and in civilian clothes, together with other

civilians, namely: Romulo Bunye II, Alfredo Bunye, Tomas Osias, Reynaldo Camilon, Benjamin, Taguibao, Benjamin Bulos and other unidentified persons, allegedly through force, violence and intimidation, forcibly broke open the doors of the offices of petitioners located at the second floor of the KBS Building, new Muntinlupa Public Market, purportedly to serve upon petitioners the Order of respondent Secretary of Agriculture dated 28 October 1988, and to implement the same, by taking over and assuming the management of KBMBPM, disbanding the then incumbent Board of Directors for that purpose and excluding and prohibiting the General Manager and the other officers from exercising their lawful functions as such.[14] The Order of the Secretary reads as follows:[15]

"O R D E R

WHEREAS, the KILUSANG BAYAN SA PAGLILINGKOD NG MGA MAGTITINDA NG BAGONG PAMILIHANG BAYAN NG MUNTINLUPA, INC., (KBMBPM), Alabang, Muntinlupa, Metro Manila is a Cooperative registered under the provisions of Presidential Decree No. 175, as amended;

WHEREAS, the Department of Agriculture is empowered to regulate and supervise cooperatives registered under the provisions of Presidential Decree No. 175, as amended;

WHEREAS, the general membership of the KBMBPM has petitioned the Department of Agriculture for assistance in the removal of the members of the Board of Directors who were not elected by the general membership of said cooperative;

WHEREAS, the on-going financial and management audit of the Department of Agriculture auditors show (sic) that the management of the KBMBPM is not operating that cooperative in accordance with P.D. 175, LOI No. 23, the Circulars issued by DA/BACOD and the provisions of the by-laws of KBMBPM;

WHEREAS, the interest of the public so demanding it is evident and urgently necessary that the KBMBPM MUST BE PLACED UNDER MANAGEMENT TAKE-OVER of the Department of Agriculture in order to preserve the financial interest of the members of the cooperative and to enhance the cooperative development program of the government;

WHEREAS, it is ordered that the Department of Agriculture in the exercise of its regulatory and supervisory powers under Section 8 of PD 175, as amended, and Section 4 of Executive Order No. 113, take over the management of KBMBPM under the following directives:

- THAT a Management Committee is hereby created composed of the following:

- a) Reg. Dir. or OIC RD - DA Region IV
- b) Atty. Rogelio P. Madriaga - BACOD
- c) Mr. Recto Coronado - KBMBPM
- d) Mrs. Nadjasda Ponsones - KBMBPM
- e) One (1) from the Municipal Government of Muntinlupa to be designated by the Sangguniang Pambayan ng Muntinlupa

- THAT the Management Committee shall, upon receipt of this Order, assume the management of KBMBPM;

- THAT the present Board of Directors is hereby disbanded and the officers and Manager of the KBMBPM are hereby directed to turnover all assets, properties and records of the KBMBPM to the Management Committee herein created;

- THAT the Management Committee is hereby empowered to promulgate rules of procedure to govern its

workings as a body;

- THAT the Management Committee shall submit to the undersigned thru the Director of BACOD monthly reports on the operations of KBMBPM;
- THAT the Management Committee shall call a General Assembly of all registered members of the KBMBPM within Ninety (90) days from date of this Order to decide such matters affecting the KBMBPM, including the election of a new set of Board of Director (sic).

This Order takes effect immediately and shall continue to be in force until the members of the Board of Directors shall have been duly elected and qualified.

Done this 28th day of October, 1988 at Quezon City."

As claimed by petitioners, the Order served on them was not written on the stationary of the Department, does not bear its seal and is a mere xerox copy.

The so-called petition upon which the Order is based appears to be an unverified petition dated 10 October 1988 signed, according to Mayor Bunye,[16] by 371 members of the KBMBPM.

On 2 November 1988, petitioners filed the petition in this case alleging, inter alia, that:

- (a) Respondent Secretary acted without or in excess of jurisdiction in issuing the Order for he arrogated unto himself a judicial function by determining the alleged guilt of petitioners on the strength of a mere unverified petition; the disbandment of the Board of Directors was done without authority of law since under Letter of Implementation No. 23, removal of officers, directors or committee members could be done only by the majority of the members entitled to vote at an annual or special general assembly and only after an opportunity to be heard at said assembly.
- (b) Respondent Secretary acted in a capricious, whimsical, arbitrary and despotic manner, so patent and gross that it amounted to a grave abuse of discretion.
- (c) The Order is a clear violation of the By-Laws of KBMBPM and is likewise illegal and unlawful for it allows or tolerates the violation of the penal provisions under paragraph (c), Section 9 of P.D. No. 175.
- (d) The Order is a clear violation of the constitutional right of the individual petitioners to be heard.[17]

They pray that upon the filing of the petition, respondents, their agents, representatives or persons acting on their behalf be ordered to refrain, cease and desist from enforcing and implementing the questioned Order or from excluding the individual petitioners from the exercise of their rights as such officers and, in the event that said acts sought to be restrained were already partially or wholly done, to immediately restore the management and operation of the public market to petitioners, order respondents to vacate the premises and, thereafter, preserve the status quo; and that, finally, the challenged Order be declared null and void.

