



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

AILEEN CYNTHIA M. AMURAO,
Petitioner,

G.R. No. 249168

Present:

-versus -

LEONEN, J., *Chairperson,*
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J., *JJ.*

PEOPLE OF THE PHILIPPINES
AND SANDIGANBAYAN SIXTH
DIVISION,

Respondent.

Promulgated:
April 26, 2021

MisDcBatt

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DECISION

LOPEZ, J., J.:

The Verified Petition¹ 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 Resolution² 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

¹ *Rollo*, pp. 3-9.

² Penned by Sandiganbayan Associate Justice Karl B. Miranda, with Associate Justices Sarah Jane T. Fernandez and Kevin Narce B. Vivero concurring; *id.* at 14-19.

to the personal and individual accounts of the petitioner and her co-accused.³

In an Information⁴ 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.) 6713,⁵ 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.⁶

During the pendency of the proceedings, the Sandiganbayan issued a Resolution⁷ 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. 3019.⁸

In her Compliance and Manifestation,⁹ 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

³ *Id.* at 17.

⁴ *Id.* at 20-22.

⁵ **Section 7. Prohibited Acts and Transactions.** - In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

x x x x

(d) Solicitation or acceptance of gifts. - Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

x x x

⁶ *Rollo*, p. 21.

⁷ *Id.* at 10.

⁸ Otherwise known as the *Anti-Graft and Corrupt Practices Act*.

⁹ *Rollo*, pp. 11-13.

which she was charged.

On September 5, 2019, the Sandiganbayan issued the assailed Resolution,¹⁰ 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.¹¹

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.¹² 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.¹³

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

¹⁰ *Id.* at 14-19.

¹¹ *Id.* at 18.

¹² *Id.* at 15-16.

¹³ *Id.* at 16-17.

inclusion. She asserts that the letters which became the basis of her indictment refer to the term “sponsorship” and not solicitation.¹⁴ 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,¹⁵ 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.¹⁶

It has long been settled that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*.¹⁷ 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.¹⁸

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 68-78.

¹⁶ *Id.* at 6.

¹⁷ *Almario-Templonuevo v. Office of the Ombudsman*, 811 Phil 686, 695 (2017), citing *Commissioner of Internal Revenue v. Court of Tax Appeals*, 695 Phil. 55, 61 (2012); *Medado v. Heirs of Consing*, 681 Phil. 536, 548 (2012), citing *Pineda v. Court of Appeals*, 649 Phil. 562, 571 (2010).

¹⁸ *Commissioner of Internal Revenue v. Court of Tax Appeals*, *supra*, 17.

In *Siok Ping Tan v. Subic Bay Distribution, Inc.*,¹⁹ 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) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte*, or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.²⁰

While the petitioner cites exceptions (c), (d), (e), and (i) in her petition,²¹ she plainly did so without explaining how such circumstances apply to her case. Nevertheless, the Court finds that the second exception is more relevant in this case as the question raised by petitioner in her Verified Petition has been duly raised before and was already passed upon by the Sandiganbayan.

Excusing the petitioner's procedural misstep notwithstanding, the petition fails.

There is grave abuse of discretion when there has been an evasion of a positive duty or a virtual refusal to perform a duty prescribed by law or to act in accordance with law, such as when a judgment was rendered not on the basis of law and evidence, but on caprice, whim, and despotism.²²

Here, the Court finds that no grave abuse of discretion may be attributed to the Sandiganbayan in the assailed Resolution, the same having been issued on cogent legal grounds.

The suspension *pendente lite* ordered in the assailed Resolution finds basis in Section 13 of R.A. 3019, to wit:

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 Seven Book II of the Revised**

¹⁹ 653 Phil 124 (2010).

²⁰ *Id.* at 136-137.

²¹ *Rollo*, p. 6.

²² *Galvante v. Hon. Casimiro*, 575 Phil. 324, 335 (2008).

Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as 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 judgement, 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 been separated from the service has already received such benefits he shall be liable to restitute the same to the government. (Emphasis and underscoring added)

Verily, and contrary to petitioner's contention, the rule on preventive suspension is not limited to cases where there has been a violation of R.A. 3019 or Title 7, Book II of the RPC. The same Rule applies for any offense involving fraud upon government or public funds or property.

