

## FIRST DIVISION

[ G.R. No. 125498, February 18, 1999 ]

**CONRADO B. RODRIGO, JR., ALEJANDRO A. FACUNDO AND  
REYNALDO G. MEJICA, PETITIONERS, VS. THE HONORABLE  
SANDIGANBAYAN (FIRST DIVISION), OMBUDSMAN AND PEOPLE  
OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

#### KAPUNAN, J.:

Petitioners Conrado B. Rodrigo and Reynaldo G. Mejica are the Mayor and Municipal Planning and Development Coordinator, respectively, of San Nicolas, Pangasinan, while petitioner Alejandro A. Facundo is the former Municipal Treasurer of the same municipality.

On 15 June 1992, the Municipality of San Nicolas, represented by Mayor Rodrigo, entered into an agreement with Philwood Construction, represented by Larry Lu, for the electrification of Barangay Caboloan, San Nicolas, for the sum of P486,386.18, requiring:

1. Installation of the two (2) units diesel power generator (20) KVA, 220 W, Battery start and other accessories);
2. Installation of 24 rolls feeder lines with nos. 6, 8 and ten wires;
3. Installation of 40 units 4 x 4 wooden post with accessories; and
4. Construction of powerhouse with concrete foundation double throw safety switches (double pole, 250 amperes capacity of 220 V with fuse).<sup>[1]</sup>

On 2 September 1992, Mejica, the Planning and Development Coordinator of San Nicolas, prepared an Accomplishment Report stating that the Caboloan Power Generation project was 97.5% accomplished. Said report was supposedly approved by mayor Rodrigo and confirmed by Larry Lu. On the basis of said report, payment of P452,825.53 was effected by the Municipal Treasurer, petitioner Facundo, to Philwood Construction.

On 14 August 1993, petitioners received a Notice of Disallowance dated 21 June 1993 from the Provincial Auditor of Pangasinan, Atty. Agustin Chan, Jr., who found that as per COA (Commission on Audit) evaluation of the electrification project, only 60.0171% of the project (equivalent to P291,915.07) was actually accomplished. Of the two units of generator supposedly purchased, only one second-hand unit was delivered. The same generator broke down after only two nights of operation. In addition, instead of 40 wooden posts, only 27 were installed. The powerhouse was only 65.635% completed. The Provincial Auditor thus disallowed the amount of

P160,910.46.

The graph below serves to illustrate the conflicts between Mejica's report and the COA's:

		Percentage Accomplished	
Amount paid By Municipality	P452,825.53	93.0090%	(accdg. to Mejica's report)
Cost of Actual Accomplishment	P291,915.07	60.0171%	(accdg. to COA report)
Amount Disallowed	P160,910.46	33.08%	(difference)

In September 1993, petitioners requested the Provincial Auditor to lift the notice of disallowance<sup>[2]</sup> and to re-inspect the project.<sup>[3]</sup> Petitioners reiterated their plea in a letter to the Provincial Auditor dated 3 November 1993,<sup>[4]</sup> attaching therewith a "Certificate of Acceptance and Completion"<sup>[5]</sup> signed by Clemente Arquero, Jr., Barangay Captain of Caboloan, and Eusebio Doton, President of the Cabaloan Electric Cooperative. The Provincial Auditor, however, allegedly did not act on petitioners' requests.

On 10 January 1994, the Provincial Auditor filed a criminal complaint for estafa before the Ombudsman against petitioners. Likewise impleaded were Larry Lu and Ramil Ang, President and General Manager, and Project Engineer, respectively, of Philwood Construction.

On 10 June 1995, Acting Ombudsman Francisco Villa approved the filing of an information against petitioners for violation of Section 3 (e) of Republic Act No. 3019<sup>[6]</sup> before the *Sandiganbayan*.

On 28 July 1995, petitioners filed a motion for reinvestigation before the *Sandiganbayan*. The *Sandiganbayan* granted said motion in an Order dated 22 April 1996.

On 7 November 1995, the Office of the Special Prosecutor issued a memorandum recommending that the charges against petitioners be maintained. The Ombudsman approved said memorandum.