In the Resolution of 9 October 1988,[18] We required the respondents to Comment on the petition. Before any Comment could be filed, petitioners filed on 2 January 1989 an Urgent Ex-Parte Motion praying that respondent Atty. Rogelio Madriaga, who had assumed the position of Chairman of the Management Committee, be ordered to stop and/or cancel the scheduled elections of the officers of the KBMBPM on 6 January 1989 and, henceforth, desist from scheduling any election of officers or Members of the Board of Directors thereof until further orders of the Court.[19] The elections were, nevertheless, held and a new board of directors was elected. So, on 19 January 1989, petitioners filed a supplemental motion[20] praying that respondent Madriaga and the "newly elected Board of Directors be ordered to cease and desist from assuming, performing or exercising powers as such, and/or from removing or replacing the counsels of petitioners as counsels for KBMBPM and for Atty.

Fernando Aquino, Jr., to cease and desist from unduly interfering with the affairs and business of the cooperative.

Respondent Bunye, by himself, filed his Comment on 23 January 1989.[21] He denies the factual allegations in the petition and claims that petitioners failed to exhaust administrative remedies. A reply thereto was filed by petitioners on 7 February 1989.[22]

Respondent Recto Coronado filed two (2) Comments. The first was filed on 6 February 1989[23] by his counsel, Atty. Fernando Aquino, Jr., and the second, which is for both him and Atty. Madriaga, was filed by the latter on 10 February 1989.[24]

On 20 February 1989, petitioners filed a Reply to the first Comment of Coronado[25] and an Ex-Parte Motion for the immediate issuance of a cease and desist order[26] praying that the so-called new directors and officers of KBMBPM, namely: Tomas M. Osias, Ildefonso B. Reyes, Paulino Moldez, Fortunato M. Medina, Aurora P. del Rosario, Moises Abrenica, and Lamberto Casalla, be ordered to immediately cease and desist from filing notices of withdrawals or motions to dismiss cases filed by the Cooperative now pending before the courts, administrative offices and the Ombudsman and Tanodbayan, and that if such motions or notices were already filed, to immediately withdraw and desist from further pursuing the same until further orders of this Court. The latter was precipitated by the Resolution No. 19 of the "new" board of directors withdrawing all cases filed by its predecessors against Bunye, et al., and more particularly the following cases: (a) G.R. No. 85439 (the instant petition), (b) Civil Case No. 88-1702, (c) OSP Case No. 88-2110 before the Ombudsman, (d) IBP Case No. 88-0119 before the Tanodbayan, and Civil Case No. 88-118 for Mandamus.[27]

On 1 March 1989, We required the Solicitor General to file his Comment to the petition and the urgent motion for the immediate issuance of a cease and desist order.[28]

A motion to dismiss the instant petition was filed on 30 March 1989.[29] On 19 April 1989, We resolved to dismiss the case and consider it closed and terminated.[30] Thereupon, after some petitioners filed a motion for clarification and reconsideration, We set aside the dismissal order and required the new directors to comment on the Opposition to Motion to Dismiss filed by the former.[31]

The new board, on 14 June 1989, prayed that its Manifestation of 6 June 1989 and Opposition dated 9 June 1989, earlier submitted in response to petitioners' motion for reconsideration of the order dismissing the instant petition, be treated as its Comment.[32] Both parties then continued their legal fencing, serving several pleadings on each other.

In Our Resolution of 9 August 1989,[33] We gave the petition due course and required the parties to submit their respective Memoranda.

On 14 August 1989, petitioners filed an urgent ex-parte motion for the immediate issuance of a cease and desist order[34] in view the new board's plan to enter into a new management contract; the motion was noted by this Court on 23 August 1989. A second ex-parte motion, noted on 18 October 1989, was filed on 19 September 1989 asking this Court to consider the "Invitation to pre-qualify and bid" for a new contract published by respondent Bunye.[35]

In a belated Comment[36] for the respondent Secretary of Agriculture filed on 22 September 1989, the Office of the Solicitor General asserts that individual petitioners, who were not allegedly elected by the members or duly designated by the BACOD Director, have no right or authority to file this case; the assailed Order of the Secretary was issued pursuant to P.D. No. 175, more particularly Section 8 thereof which authorizes him "(d) to suspend the operation or cancel the registration of any cooperative after hearing and when in its judgment and based on findings, such cooperative is operating in violation of this Decree, rules and regulations, existing laws as well as

the by-laws of the cooperative itself;" the Order is reasonably necessary to correct serious flaws in the cooperative and provide interim measures until election of regular members to the board and the officers thereof; the elections conducted on 6 January 1989 are valid; and that the motion to dismiss filed by the new board of directors binds the cooperative. It prays for the dismissal of the petition.