The relevant question now is whether the offense charged against petitioner is considered as fraud upon the government or public funds or property.

In *Bustillo v. Sandiganbayan*,²³ this Court has settled that the term "fraud," as used in Section 13 of R.A. 3019, is understood in its generic sense, that is, referring to "an instance or an act of trickery or deceit especially when involving misrepresentation."²⁴

The Information²⁵ filed against petitioner charged her and her co-accused with violation of Section 7(d) of R.A. 6713 by soliciting money and gifts from private individuals and entities for supposed tourism activities and projects of the City Government of Puerto Princesa, Palawan while in the performance of their functions and taking advantage of their positions as tourism officers. It is clear from the foregoing that the act of petitioner (and her co-accused) involves fraud upon public funds as such money and gifts solicited were collected for the purpose of funding the tourism activities of the City Government of Puerto Princesa, Palawan.

It is noteworthy that petitioner did not assail the validity of such Information. In fact, in her Manifestation and Compliance before the Sandiganbayan, petitioner begged exception to the suspension *pendente lite* that she admitted should be imposed on her under a "valid information."²⁶

²³ 521 Phil. 43 (2006).

²⁴ *Id.* at 51.

²⁵ *Supra* note 4.

²⁶ *Rollo*, p. 46.

In *Bolastig v. Sandiganbayan (Third Division)*,²⁷ the Court underscored the mandatory nature of preventive suspension when a public officer is charged with a valid information involving violation of R.A. 3019, Title 7, Book II of the RPC, or offenses involving fraud upon government, public funds, or property:

x x x [S]ec. 13 of Republic Act No. 3019 makes it mandatory for the Sandiganbayan to suspend any public officer against whom a valid information charging violation of that law, Book II, Title 7 of the Revised Penal Code, or any offense involving fraud upon government or public funds or property is filed. The court trying a case has neither discretion nor duty to determine whether preventive suspension is required to prevent the accused from using his office to intimidate witnesses or frustrate his prosecution or continue committing malfeasance in office. The presumption is that unless the accused is suspended he may frustrate his prosecution or commit further acts of malfeasance or do both, in the same way that upon a finding that there is probable cause to believe that a crime has been committed and that the accused is probably guilty thereof, the law requires the judge to issue a warrant for the arrest of the accused. The law does not require the court to determine whether the accused is likely to escape or evade the jurisdiction of the court.²⁸ (citations omitted)

Since the petitioner is charged with an offense that clearly falls under Section 13 of R.A. 3019, her suspension *pendente lite* is justified. The Sandiganbayan has no other option but to order the suspension of the petitioner when it is convinced that the information charges her with acts of fraud involving government funds.²⁹

WHEREFORE, premises considered, the instant petition is **DISMISSED**. The Resolution dated September 5, 2019 issued by the Sandiganbayan, Sixth Division in Criminal Case No. SB-17-CRM-1385 is hereby **AFFIRMED**.

SO ORDERED.

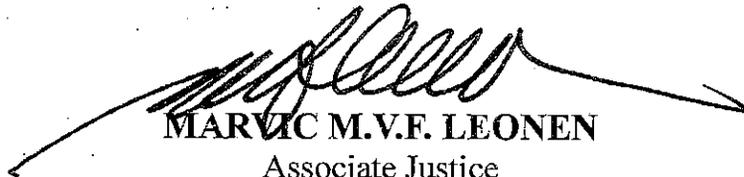

JHOSEP Y. LOPEZ
Associate Justice

²⁷ 305 Phil. 110 (1994).

²⁸ *Id.* at 115

²⁹ See *Flores v. Hon. Layosa*, 479 Phil. 1020, 1039 (2004).

WE CONCUR:



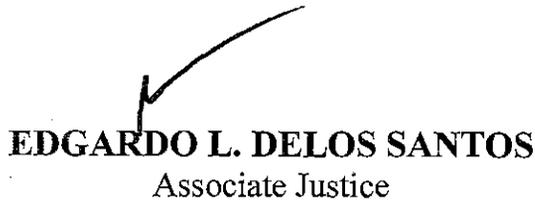
MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Third Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice