

## THIRD DIVISION

[ G.R. No. 249168, April 26, 2021 ]

**AILEEN CYNTHIA M. AMURAO, PETITIONER, V. PEOPLE OF THE PHILIPPINES AND SANDIGANBAYAN SIXTH DIVISION, RESPONDENT.**

### DECISION

**LOPEZ, J., J.:**

The Verified Petition<sup>[1]</sup> for *Certiorari*, Prohibition, and *Mandamus* (with prayer for the issuance of a temporary restraining order or writ of preliminary injunction) filed by petitioner Aileen Cynthia M. Amurao seeks the nullification and setting aside of the Resolution<sup>[2]</sup> dated September 5, 2019 issued by the respondent Sandiganbayan Sixth Division, ordering the suspension *pendente lite* of petitioner in Criminal Case No. SB-17-CRM-1385.

The case stemmed from an Affidavit executed by Doris Suelo, Sheryl Lynn Lebante, and Engilbert Alvarez, the private complainants in Criminal Case No. SB-17-CRM-1385, wherein they alleged that petitioner and her co-accused, as tourism officers of the City Government of Puerto Princesa, Palawan, solicited money and other gifts from private individuals and entities for the purpose of tourism activities. The money and gifts solicited then went to the personal and individual accounts of the petitioner and her co-accused.<sup>[3]</sup>

In an Information<sup>[4]</sup> dated March 5, 2015, petitioner and several others were charged before the Sandiganbayan with violation of Section 7(d) of Republic Act No. (R.A.) 6713,<sup>[5]</sup> otherwise known as the *Code of Conduct and Ethical Standards for Public Officials and Employees*. The Information states:

That on or about the period between February 2014 and April 2014 or sometime prior or subsequent thereto, in Puerto Princesa City, Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused public officers, Aileen Cynthia M. Amurao, being the City Tourism Officer and Head of the City Tourism Department, Joyce C. Enriquez, Tourism Operations Assistant, Michie H. Meneses, Tourism Operations Officer I, and Michael Angelo M. Meneses and Lucero Aquino, Jr., contractual Tourism Operations Assistant, all of the City Tourism Department, City Government of Puerto Princesa City, Palawan, while in the performance of their functions, taking advantage of their positions, committing the offense in relation to their office, and conspiring and confederating with each other, did then and there, willfully, unlawfully and criminally solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or anything of monetary value from tourism-oriented and private entities or individuals by sending them solicitation

letters for sponsorship of the City Government of Puerto Princesa's tourism activities and related projects, supervised by the accused.

CONTRARY TO LAW.<sup>[6]</sup>

During the pendency of the proceedings, the Sandiganbayan issued a Resolution<sup>[7]</sup> dated July 23, 2019 pursuant to Section 4, Rule VIII of the 2018 Revised Internal Rules of the Sandiganbayan. The Order directed petitioner to show cause why she should not be suspended *pendente lite* in accordance with Section 13 of R.A. 3019.<sup>[8]</sup>

In her Compliance and Manifestation,<sup>[9]</sup> petitioner claimed that she should not be suspended because Section 13 of R.A. 3019 only applies to those charged with violation under the same law and the provisions under the Revised Penal Code (*RPC*) on bribery, and not to violations of R.A. 6713 of which she was charged.

On September 5, 2019, the Sandiganbayan issued the assailed Resolution,<sup>[10]</sup> the dispositive portion of which reads:

**WHEREFORE**, premises considered, accused **AILEEN CYNTHIA MAGGAY AMURAO** is ordered **SUSPENDED** *pendente lite*, for a period of ninety (90) days, as Head of the Office of the City Tourism of Puerto Princesa City, or any other public position she may now or hereafter be holding.

Accused Aileen Cynthia Maggay Amurao is ordered to **CEASE AND DESIST** from further performing and/or exercising the functions, duties, and privileges of her position upon the implementation of this Order of Preventive Suspension. The suspension of the accused shall be automatically lifted upon the expiration of the 90-day period from the implementation of this resolution.<sup>[11]</sup>

The Sandiganbayan ruled that the offense charged against petitioner is covered by the rule on preventive suspension under Section 13 of R.A. 3019. It noted that the imposition of preventive suspension is applicable not only to those charged with violation of R.A. 3019 and Title 7, Book II of the *RPC*, but also to those charged with any offense involving fraud upon the government and any offense involving public funds or property.<sup>[12]</sup> Finding that the latter two instances applies to petitioner's case, the Sandiganbayan held that fraud upon the government was committed when the money received from solicitations was deposited in petitioner's personal bank account and allegedly used for the latter's personal consumption; and that such amounts of money solicited from the private individuals and entities are public funds as they were intended for the tourism activities of the City Government of Puerto Princesa.<sup>[13]</sup>

Petitioner did not move for the reconsideration of the assailed Resolution. Instead, she filed the instant petition, imputing grave abuse of discretion on the part of the Sandiganbayan.

The contentions raised by petitioner boil down to the lone issue of whether the Sandiganbayan, Sixth Division committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the assailed Resolution ordering her suspension *pendente lite*.

Petitioner maintains that violation of Section 7(d) of R.A. 6713 is not among those offenses covered by the preventive suspension rule under Section 13 of R.A. 3019 as there is yet to be a categorical pronouncement on such inclusion. She asserts that the letters which became the basis of her indictment refer to the term "sponsorship" and not solicitation.<sup>[14]</sup> Petitioner likewise argues that she did not commit fraud and that deceit was not proven in relation to the offense charged against her. She claims that evidence for the defense in Criminal Case No. SB-17-CRM-1385 would show that the cash, gift checks, and other form of awards went directly to the participants and winners of contests, pageants, and other activities. Petitioner also contends that the money that came from tourism stakeholders was not in the nature of public funds because it was still in the possession of the one in charge or assigned to collect and keep the same for distribution during an awards night.

In its Comment,<sup>[15]</sup> the People of the Philippines, represented by the Office of the Ombudsman, through the Office of the Special Prosecutor (OSP), argues that Section 7(d) of R.A. 6713 is included among the offenses covered by Section 13 of R.A. No. 3019. It maintains that the assailed Resolution was issued on the basis of compliance with Section 13, R.A. 3019, as amended, reiterating that the fraudulent act of petitioner was established through evidence before the Sandiganbayan when money (and gifts) was solicited from private individuals and deposited in petitioner's (and her co-accused's) personal accounts. The OSP likewise echoes the ruling of the Sandiganbayan that the sums of money subject of the criminal case, having been collected for the purpose of tourism activities, are public funds.

### **The Ruling of the Court**

We first discuss the procedural issue of petitioner's failure to file a motion for reconsideration prior to resorting to the present petition for *certiorari*, prohibition, and *mandamus*.

In her Verified Petition, petitioner submits that she did not file a motion for reconsideration because the preventive suspension contemplated in Section 13 of R.A. 3019 is mandatory and ministerial on the part of the Sandiganbayan. She, likewise, posits that the instant petition falls under the exceptions to the necessity of filing a motion for reconsideration.<sup>[16]</sup>

It has long been settled that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*.<sup>[17]</sup> The objective of this mandate is to allow the lower court, or tribunal, the opportunity to correct any actual or perceived error imputed to it.<sup>[18]</sup>

In *Siok Ping Tan v. Subic Bay Distribution, Inc.*,<sup>[19]</sup> however, the Court reiterated that the foregoing rule admits of exceptions:

x x x The rule is, however, circumscribed by well-defined exceptions, such as (a) where the order is a patent nullity, as where the court a quo had no jurisdiction; (b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d)