Respondent Secretary of Agriculture manifested on 22 September 1989 that he is adopting the Comment submitted by the Office of the Solicitor General as his memorandum;^[37] petitioners and respondents Coronado and Madriaga filed their separate Memoranda on 6 November 1989;^[38] while the new board of directors submitted its Memorandum on 11 December 1989.^[39]

The new KBMBPM board submitted additional pleadings on 16 February 1990 which it deemed relevant to the issues involved herein. Reacting, petitioners filed a motion to strike out improper and inadmissible pleadings and annexes and sought to have the pleaders cited for contempt. Although We required respondents to comment, the latter did not comply.

Nevertheless, a manifestation was filed by the same board on 25 February 1991^[40] informing this Court of the holding, on 9 January 1991, of its annual general assembly and election of its board of directors for 1991. It then reiterates the prayer that the instant petition be considered withdrawn and dismissed. Petitioners filed a counter manifestation alleging that the instant petition was already given due course on 9 August 1989.^[41] In its traverse to the counter manifestation, the new board insists that it "did not derive authority from the October 28, 1988 Order, the acts of the Management Committee, nor (sic) from the elections held in (sic) January 6, 1989," but rather from the members of the cooperative who elected them into office during the elections.

Petitioners filed a rejoinder asserting that the election of new directors is not a supervening event independent of the main issue in the present petition and that to subscribe to the argument that the issues in the instant petition became moot with their assumption into office is to reward a wrong done.

G. R. NO. 91927

Petitioners claim that without ruling on their 20 October 1988 motion for an extension of at least 15 days from 22 October 1988 within which to file their counter-affidavits, which was received by the Office of the Special Prosecutor on 3 November 1988, Special Prosecutor Onos promulgated on 11 November 1988 a Resolution finding the evidence on hand sufficient to establish a prima facie case against respondents (herein petitioners) and recommending the filing of the corresponding information against them before the Sandiganbayan.^[42] Petitioners also claim that they submitted their counter-affidavits on 9 November 1988.^[43]

In their motion dated 2 December 1988, petitioners move for a reconsideration of the above Resolution,^[44] which was denied by Onos^[45] in his 18 January 1989 Order. The information against the petitioners was attached to this order.

Upon submission of the records for his approval, the Ombudsman issued a first indorsement on 4 April 1989 referring to "Judge Gualberto J. de la Llana, Acting Director, IEO/RSSO, this Office, the within records of OSP Case No. 88-02110 ... for further preliminary investigation ..."^[46]

Thereafter, on 28 April 1989, Bunye and company received a subpoena from de la Llana requiring them to appear before the latter on 25 April 1989,^[47] submit a report and file comment. After being granted an extension, Bunye and company submitted their comment on 18 May 1989.^[48]

On 22 August 1989, de la Llana recommended the filing of an information for violation of section 3 (e) of the Anti-Graft and Corrupt Practices Act.^[49] The case was referred to special prosecuting officer Jose Parentela, Jr.

who, in his Memorandum[50] to the Ombudsman through the Acting Special Prosecutor, likewise urged that an information be filed against herein petitioners. On 3 October 1989, the Ombudsman signed his conformity to the Memorandum and approved the 18 January information prepared by Onos, which was then filed with the Sandiganbayan.

Consequently, Bunye, et al. were served arrest warrants issued by the Sandiganbayan. Detained at the NBI on 9 October 1989, they claim to have discovered only then the existence of documents recommending and approving the filing of the complaint and a memorandum by special prosecutor Bernardita G. Erum proposing the dismissal of the same.[51]

Arraignment was set for 18 October 1989.[52]

However, on 14 October 1989, petitioners filed with the Sandiganbayan an “Omnibus Motion to Remand to the Office of the Ombudsman; to Defer Arraignment and to Suspend Proceedings.”[53]

Subsequently, through new counsel, petitioners filed on 17 October 1989 a Consolidated Manifestation and Supplemental Motion[54] praying, inter alia, for the quashal of the information on the ground that they were deprived of their right to a preliminary investigation and that the information did not charge an offense.

