



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on September 6, 2018.

Present:

Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA -----Chairperson
Justice ZALDY V. TRESPESES ----- Member
Justice GEORGINA D. HIDALGO ----- Member

The following resolution was adopted:

Criminal Case No. SB-11-CRM-0203 – People v. Tomas P. Bongalonta, Jr.

GOMEZ-ESTOESTA, J.:

In a Resolution dated September 5, 2017, this Court ordered the suspension *pendente lite* for ninety (90) days of accused **Tomas P. Bongalonta, Jr.** [“accused”], the incumbent Municipal Mayor of Pili, Camarines Sur, on the basis of Section 13 of *Republic Act No. 3019*, otherwise known as the *Anti-Graft and Corrupt Practices Act*.¹

Dissatisfied, the accused moved for the reconsideration of his suspension,² but the same was denied by this Court in its Resolution³ dated October 19, 2017.

¹ The cited provision states:

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 whether 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 restitute the same to the Government.

² Records, Vol. 3, pp. 104-113

³ *Id.* at 203-208

1.7.18

Still unsatisfied, the accused questioned, among others, the Court's Resolution dated September 5, 2017 via a petition for certiorari and injunction filed before the Supreme Court.⁴

On December 6, 2017, the Supreme Court issued a *Status Quo Ante Order*⁵ enjoining the implementation of this Court's Resolution dated September 5, 2017 which imposed upon the accused a 90-day period of preventive suspension.

On June 13, 2018, the Supreme Court issued a Resolution⁶ dismissing the accused's petition and recalling and lifting the *Status Quo Ante Order*, in this wise:

IN VIEW WHEREOF, the instant petition is DISMISSED. The Status Quo Ante Order issued by the Court in its Resolution dated 6 December 2017 is hereby RECALLED and LIFTED

SO ORDERED.

With the Supreme Court's ruling dismissing the petition filed by the accused, and the concomitant lifting of the *Status Quo Ante Order*, the subject of accused's preventive suspension has resurfaced.

It bears stressing that Section 13 of *R.A. 3019* makes it **mandatory** for this Court to suspend any public officer against whom a valid information is filed charging a violation of said law, Title 7, Book II of the *Revised Penal Code*, or for any offense involving fraud upon government or public funds or property.⁷

At this instance, trial on the merits has already been concluded, and the only matter left for adjudication is the promulgation of decision which has already been set on November 23, 2018. However, this is not to say that the preventive suspension of the accused is no longer necessary or that the same has outlived its purpose. If only to highlight the mandatory nature of preventive suspension, the case of *Bolastig v. Sandiganbayan*,⁸ is reiterated, to wit:

It is indeed true that in some of our decisions the expression "the maximum period of ninety (90) days" is used. But that is only for the purpose of emphasizing that the preventive suspension therein involved, which were for more than ninety (90) days, were excessive and unreasonable. It is to be noted that the ninety-day period of preventive suspension is not found in sec. 13 of Republic Act No. 3019 but was adopted from sec. 42 of the Civil Service Decree (P.D. No. 807), which is not sec. 52 of the Administrative Code of 1987. This latter provision states:

Sec. 52. Lifting of Preventive Suspension
Pending Administrative Investigation. — When the

⁴ Entitled, "Tomas P. Bongalonta v. Department of the Interior and Local Government et al." and docketed as G.R. No. 234428

⁵ G.R. No. 234428 (Records, Vol. 3, pp. 222-224)

⁶ Records, Vol. 3, pp. 353-355

⁷ *Flores v. Layosa*, G.R. No. 154714, August 12, 2004

⁸ G.R. No. 110503, August 4, 1994

administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: Provided, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.

The duration of preventive suspension is thus coeval with the period prescribed for deciding administrative disciplinary cases. If the case is decided before ninety days, then the suspension will last less than ninety days, but if the case is not decided within ninety days, then the preventive suspension must be up to ninety days only. Similarly, **as applied to criminal prosecutions under Republic Act No. 3019, preventive suspension will last for less than ninety days only if the case is decided within that period: otherwise, it will continue for ninety days.**

The duration of preventive suspension will, therefore, vary to the extent that it is contingent on the time it takes the court to decide the case but not on account of any discretion lodged in the court, taking into account the probability that the accused may use his office to hamper his prosecution.

Indeed, were the Sandiganbayan given the discretion to impose a shorter period of suspension, say, 80, 70 or 60 days, as petitioner asserts, it would lie in its power not to suspend the accused at all. That, of course, would be contrary to the command of sec. 13 of Republic Act No. 3019. (Emphasis supplied)

This case is still pending judgment. Heeding *Bolastig v. Sandiganbayan*, the Court has no discretion to shorten the 90-day period of accused's preventive suspension, much less lift the same, even at this stage of the proceedings.

WHEREFORE, premises considered, the preventive suspension of accused Tomas P. Bongalonta, Jr., as Municipal Mayor of Pili, Camarines Sur or any public office which he may now or hereafter be holding, is hereby **ORDERED** to be **IMPLEMENTED** by the Department of Interior and Local Government for the remaining period of the 90-day suspension.

Let a copy of this Resolution be furnished the Secretary of the Department of Interior and Local Government, whose office is requested to inform this Court of the date the accused commenced serving his suspension *pendente lite* and the date of its termination.

The parties are reminded that promulgation of judgment will proceed on November 23, 2018 at 8:30 in the morning at the Fourth Division courtroom.



SO ORDERED.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice
Chairperson

WE CONCUR:


ZALDY V. TRESPES
Associate Justice


GEORGINA D. HIDALGO
Associate Justice