

## EN BANC

[ G.R. No. 154098, July 27, 2005 ]

**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 CAPACITY AS GOVERNOR OF THE PROVINCE OF ISABELA,  
RESPONDENTS.**

### DECISION

**PUNO, J.:**

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.<sup>[1]</sup> 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.<sup>[2]</sup> 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;<sup>[3]</sup> (b) gave directives to the heads of offices and other employees;<sup>[4]</sup> (c) issued Office Order No. 11-021 which authorized certain persons to start work;<sup>[5]</sup> 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.<sup>[6]</sup> 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).<sup>[7]</sup>

In his counter-affidavit, Mayor Miranda asserted that he reassumed office on the advice of his lawyer and in good faith.<sup>[8]</sup> 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.<sup>[9]</sup> 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.<sup>[10]</sup> Notably, Mayor Miranda's counter-affidavit also stated that he left the mayoralty post after "coercion" by the Philippine National Police.<sup>[11]</sup>

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.<sup>[12]</sup> After reinvestigation, Special Prosecution Officer Rodrigo V. Coquia (Coquia) recommended the dismissal of the case in a Resolution dated 14 September 2000.<sup>[13]</sup> Coquia held that Miranda reassumed his office in "good faith" and on "mistake of fact" due to the "difficult questions of law" involved.<sup>[14]</sup>

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.<sup>[15]</sup> 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.<sup>[16]</sup> He further noted that Miranda violated the orders of both the Ombudsman and the DILG.<sup>[17]</sup> Ombudsman Desierto adopted the Chief Legal Counsel's recommendation,<sup>[18]</sup> and the case was re-raffled to Special Prosecution Officer Evelyn T. Lucero. **Subsequently, the prosecution filed an amended Information with the Sandiganbayan,<sup>[19]</sup> to which the petitioner interposed a negative plea.<sup>[20]</sup>**

**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.<sup>[21]</sup>** 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."<sup>[22]</sup>

**In a Resolution dated 4 February 2002, the Sandiganbayan preventively suspended Mayor Miranda from office for 90 days.<sup>[23]</sup>** 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."<sup>[24]</sup> It further ruled that Miranda's act fell within the catch-all provision "x x x or for any offense involving fraud upon government."<sup>[25]</sup> Miranda's motion for reconsideration was denied in the Sandiganbayan's Resolution dated 17 June 2002.<sup>[26]</sup> **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 retribute 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<sup>[27]</sup>

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]