

THIRD DIVISION

[G.R. No. 169888, November 11, 2008]

**RAMON Y. TALAGA, JR., CITY MAYOR, LUCENA CITY,
PETITIONER, VS. HON. SANDIGANBAYAN, 4TH DIVISION, AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Herein special civil action for *certiorari* under Rule 65 of the Rules of Court seeks the nullification of the Resolution^[1] dated October 3, 2005 of the *Sandiganbayan* issued in Criminal Case No. 27738 - where Mayor Ramon Y. Talaga, Jr. (petitioner) and the City Councilors are prosecuted for violation of the Anti-Graft and Corrupt Practices Act: Republic Act (R.A.) No. 3019, as amended.

The assailed Resolution ordered petitioner's preventive suspension for ninety (90) days in accordance with Section 13 of R.A. No. 3019.

The facts of the case:

Criminal and administrative complaints were filed by Elan Recreation, Inc. (ELAN) against petitioner with the Office of the Ombudsman. The complaints alleged that petitioner, in his capacity as mayor of the City of Lucena, had unlawfully granted favors to a third party with respect to the operation of bingo games in the city, to the damage and prejudice of the complainants.^[2]

On May 23, 2003, the Office of the Deputy Ombudsman for Luzon recommended the dismissal of both the criminal and administrative complaints.^[3] However, the Ombudsman approved the dismissal of the administrative case but denied the dismissal of the criminal case.

As a result, the Office of the Special Prosecutor recommended the filing of three criminal charges for violation of R.A. No. 3019:

1. Criminal Case No. 27737. For causing undue injury to complainants when petitioner as mayor of Lucena City vetoed an ordinance granting a local franchise to the complainants to operate bingo games in the city;
2. **Criminal Case No. 27738. For giving unwarranted benefits to Jose Sy Bang by approving an ordinance granting to Sy Bang a local franchise to operate bingo games in the city;** and
3. Criminal Case No. 27739. For causing undue injury to complainants when petitioner closed down their bingo operations temporarily.

(Emphasis supplied)

Petitioner filed a motion for reconsideration/reinvestigation^[4] questioning the finding of the Special Prosecutor. The Motion for Reconsideration was denied by the Office of the Ombudsman.

On May 17, 2003, petitioner filed a motion to quash the three informations.^[5] On February 9, 2004, the *Sandiganbayan* issued a Resolution^[6] quashing the Informations in Criminal Cases No. 27737 and 27739. However, it sustained the Information in Criminal Case No. 27738. In the said Resolution, respondent referred Criminal Case No. 27738 back to the Office of the Ombudsman and ordered the latter to conduct further preliminary investigation to determine the possible liability of the members of the City Council which passed Ordinance No. 1963 in said case.^[7]

An Amended Information^[8] and Second Amended Information^[9] were filed by the prosecution in the *Sandiganbayan*. The first included the members of the City Council of Lucena City (City Councilors), as additional accused, while the Second Amended Information (Information) alleged conspiracy between petitioner and the City Councilors. Over the opposition^[10] of petitioner, the *Sandiganbayan* admitted both amended informations.^[11]

On February 21, 2005, petitioner and the City Councilors filed a Motion to Quash^[12] the Information on the ground that there is no valid information on which the *Sandiganbayan* has a finding of probable cause because the second amended information's allegations do not constitute an offense, there being no violation of Presidential Decree (P.D.) No. 771 as it has no applicability to bingo operations and P.D. No. 771 has been superceded by P.D. No. 1869 and R.A. No 7160. The *Sandiganbayna* denied^[13] the petition and it likewise denied petitioner's Motion for Reconsideration.^[14]

On June 29, 2005, petitioner and the City Councilors were arraigned in Criminal Case No. 27738 and all pleaded "not guilty".

On July 5, 2005, the prosecution filed a Motion to Suspend the Accused

Pendente Lite.^[15] Petitioner and his co-accused filed an Opposition^[16] to the motion. Thereafter, respondent ordered the suspension of the petitioner and his co-accused, to wit:

x x x x

WHEREFORE, the prosecution's motion for suspension *pendente lite* is hereby GRANTED, and accused Ramon Y. Talaga, Jr., Godofredo V. Faller, Danilo R. Zaballero, Salome S. Dato, Simon N. Aldovino, Wilfredo F. Asilo, and Aurora C. Garcia are hereby directed to CEASE and DESIST from further performing and/or exercising the functions, duties, and privileges of their positions as City Mayor, and City Councilors of Lucena City, respectively, or any other positions they may now or hereafter be holding

effective immediately upon receipt hereof and continuing for a total period of ninety (90) days.^[17]

Petitioner then filed the present petition for *certiorari* with an urgent application for the issuance of a temporary restraining order and/or preliminary injunction under Rule 65 of the Rules of Court. The Court issued a Temporary Restraining Order on November 9, 2005 enjoining public respondents from implementing the suspension of petitioner.^[18]

Assailing his suspension, petitioner alleges:

I

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IN ABDICATION OF ITS CONSTITUTIONAL DUTY TO RESOLVE A JUDICIAL CONTROVERSY, IT IS MINISTERIAL DUTY TO ISSUE A PREVENTIVE SUSPENSION ORDER AGAINST THE PETITIONER AND THERE ARE NO IFS AND BUTS ABOUT IT.

