

THIRD DIVISION

[G.R. No. 124067, March 27, 1998]

PERLA A. SEGOVIA, REYNALDO C. SANTIAGO AND WINIFREDO SM. PANGILINAN, PETITIONERS VS. THE SANDIGANBAYAN, PEOPLE OF THE PHILIPPINES, AND THE PRESIDENT OF THE NATIONAL POWER CORPORATION, RESPONDENTS.

D E C I S I O N

NARVASA, C.J.:

The special civil action of certiorari and prohibition at bar seeks nullification of two (2) Resolutions of the Second Division of the Sandiganbayan issued in Criminal Case No. 21711 -- in which petitioners are prosecuted for violation of the Anti-Graft and Corrupt Practices Act : Republic Act No. 3019, as amended. The resolution assailed are:

- 1) that dated February 1, 1996, which ordered petitioners ' preventive suspension for ninety (90) days in accordance with Section 13 of said R.A 3019; and
- 2) that dated February 23, 1996, which denied petitioners' motion for reconsideration of the suspension order.

The primary issue raised is whether it is *mandatory or discretionary* for the Sandiganbayan to place under preventive suspension public officers who stand accused before it, pursuant to said Section 13 of the law. Section 13 reads:

Sec. 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 in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. ** **"

It is petitioners' submission that preventive suspension under this section "*rest in the sound discretion of the Sandiganbayan despite the ostensibly mandatory language*" of the statute, and that that discretion was gravely abused by the Sandiganbayan, or it exceeded its jurisdiction, when it decreed their suspension.

Petitioners -- Perla Segovia, Reynaldo Santiago, and Winifredo SM Pangilinan -- all hold regular executive positions in the National Power Corporation (NPC). They -- together with two other officers who have since resigned from the NPC, namely: Gilberto A. Pastoral and Cecilia D. Vales -- were designated by the NPC Board to compose the Contracts Committee for said NPC's "Mindanao Grid LDC & SCADA/EMS System Operation Control Center and Facilities Project."

The Contracts Committee thus constituted conducted the prequalification and bidding procedures for the project. The lowest and second lowest bidders were the *Joint Venture of INPHASE and T & D, and Urban Consolidated Constructors, Inc.,*

respectively. The Technical Task Force on Bid Evaluation of the NPC reviewed all the bids submitted and recommended approval of the results. The contracts Committee, however, declared the lowest bidder (*Joint Venture*) disqualified after verification from the Philippines Contractors Accreditation Board that that group, as well as the second lowest bidder (*Urban*) had been “downgraded,” thereby rendering both ineligible as bidders.

The Contracts Committee also stated that since a review of relevant factors disclosed that the other bids had exceeded the Approved Agency Estimates and the Allowable Government Estimates for Options A and B of the Project, it was needful for the NPC Board to declare a failure of bidding and direct a re-bidding. The recommendation was unanimously approved by the NPC Board; but for reasons not appearing on record (and, in any event, not relevant to the inquiry), the project was eventually cancelled.

Obviously feeling aggrieved by the turn of events, *Urban* filed a complaint with the Office of the Ombudsman against the Chairman and Members of the Board of Directors of NPC; the Chairman (Gilberto Pascual) and Members of the NPC Contracts Awards Committee; the Chairman (Perla Segovia) of the Pre-Qualification Bids & Awards Committee; the Manager (Cecilia D. Vales) of the Contracts Management Office, and two others.^[1] *Urban* alleged that before the bidding, *Joint Venture* had been disqualified, but the Contracts Committee, without basis and in order to favor it, reconsidered its disqualification and thus enabled it to take part in the bidding and in fact to submit the lowest bid; that the NPC was “already poised to award the contract to Joint Venture” but because *Urban* protested, it was compelled to “post-disqualify” the former; however, instead of awarding the contract for the project to *Urban* as the second lowest bidder, the Committee and the NPC Board declared a failure of bidding and ultimately cancelled the project. These acts, it is claimed, constituted a violation of the Anti-Graft and Corrupt Practices Act.

A preliminary investigation was conducted by the Ombudsman’s Office after which Graft Investigation Officer A.A. Amante submitted a Resolution dated August 2, 1994^[2] recommending, among others, that:

- 1) petitioners Perla Segovia, Reynaldo Santiago, Winifredo SM Pangilinan, as well as Gilberto Pastoral and Cecilia Vales be charged with a violation of Section 3 (e) of RA 3019 of having in “one way or the other extended undue advantage to Joint Venture through manifest partiality, evident bad faith and gross inexcusable negligence;” and
- 2) the NPC President, NPC chairman and Members of the Board of Directors be cleared of the ** complaint as their official actuation of sustaining a failure of bidding and the consequent re-bidding is supported by factual and legal basis.”

Assistant Ombudsman Abelardo L. Aportadera, Jr., favorably endorsed the recommendation which was eventually approved on December 6, 1994 by Hon. Conrado M. Vasquez, then the Ombudsman.^[3]

An information was accordingly filed with the Sandiganbayan against petitioners Segovia, Santiago, and Pangilinan, as well as Pastoral and Vales, docketed as Criminal Case No. 21711. They were charged with infringement of Section 3 (e) of RA 3019: i.e., “causing undue injury to any party, including the Government, or giving any party any unwarranted benefits, advantage or preference in the discharge of his official,

administrative or judicial function through manifest partiality, evident bad faith or gross inexcusable negligence.”

Petitioners sought and obtained a reinvestigation of their case but gained no benefit thereby. For although the reinvestigating officer made a recommendation on March 7, 1995 that the information against petitioners be withdrawn -- because the “*prima facie* case had already been overthrown, considering that, as it now stands, the evidence at hand cannot stand judicial scrutiny”^[4] -- and that recommendation met with the approval of the Special Prosecutor, it was ultimately turned down by the chief Special Prosecutor^[5] on April 18, 1995, and on April 20, 1995, by the Ombudsman himself.^[6]

The case thus proceeded in the Sandiganbayan. The accused were arraigned and entered pleas of not guilty; and a pre-trial was held which resulted in stipulation of facts embodied in an order dated January 11, 1996.^[7]

Earlier, the People had filed a “Motion to Suspend Accused *Pendente Lite*” dated October 24, 1995, invoking Section 13 of RA 3019., as amended, and relevant jurisprudence, and alleging that the “information/s is /are valid.”^[8]

Petitioner opposed the motion.^[9] In their pleading dated November 28, 1995, they theorized that the explicit terms of the law notwithstanding, their suspension was not mandatory in the premises. They claimed that the admissions at the pre-trial show that the transactions in question resulted in no unwarranted benefits, advantage or preference, or injury, to anyone; that two of the five accused were no longer employees of the NPC; that two of the five accused were no longer employees of the NPC; that the positions that Segovia, Pangilinan and Santiago continued to occupy in the NPC were quite sensitive and had no relation to prequalification of contractors, biddings or awards -- which was an additional function temporarily assigned to them and for which they received no compensation at all -- and their suspension might cause delay of vital projects of the NPC; and that under the circumstances obtaining, they were in no position to tamper with any evidence.

Petitioners’ opposition was overruled. On January 31, 1996 the Sandiganbayan^[10] handed down its Resolution suspending them for a period of ninety (90) days.^[11] The Sandiganbayan held that the suspension was mandated under the law upon a finding that a proper preliminary investigation had been conducted, the information was valid, and the accused were charged with any of the crimes specified in the law; and stressed that its “authority and power to suspend the accused had been repeatedly upheld” in several precedents. It subsequently denied petitioners’ motion for reconsideration dated February 14, 1996, “(c)onsidering the paucity of the(ir) arguments ** and in the light of the mass of jurisprudence involving the power and authority of this Court to issue orders for preventive suspension of the accused **.”^[12]

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 to this late date, despite the “mass of jurisprudence” relevant to the issue, it little short of amazing, bordering on contumacious disregard of the solemn magisterial pronouncements of the Highest court of the land.

Republic Act no. 3019 was enacted by Congress more than 37 years ago, on August 17, 1960, becoming effective on the same date. The law was later amended by Republic Act No. 3047, Presidential Decree 677 and Presidential Decree No. 1288. The last amendment -- to Section 13 thereof -- was introduced by *Batas Pambansa Bilang 195*, approved on March 16, 1972.

The validity of Section 13, R.A. 3019, as amended -- treating of the suspension *pendente lite* of an accused public officer -- may no longer be put at issue, having been repeatedly upheld by this Court. As early as 1984, in *Bayot v. Sandiganbayan*,^[13] the Court held by this Court. As suspension was not penal in character but merely a preventive measure before final judgement; hence, the suspension of a public officer charged with one of the crimes listed in the amending law, committed before said amendment, does not violate the constitutional provision against an *ex post facto* law. The purpose of suspension is to prevent the accused public officer from frustrating or hampering his prosecution by intimidating or influencing witnesses or tampering with documentary evidence, or from committing further acts of malfeasance while in office.^[14] Substantially to the same effect was the Court’s holding in 1991, in *Gonzaga v. Sandiganbayan*,^[15] that preventive suspension is not violative suspension remains entitled to the constitutional presumption of innocence since his culpability must still be established.

The Anti-Graft and Corrupt Practices Act implicitly recognizes that the power of preventive suspension lies in the court in which the criminal charge is filed; once a case is filed in court, all other acts connected with the discharge of court functions -- including preventive suspension -- should be acknowledged as within the competence of the court that has taken cognizance thereof, no violation of the doctrine of separation of powers being perceivable in that acknowledgment.^[16]

The provision of suspension *pendente lite* applies to all persons indicated upon a valid information under Act, whether they be appointive or elective officials; or permanent or temporary employees, or pertaining to the career or non-career service.^[17] It appears to a Public High School Principal;^[18] a Municipal Mayor;^[19] a Governor;^[20] a Congressman;^[21] a Department of Science and Technology (DOST) non-career Project Manager;^[22] a Commissioner of the Presidential Commission on Good Government (PCGG).^[23] The term “office” in Section 13 of the law applies to any office in relation to which he is charged.^[24]

It is mandatory for the court to place under preventive suspension a public officer accused before it.^[25] Imposition of suspension, however, is not automatic or self-operative. A precondition therefor is the existence of a valid information, determined at a pre-suspension hearing. Such a hearing is in accord with the spirit of the law, considering the serious and far-reaching consequences of a suspension of a public official even before his conviction, and the demands of public interest for speedy determination of the issues involved in the case.^[26] The purpose of the pre-suspension hearing is basically to determine the validity of the information and thereby furnish the court with a basis to either suspend the accused and proceed with the trial on the merits of the case, or refuse suspension of the latter and dismiss the case, or correct

any part of the proceeding which impairs its validity.²⁷ The accused should be given adequate opportunity to challenge the validity or regularity of the criminal proceedings against him; e.g. that he has not been afforded the right to due preliminary investigation; that he has not been afforded the right to due preliminary investigation; that the acts imputed to him do not constitute a specific crime (under R.A. 3019 or the Revised Penal Code) warranting his mandatory suspension from office under Section 13 of the Act; or that the information is subject to quashal on any of the grounds set out in Rule 117 of the Rules of Court.²⁸ But once a proper determination of the validity of the Information has been made, it becomes the ministerial duty of the court to forthwith issue the order of preventive suspension of the accused official on the pretext that the order denying the latter's motion to quash is pending review before the appellate courts.²⁹

However, the preventive suspension may not be of indefinite duration or for an unreasonable length of time; it would be constitutionally proscribed otherwise as it raises, at the very least, questions of denial of due process and equal protection of the laws.³⁰ 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 (the Civil Service Decree), now Section 52 of the Administrative Code of 1987.³¹

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"³² -- e.g., "to preclude the abuse of the prerogative of ** (his) office, such as through intimidation of witnesses,"³³ or the tampering with documentary evidence -- will not occur in the present situation where:

"1. The Project has been cancelled.

2. (Their) ** official duties no longer pertain, in any manner, to the prequalification of contractors dealing with the 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 submitted either to the Ombudsman or 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*, supra.,³⁴ are germane:

"Our holding that, upon the filing of a valid information charging violation of Republic Act No. 3019, Book II, Title 7 of the Revised Penal Code, or fraud upon government or public property, it is the duty of the court to place the accused under preventive suspension disposes of petitioner's other contention that since the trial in the