The Sandiganbayan issued an order on 18 October 1989 deferring arraignment and directing the parties to submit their respective memoranda,[55] which petitioners complied with on 2 November 1989.[56] On 16 November 1989, Special Prosecutor Berbano filed a motion to admit amended information.[57]

On 17 November 1989, The Sandiganbayan handed down a Resolution[58] denying for lack of merit the Omnibus Motion to Remand the Case To The Office of the Ombudsman, to Defer Arraignment and to Suspend Proceedings. Petitioners then filed a motion to order a preliminary investigation[59] on the basis of the introduction by the amended information of new, material and substantive allegations, which the special prosecutor opposed,[60] thereby precipitating a rejoinder filed by petitioners.[61]

On 4 January 1990, the Sandiganbayan handed down a Resolution[62] admitting the Amended Information and denying the motion to direct preliminary investigation. Their motion to reconsider this Resolution having been denied in the Resolution of 1 February 1990,[63] petitioners filed the instant petition on 12 February 1990.

Petitioners claim that respondent Sandiganbayan acted without or in excess of jurisdiction or with manifest grave abuse of discretion amounting to lack of jurisdiction in denying petitioners their right to preliminary investigation and in admitting the Amended Information.

They then pray that: (a) the 4 January and 1 February 1990 Resolutions of the Sandiganbayan, admitting the amended information and denying the motion for reconsideration respectively, be annulled; (b) a writ be issued enjoining the Sandiganbayan from proceeding further in Criminal Case No. 13966; and (c) respondents be enjoined from pursuing further actions in the graft case.

We required the respondents to Comment on the petition.

On 21 February 1990, petitioners' counsel filed a motion to drop Epifanio Espeleta and Rey E. Dulay as petitioners,[64] and in the Comment they filed on 30 March 1990, in compliance with Our Resolution of 1 March 1990, they state that they do not interpose any objection to the motion.

On 20 March 1990, the Office of the Solicitor General moved that it be excused from filing comment for the respondents as it cannot subscribe to the position taken by the latter with respect to the questions of law involved.[65] We granted this motion in the resolution of 8 May 1990.

Respondent Berbano filed his comment on 10 September 1991 and petitioners replied on 20 December 1990; Berbano subsequently filed a Rejoinder thereto on 11 January 1991.[66] The Sandiganbayan then filed a manifestation proposing that it be excused from filing comment as its position on the matters in issue is adequately stated in the resolutions sought to be annulled.[67] On 7 March 1991, We resolved to note the manifestation and order the instant petition consolidated with G.R. No. 85439.

The present dispute revolves around the validity of the antecedent proceedings which led to the filing of the original information on 18 January 1989 and the amended information afterwards.

THE ISSUES AND THEIR RESOLUTION

1. G. R. NO. 85439.

As adverted to in the introductory portion of this Decision, the principal issue in G.R. No. 85439 is the validity of the 28 October 1988 Order of respondent Secretary of Agriculture. The exordium of said Order unerringly indicates that its basis is the alleged petition of the general membership of the KBMBPM requesting the Department for assistance "in the removal of the members of the Board of Directors who were not elected by the general membership" of the cooperative and that the "ongoing financial and management audit of the Department of Agriculture auditors show (sic) that the management of the KBMBP is not operating that cooperative in accordance with P.D. 175, LOI 23, the Circulars issued by DA/BACOD and the provisions and by-laws of KBMBPM." It is also professed therein that the Order was issued by the Department "in the exercise of its regulatory and supervisory powers under Section 8 of P.D. 175, as amended, and Section 4 of Executive Order No. 113."

Respondents challenge the personality of the petitioners to bring this action, set up the defense of non-exhaustion of administrative remedies, and assert that the Order was lawfully and validly issued under the above decree and Executive Order.

We find merit in the petition and the defenses interposed do not persuade Us.

Petitioners have the personality to file the instant petition and ask, in effect, for their reinstatement as Section 3, Rule 65 of the Rules of Court, defining an action for mandamus, permits a person who has been excluded from the use and enjoyment of a right or office to which he is entitled, to file suit.[68] Petitioners, as ousted directors of the KBMBPM, are questioning precisely the act of respondent Secretary in disbanding the board of directors; they then pray that this Court restore them to their prior stations.

As to failure to exhaust administrative remedies, the rule is well-settled that this requirement does not apply where the respondent is a department secretary whose acts, as an alter ego of the President, bear the implied approval of the latter, unless actually disapproved by him.[69] This doctrine of qualified political agency ensures speedy access to the courts when most needed. There was no need then to appeal the decision to the office of the President; recourse to the courts could be had immediately. Moreover, the doctrine of exhaustion of administrative remedies also yields to other exceptions, such as when the question involved is purely legal, as in the instant case,[70] or where the questioned act is patently illegal, arbitrary or oppressive.[71] Such is the claim of petitioners which, as hereinafter shown, is correct.