II

ASSUMING THAT THE ISSUANCE OF THE PREVENTIVE SUSPENSION IS MANDATORY, THE HONORABLE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION WHEN IT ORDERED THE SUSPENSION OF THE PETITIONER AS SECTION 13 OF REPUBLIC ACT NO. 3019, WHICH FORMS THE BASIS OF THE ORDER OF SUSPENSION, IS UNCONSTITUTIONAL ON THE GROUND THAT IT IMPINGES UPON THE EXCLUSIVE PREROGATIVE OF THE JUDICIARY.

III

THE HONORABLE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ORDERED THE SUSPENSION OF HEREIN PETITIONER DESPITE THE FACT THAT THERE EXISTS NO VALID INFORMATION UNDER WHICH PETITIONER STANDS CHARGED.^[19]

The petition is devoid of merit.

Petitioner argues that respondent committed grave abuse of discretion when in imposing the sanction of suspension, it only relied on the "mandatory" provision of Section 13 insensate to the weight and cogency of the peculiar circumstances of the case before it.^[20] Moreover, petitioner argues that the bare reliance of respondent on Section 13 without calibrating the weight of diverse and dueling evidence pertinent to the issue of appropriateness of ordering his suspension is a clear abdication of respondent's constitutional duty to exercise its judicial function.^[21] In addition, petitioner contends that respondent should have looked into the "environmental circumstances" of the case and thus it was unwarranted to apply the

presumption in *Bolastig v. Sandiganbayan*^[22] that unless the accused is suspended, he may frustrate or commit further acts of malfeasance or do both.

Petitioner asks this Court to first look into the circumstances of the case and thereafter determine the propriety of issuing a suspension order. The Court could not be more explicit than its ruling in *Segovia v. Sandiganbayan*,^[23] thus:

Petitioners would now have this Court strike down these resolutions because supposedly rendered in excess of jurisdiction or with grave abuse of discretion. The Court will not do so. In no sense may the challenged resolutions be stigmatized as so clearly capricious, whimsical, oppressive, egregiously erroneous or wanting in logic as to call for invalidation by the extraordinary writ of certiorari. On the contrary, in promulgating those resolutions, the Sandiganbayan did but adhere to the clear command of the law and what it calls a "mass of jurisprudence" emanating from this Court, sustaining its authority to decree suspension of public officials and employees indicted before it. **Indeed that the theory of "discretionary suspension" should still be advocated at this late date, despite the "mass of jurisprudence" relevant to the issue, is little short of amazing, bordering on contumacious disregard of the solemn magisterial pronouncements of the Highest Court of the land.**^[24]

x x x x

While petitioners concede that this Court has "almost consistently ruled that the preventive suspension contemplated in Section 13 of RA 3019 is mandatory in character," they nonetheless urge the Court to consider their case an exception because of the "peculiar circumstances" thereof. They assert that the evils sought to be avoided by "separating a public official from the scene of his alleged misfeasance while the same is being investigated" — e.g., "to preclude the abuse of the prerogative of (his) office, such as through intimidation of witnesses," or the tampering with documentary evidence — will not occur in the present situation where:

1. The Project has been canceled.
2. (Their) ** official duties no longer pertain, in any manner, to the prequalification of contractors dealing with NPC. Neither are they now involved in any bidding for or awarding of contracts, ** it (being) emphasized (in this connection) that they were merely designated as *ad hoc* members of the Committee without additional compensation for their additional duties.
3. All the relevant documentary evidence had been either submitted to the Ombudsman or to the Honorable Sandiganbayan.

They conclude that their preventive suspension "at this point would actually be purposeless, as there is no more need for precautionary

measures against their abuse of the prerogatives of their office."

The arguments are not new. They have been advanced and rejected in earlier cases. They will again be so rejected in this case.

The Court's pronouncements in *Bolastig v. Sandiganbayan*, are germane:

x x x The fact is that the possibility that the accused would intimidate witnesses or otherwise hamper his prosecution is just one of the grounds for preventive suspension. The other one is, **to prevent the accused from committing further acts of malfeasance while in office.**^[25] (Emphasis supplied)

Ineluctably, the theory of petitioner that "environmental circumstances" of the case should first be explored has no leg to stand on.

Section 13, R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, provides:

Suspension and loss of benefits. - Any public officer against whom any criminal prosecution **under a valid information under this Act or under the provisions of the Revised Penal Code on bribery 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 salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him. (Emphasis supplied)

In *Beroña v. Sandiganbayan*,^[26] the Court explicitly ruled:

Section 13 is so clear and explicit that there is hardly room for any extended court rationalization of the law. Section 13 unequivocally mandates the suspension of a public official from office pending a criminal prosecution under R.A. 3019 or Title 7, Book II of the Revised Penal Code or for any offense involving public funds or property or fraud on government. This Court has repeatedly held that such preventive suspension is mandatory, and there are no "ifs" and "buts" about it.

As early as *Luciano v. Mariano*,^[27] the Court has set out the guidelines to be followed by the lower courts in the exercise of the power of suspension, to wit:

x x x x

(c) By way of broad guidelines for the lower courts in the exercise of the power of suspension from office of public officers charged under a valid information under the provisions of Republic Act No. 3019 or under the provisions of the Revised Penal Code on bribery, pursuant to section 13 of said Act, it may be briefly stated that upon the filing of such information, the trial court should issue an order with proper notice requiring the accused officer to show cause at a specific date of hearing why he should