Petitioners thereafter filed before the *Sandiganbayan* a motion to quash the information alleging, as grounds therefor that (1) the facts alleged in the information did not constitute an offense, and (2) the same information charged more than one offense. Petitioners, however, did not elaborate on these grounds. They instead faulted the Provincial Auditor for instituting the complaint against them notwithstanding the pendency of their opposition to the notice of disallowance. They also argued that the evidence against them did not establish the element of damage nor the presence of any conspiracy between them.

The *Sandiganbayan* denied said motion in an Order dated 18 March 1996.

On 18 March 1996, the prosecution moved to suspend petitioners *pendente lite*. Petitioners opposed the motion on the ground that the *Sandiganbayan* lacked

jurisdiction over them. In a Resolution dated 2 July 1996, the *Sandiganbayan* ruled that it had jurisdiction over petitioners and ordered the suspension of petitioners *pendente lite*.

Petitioners thus filed before this Court the instant petition for *certiorari* under Rule 65, praying that the Court annul: (a) the order of the *Sandiganbayan* denying petitioners' motion to quash, and (b) the resolution of the same court upholding its jurisdiction over petitioners. Petitioners likewise prayed that this Court issue a temporary restraining order to enjoin the *Sandiganbayan* from proceeding with the case.

On 28 August 1998, the court resolved to issue the temporary restraining order prayed for.

Petitioners allege the following grounds in support of their petition:

#### I

THE *SANDIGANBAYAN* ERRED IN ALLOWING THE LITIGATION OF THE CRIMINAL INFORMATION FOR CONSPIRACY IN VIOLATING SECTION 3(E) OF THE ANTI- GRAFT ACT (R.A. 3019) WHEN THE NOTICE OF DISALLOWANCE STILL PENDS WITH THE PROVINCIAL AUDITOR UNDER PETITIONER' PROTEST SUPPORTED BY CERTIFICATE OF COMPLETION AND ACCEPTANCE OF THE REQUIRED ELEMENT OF 'CAUSING UNDUE INJURY TO ANY PARTY, INCLUDING THE GOVERNMENT' AND GROSS NEGLIGENCE.

#### II

THE *SANDIGANBAYAN* HAS NO JURISDICTION TO PROCEED AGAINST ALL THE PETITIONERS AND ALL THE PROCEEDINGS THEREIN, PARTICULARLY THE ORDER OF SUSPENSION FROM OFFICE *PENDENTE LITE*, ARE NULL AND VOID *AB INITIO*.

#### III

THE ONGOING PROCEEDINGS BEFORE THE *SANDIGANBAYAN* IS A CLEAR VIOLATION OF THE CONSTITUTIONAL RIGHTS OF THE PETITIONERS UNDER THE *DUE PROCESS CLAUSE* AS IT WAS PRECEDED BY HASTY, MALICIOUS, SHAM AND HASTY PRELIMINARY INVESTIGATION INEVITABLY EXPOSING THEM TO A PROLONGED ANXIETY, AGGRAVATION, EXPENSES, AND HUMILIATION OF A PUBLIC TRIAL.

#### IV

THE PRECIPITATE *SANDIGANBAYAN* ORDER OF SUSPENSION IS A LEGAL ERROR AS THE SAME EVIDENTLY THE LACK OF THE REQUIRED *COLD NEUTRALITY OF AN IMPARTIAL TRIBUNAL* VIOLATING PETITIONERS' CONSTITUTIONAL RIGHTS UNDER THE *DUE PROCESS CLAUSE* AND BILL OF RIGHTS.<sup>[7]</sup>

The first ground raises two issues: (1) whether petitioners' right to due process was violated by the filing of the complaint against them by the Provincial Auditor, and (2) whether the Ombudsman committed grave abuse of discretion in filing the information against petitioners. The second questions the jurisdiction of the *Sandiganbayan* over petitioners. The third and fourth grounds are related to the first and are subsumed thereunder.

After a meticulous scrutiny of petitioners' arguments, we find the petition devoid of merit.

## I

Petitioners contend that the institution by the Provincial Auditor of the complaint despite the pendency of their opposition to the notice of disallowance violates their right to due process. They submit that "the issuance of a notice of disallowance against (them) compels the provincial auditor to either accept a settlement or adjudicate and decide on *the written explanation for the purpose of lifting/settling the suspension or extending the time to answer beyond the ninety (90) day period prior to its conversion into a disallowance.*"<sup>[8]</sup>

The italicized portion above is an excerpt from Section 44.6.4 of the State Audit Manual, which states in full:

Sec. 44.6.4. Auditor's Responsibility re Evaluation of Disallowance. - It shall be the responsibility of the auditor to exercise professional judgment in evaluating, on the basis of the facts and circumstances of each case as well as the pertinent provisions of applicable laws, rules and regulations, the grounds for a charge or suspension/disallowance of an account or transaction.

It shall be the responsibility of the auditor to exercise sound judgment in evaluating the written explanation of the accountable/responsible/liable officer concerned for the purpose of lifting the suspension or extending the time to answer beyond the ninety (90) day period prior to its conversion into a disallowance. (Underscoring supplied.)

The aforementioned provision should be read in conjunction with Section 82 of the State Audit Code,<sup>[9]</sup> which states that:

(a) charge of suspension which is not satisfactorily explained within ninety days after receipt or notice by the accountable officer concerned shall become a disallowance, unless the Commission or auditor concerned shall, in writing and for good cause shown, extend the time for answer beyond ninety days.

At this point, it may be useful to distinguish between a disallowance and a suspension. A **disallowance** is the disapproval of a credit or credits to an account/accountable officer's accountability due to non-compliance with law or regulations.<sup>[10]</sup> Thus, the auditor may disallow an expenditure/transaction which is unlawful or improper.<sup>[11]</sup>

A **suspension**, on the other hand, is the deferment of action to debit/credit the

account/accountable officer's accountability pending compliance with certain requirements.<sup>[12]</sup> A notice of suspension is issued on transactions or accounts which could otherwise have been settled except for some requirements, like lack of supporting documents or certain signatures. It is also issued on transactions or accounts the legality/propriety of which the auditor doubts but which he may later allow after satisfactory or valid justification is submitted by the parties concerned.<sup>[13]</sup>

As stated in Section 82, *supra*, however, the suspension shall become a disallowance if the charge of suspension is "not satisfactorily explained within ninety days after receipt or notice by the accountable officer concerned." The ninety-day period within which the accountable officer may answer the charge of suspension may nevertheless be extended by the Commission or the auditor for "good cause shown."

Clearly, petitioners misinterpreted Section 44.6.4. First, petitioners were not charged with *suspension* but *disallowance*. Second, the "written explanation" referred to in said section is "for the purpose of lifting the suspension or extending the time to answer beyond the ninety (90) day period prior to its conversion into a disallowance," *not* for contesting a disallowance, as petitioners wrongfully assert. Section 44.6.4., therefore, finds no application in this case.

On the other hand, respondents correctly invoke Sections 55 and 56 of Commission on Audit Circular No. 85-156-B, which respectively provide:

#### SECTION 55. REPORTING FRAUD/UNLAWFUL ACTIVITIES

If after evaluation of the findings, the auditor is convinced that the evidence sufficiently discloses the fraud and other unlawful activities and identifies the perpetrators thereof, he shall prepare the sworn statements of the examining witnesses and/or other witnesses and make a report to the Manager/Regional Director concerned, attaching thereto copies of the pertinent affidavits and other supporting documents.

#### SECTION 56. INSTITUTION OF CRIMINAL ACTION

If criminal prosecution is warranted, the Regional Director/Manager concerned with respect to National Government Agencies/government Owned or Controlled Corporations or Provincial/City Auditors with respect to local government units shall prepare a letter-complaint and file the same with the Tanodbayan or the local deputized Tanodbayan prosecutor within ten (10) days from receipt of the report from the examining auditor, attaching thereto copies of the sworn statements or affidavits of witnesses and other pertinent documents.

Section 56 imposes upon the Provincial Auditor the duty to file a complaint before the Tanodbayan (now the Ombudsman) when, from the evidence obtained during the audit, he is convinced that "criminal prosecution is warranted." The Provincial Auditor need not resolve the opposition to the notice of disallowance and the motion for re-inspection pending in his office before he institutes such complaint so long as there are sufficient grounds to support the same. The right to due process of the respondents to the complaint, insofar as the criminal aspect of the case is concerned, is not impaired by such institution. The respondents will still have the opportunity to confront the accusations contained in the complaint during the