And now on the validity of the assailed Order.

Regulation 34 of Letter of Implementation No. 23 (implementing P.D. No. 175) provides the procedure for the removal of directors or officers of cooperatives, thus:

"An elected officer, director or committee member may be removed by a vote of majority of the members entitled to vote at an annual or special general assembly. The person involved shall have an opportunity to be heard."

A substantially identical provision, found in Section 17, Article III of the KBMBPM's by-laws, reads:

"Section 17. Removal of Directors and Committee Members. - Any elected director or committee member may be removed from office for cause by a majority vote of the members in good standing present at the annual or special general assembly called for the purpose after having been given the opportunity to be heard at the assembly."

Under the same article are found the requirements for the holding of both the annual general assembly and a special general assembly.

Indubitably then, there is an established procedure for the removal of directors and officers of cooperatives. It is likewise manifest that the right to due process is respected by the express provision on the opportunity to be heard. But even without said provision, petitioners cannot be deprived of that right.

The procedure was not followed in this case. Respondent Secretary of Agriculture arrogated unto himself the power of the members of the KBMBPM who are authorized to vote to remove the petitioning directors and officers. He cannot take refuge under Section 8 of P.D. No. 175 which grants him authority to supervise and regulate all cooperatives. This section does not give him that right.

An administrative officer has only such powers as are expressly granted to him and those necessarily implied in the exercise thereof.[72] These powers should not be extended by implication beyond what may be necessary for their just and reasonable execution.[73]

Supervision and control include only the authority to: (a) act directly whenever a specific function is entrusted by law or regulation to a subordinate; (b) direct the performance of duty; restrain the commission of acts; (c) review, approve, reverse or modify acts and decisions of subordinate officials or units; (d) determine priorities in the execution of plans and programs; and (e) prescribe standards, guidelines, plans and programs. Specifically, administrative supervision is limited to the authority of the department or its equivalent to: (1) generally oversee the operations of such agencies and insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; (2) require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; (3) take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of mal-administration; (4) review and pass upon budget proposals of such agencies but may not increase or add to them.[74]

The power to summarily disband the board of directors may not be inferred from any of the foregoing as both P.D. No. 175 and the by-laws of the KBMBPM explicitly mandate the manner by which directors and officers are to be removed. The Secretary should have known better than to disregard these procedures and rely on a mere petition by the general membership of the KBMBPM and an on-going audit by Department of Agriculture auditors in exercising a power which he does not have, expressly or impliedly. We cannot concede to the proposition of the Office of the Solicitor General that the Secretary's power under paragraph (d), Section 8 of P.D. No. 175 above quoted to suspend the operation or cancel the registration of any cooperative includes the "milder authority of suspending officers and calling for the election of new officers." Firstly, neither suspension nor cancellation includes the take-over and ouster of incumbent directors and officers, otherwise the law itself would have expressly so stated. Secondly, even granting that the law intended such as postulated, there is the requirement of a hearing. None was conducted.

Likewise, even if We grant, for the sake of argument, that said power includes the power to disband the board of directors and remove the officers of the KBMBPM, and that a hearing was not expressly required in the law, still the Order can be validly issued only after giving due process to the affected parties, herein petitioners.

Due process is guaranteed by the Constitution^[75] and extends to administrative proceedings. In the landmark case of *Ang Tibay vs. Court of Industrial Relations*,^[76] this Court, through Justice Laurel, laid down the cardinal primary requirements of due process in administrative proceedings, foremost of which is the right to a hearing, which includes the right to present one's case and submit evidence in support thereof. The need for notice and the opportunity to be heard is the heart of procedural due process, be it in either judicial or administrative proceedings.^[77] Nevertheless, a plea of a denial of procedural due process does not lie where a defect consisting in an absence of notice of hearing was thereafter cured by the aggrieved party himself as when he had the opportunity to be heard on a subsequent motion for reconsideration. This is consistent with the principle that what the law prohibits is not the absence of previous notice but the absolute absence thereof and lack of an opportunity to be heard.^[78]

In the instant case, there was no notice of a hearing on the alleged petition of the general membership of the KBMBPM; there was, as well, not even a semblance of a hearing. The Order was based solely on an alleged petition by the general membership of the KBMBPM. There was then a clear denial of due process. It is most unfortunate that it was done after democracy was restored through the peaceful people revolt at EDSA and the overwhelming ratification of a new Constitution thereafter, which preserves for the generations to come the gains of that historic struggle which earned for this Republic universal admiration.

If there were genuine grievances against petitioners, the affected members should have timely raised these issues in the annual general assembly or in a special general assembly. Or, if such a remedy would be futile for some reason or another, judicial recourse was available.

Be that as it may, petitioners cannot, however, be restored to their positions. Their terms expired in 1989, thereby rendering their prayer for reinstatement moot and academic. Pursuant to Section 13 of the by-laws, during the election at the first annual general assembly after registration, one-half plus one (4) of the directors obtaining the highest number of votes shall serve for two years, and the remaining directors (3) for one year; thereafter, all shall be elected for a term of two years. Hence, in 1988, when the board was disbanded, there was a number of directors whose terms would have expired the next year (1989) and a number whose terms would have expired two years after (1990). Reversion to the status quo preceding 29 October 1988 would not be feasible in view of this turn of events. Besides, elections were held in 1990 and 1991.^[79] The affairs of the cooperative are presently being managed by a new board of directors duly elected in accordance with the cooperative's by-laws.

2. G. R. NO. 91927.

The right of an accused to a preliminary investigation is not among the rights guaranteed him in the Bill of Rights. As stated in *Marcos, et al. vs. Cruz*,^[80] "the preliminary investigation in criminal cases is not a creation of the Constitution; its origin is statutory and it exists and the right thereto can be invoked when so established and granted by law." It is so specifically granted by procedural law.^[81] If not waived, absence thereof may amount to a denial of due process.^[82] However, lack of preliminary investigation is not a ground to quash or dismiss a complaint or information. Much less does it affect the court's jurisdiction. In *People vs. Casiano*,^[83] this Court ruled:

"Independently of the foregoing, the absence of such investigation [preliminary] did not impair the validity of the information or otherwise render it defective. Much less did it affect the jurisdiction of the court of first instance over the present case. Hence, had the defendant-appellee been entitled to another preliminary investigation, and

had his plea of not guilty upon arraignment not implied a waiver of said right, the court of first instance should have, either conducted such preliminary investigation, or ordered the Provincial Fiscal to make it, in pursuance of section 1687 of the Revised Administrative Code (as amended by Republic Act No. 732), or remanded the record for said investigation to the justice of the peace court, instead of dismissing the case, as it did in the order appealed from."

This doctrine was thereafter reiterated or affirmed in several cases.[84]

In the instant case, even if it is to be conceded for argument's sake that there was in fact no preliminary investigation, the Sandiganbayan, per *Doromal vs. Sandiganbayan*,^[85] "should merely suspend or hold in abeyance proceedings upon the questioned Amended Information and remand the case to the Office of the Ombudsman for him to conduct a preliminary investigation."

It is Our view, however, that petitioners were not denied the right to preliminary investigation. They, nevertheless, insist that the preliminary investigation conducted by the Office of the Special Prosecutor existed more in form than in substance. This is anchored on the failure by prosecutor Onos to consider the counter-affidavits filed by petitioners. The same sin of omission is ascribed to Acting Director de la Llana who purportedly failed to consider the comments submitted by the petitioners pursuant to a subpoena dated 13 April 1989. The failure of special prosecutor Berbano to conduct a preliminary investigation before amending the information is also challenged.

It is finally urged that the Sandiganbayan completely disregarded the "glaring anomaly that on its face the Information filed by the Office of the Special Prosecutor" was prepared and subscribed on 18 January 1989, while the records indicate that the preliminary investigation was concluded on 3 October 1989.

In his Comment, respondent Berbano dispassionately traces the genesis of the criminal information filed before the Sandiganbayan. His assessment that a preliminary investigation sufficient in substance and manner was conducted prior to the filing of the information reflects the view of the Sandiganbayan, maintained in both the 17 November 1989 and 4 January 1990 resolutions, that there was compliance with the requirements of due process.

Petitioners were provided a reasonable period within which to submit their counter-affidavits; they did not avail of the original period; they moved for an extension of at least fifteen (15) days from 22 October 1988. Despite the urgency of its nature, the motion was sent by mail. The extension prayed for was good up to 6 November 1988. But, as admitted by them, they filed the Counter-Affidavits only on 9 November 1988. Yet, they blamed Prosecutor Onos for promulgating the 11 November 1989 Resolution and for, allegedly, not acting on the motion. Petitioners then should not lay the blame on Onos; they should blame themselves for presuming that the motion would be granted.

This notwithstanding, petitioners were able to file a Motion for Reconsideration on 13 December 1988 requesting that the reviewing prosecutor consider the belatedly filed documents;^[86] thus, there is the recommendation of prosecutor Bernardita Erum calling for the dismissal of the charges on 2 March 1989, which, however, was not sustained upon subsequent review. The Sandiganbayan, in its 17 November 1989 Resolution, succinctly summed up the matter when it asserted that "even granting, for the sake of argument, that prosecutor Onos ... failed to consider accused-movants' counter-affidavits, such defect was cured when a 'Motion for Reconsideration' was filed, and which ... de la Llana took into account upon review."

It may not then be successfully asserted that the counter-affidavits were not considered by the Ombudsman in approving the information. Perusal of the factual antecedents reveals that a second investigation was conducted upon the "1st Indorsement" of the Ombudsman of 4 April 1989. As a result, subpoenas were issued and comments were asked to be submitted, which petitioners did, but only after a further extension of fifteen (15) days from the

expiration of the original deadline. From this submission the matter underwent further review.

Moreover, in the 18 January 1989 Order of prosecutor Onos, there was an ample discussion of the defenses raised by the petitioners in their counter-affidavits, thus negating the charge that the issues raised by them were not considered at all.[87]

It is indisputable that the respondents were not remiss in their duty to afford the petitioners the opportunity to contest the charges thrown their way. Due process does not require that the accused actually file his counter-affidavits before the preliminary investigation is deemed completed. All that is required is that he be given the opportunity to submit such if he is so minded.[88]

In any event, petitioners did in fact, although belatedly, submit their counter-affidavits and as a result thereof, the prosecutors concerned considered them in subsequent reviews of the information, particularly in the re-investigation ordered by the Ombudsman.

And now, as to the protestation of lack of preliminary investigation prior to the filing of the Amended Information. The prosecution may amend the information without leave of court before arraignment,[89] and such does not prejudice the accused.[90] Reliance on the pronouncements in *Dormal vs. Sandiganbayan*[91] is misplaced as what obtained therein was the preparation of an entirely new information as contrasted with mere amendments introduced in the amended information, which also charges petitioners with violating Section 3 (e) of the Anti-Graft Law.

In *Gaspar vs. Sandiganbayan*,[92] We held that there is no rule or law requiring the Tanodbayan to conduct another preliminary investigation of a case under review by it. On the contrary, under P.D. No. 911, in relation to Rule 12, Administrative Order No. VII, the Tanodbayan may, upon review, reverse the findings of the investigator and thereafter "where he finds a prima facie case, to cause the filing of an information in court against the respondent, based on the same sworn statements or evidence submitted, without the necessity of conducting another preliminary investigation."

Respondent Sandiganbayan did not then commit any grave abuse of discretion in respect to its Resolutions of 4 January 1990 and 1 February 1990.

The petition then must fail.

CONCLUSION

WHEREFORE, judgment is hereby rendered:

1. GRANTING the petition in G.R. No. 85439; declaring null and void the challenged Order of 28 October 1988 of the respondent Secretary of Agriculture; but denying, for having become moot and academic, the prayer of petitioners that they be restored to their positions in the KBMBPM.
2. DISMISSING, for lack of merit, the petition in G.R. No. 91927.

No pronouncement as to costs.

IT IS SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, and Romero, JJ., concur.

Gutierrez, Jr., and Nocon, JJ., no part.

[1] Annex "C" of Petition, Bunye case.

[2] Rollo, Kilusang Bayan case, 5.

[3] Rollo, Bunye case, 3-4.

[4] Id., 6.

[5] Id., 8.

[6] Annex "H", Bunye case.

[7] Annex "M", Id.

[8] G.R. No. 86750.

[9] In the decision promulgated on 23 September 1991, the Court of Appeals, finding no reversible error in the challenged Orders, dismissed the petition.

[10] R.A. No. 3019.

[11] Annex "I", Id.

[12] Annex "J", Bunye case.

[13] Annex "K", Id.

[14] Rollo, Kilusang Bayan case, 10-11.

[15] Annex "K", Id., 102-103.

[16] Annex "I" of Mayor Bunye's Answer, Rollo, Kilusang Bayan case, 136-152.

[17] Rollo, Kilusang Bayan case, 12-19.

[18] Rollo, Kilusang Bayan case, 108.

[19] Id., 112.

[20] Id., 123.

[21] Id., 129, et seq.

[22] Id., 259, et seq.

[23] Rollo, Kilusang Bayan case, 227.

[24] Id., 272.

[25] Id., 366.

[26] Id., 381.

[27] Id., 403-404.

[28] Rollo, Kilusang Bayan case, 425.

[29] Id., 427.

- [30] Id., 444.
- [31] Id., 450.
- [32] Id., 497.
- [33] Id., 620-A.
- [34] Rollo, Kilusang Bayan case, 623.
- [35] Id., 645.
- [36] Id., 653, et seq.
- [37] Rollo, Kilusang Bayan case, 650.
- [38] Id., 702, et seq.; 827, et seq.
- [39] Id., 996, et seq.
- [40] Id., 1166.
- [41] Id., 1190.
- [42] Annex "L", Bunye case, Id., 94, et seq.
- [43] Id., 9.
- [44] Id., 11.
- [45] Comment of public respondent Berbano; Id., 202-204.
- [46] Annex "15", Bunye case, 263; underscoring supplied.
- [47] Annexes "16" and "16-A", Id., 264-265.
- [48] Id., 206. According to petitioners, they filed it on 17 May 1989, Id., 11.
- [49] Annex "18", Id., 266, et seq.
- [50] Annex "19", Id., 276, et seq.
- [51] Rollo, Bunye case, 11-12.
- [52] Id., 14.
- [53] Annex "O" of Petition.
- [54] Annex "P", Id.
- [55] Annex "Q", Id.
- [56] Annex "S", Id.
- [57] Annex "T"; Id.
- [58] Annexes "22" and "23", Comment of Berbano.
- [59] Annex "V" of Petition.
- [60] Annex "25", op. cit.

[61] Annex "26", Id.

[62] Annex "A", op. cit.

[63] Annex "B", Id.

[64] Rollo, Bunye case, 165.

[65] Id., 170.

[66] Id., 430.

[67] Id., 447.

[68] MORAN, M., Comments on the Rules of Court, vol. III, 1980 ed., 199.

[69] Bartulata vs. Peralta, Jr., 59 SCRA 7 and cases cited. Demaisip vs. Court of Appeals, 106 Phil. 237. See also Almine vs. Court of Appeals, 177 SCRA 796; Brett vs. IAC, 191 SCRA 687; Industrial Power Sales, Inc. vs. Sinsuat, 160 SCRA 19; Supangan vs. Santos, 189 SCRA 56.

[70] Pascual vs. Provincial Board, 106 Phil. 466; Tapales vs. President, 7 SCRA 553; Gonzales vs. Hechanova, 9 SCRA 230; Velasco vs. Provincial Board, 115 SCRA 540.

[71] NDC vs. Collector, 9 SCRA 429; Mangubat vs. Osmeña, 105 Phil. 1308.

[72] Gonzalo Sy Trading vs. Central Bank, 70 SCRA 570.

[73] 42 Am. Jur., 316-318.

[74] Paragraph (1) and (2) of Section 38, Chapter 7, Book IV, Administrative Code of 1987, Executive Order No. 292.

[75] Section I, Article III, 1987 Constitution.

[76] 69 Phil. 635.

[77] BERNAS, J., The Constitution of the Republic of the Philippines, vol. I, 1987 ed., 47, citing Mendoza vs. NHA, 111 SCRA 637; Malayan Insurance vs. Salas, 90 SCRA 252; Molino vs. Court of Appeals, G.R. No. 59283, 30 July 1982; Beriña vs. PMI, G.R. No. 58610, 30 September 1982. See also Robusta Agro-Marine Products, Inc. vs. Gorombalem, et al., 175 SCRA 93.

[78] Catura, et al. vs. CIR, 37 SCRA 303, citing Batangas Laguna Tayabas Bus Co. vs. Cadiao, 22 SCRA 987; Vda. de Pineda, et al., Peña, et al., 187 SCRA 22.

[79] Annex "18-A", Rollo, 346; Annex "D", Id., 1175.

[80] 68 Phil. 96. See also People vs. Abejuela, 38 SCRA 324.

[81] Rule 112, Rules of Court.

[82] San Diego vs. Hernandez, 24 SCRA 110.

[83] 1 SCRA 428 (1961).

[84] Notably, People vs. Abejuela, supra.; People vs. Figueroa, 27 SCRA 1239; Bandiala vs. CFI, 35 SCRA 237; People vs. La Caste, 37 SCRA 767; Luciano vs. Mariano, 40 SCRA 187; Ilagan vs. Enrile, 139 SCRA 349; Sanciangco vs. People, et al., 149 SCRA 1; Doromal vs. Sandiganbayan, 177 SCRA 354.

[85] Supra.

[86] Annex "J" to "J-20" of the Omnibus Motion, cited in footnote 3 of the Sandiganbayan's Resolution of 17 November 1989.

[87] Order, 12-14, Rollo, Bunye case, 259-261.

[88] Soliven vs. Makasiar, 167 SCRA 393.

[89] Rule 110, Section 14, Rules of Court. Roda vs. People, G.R. No. 86371, 19 January 1988, Minute Resolution.

[90] People vs. Dacudao, 170 SCRA 489.

[91] Supra.

[92] 144 SCRA 415.

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