

Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. Nos. 162748-50 March 28, 2006

PEOPLE OF THE PHILIPPINES, Petitioner,

vs.

SANDIGANBAYAN (1st Division), SEVERINO J. LAJARA, DENNIS LANZANAS, APOLONIO ELASIGUE, SENADOR C. ALCALDE, EMILIO C. RODRIGUEZ, EFREN M. GARCIA, FRISCO L. ONA, RENATO S. BUNYI, DIOSDADO J. LAJARA, CRISPIN M. CONTRERAS, JORGE M. JAVIER, and JESUS V. GARCIA, Respondents.

DECISION

CARPIO MORALES, J.:

Challenged by the People of the Philippines via petition for certiorari under Rule 65 are the Sandiganbayan Resolution¹ of September 26, 2003 granting the Motion to Quash² filed by private respondents and accordingly dismissing Criminal Case Nos. 23153-23155, and the Resolution³ of January 28, 2004 denying the Motion for Reconsideration of said resolution.

Private respondents then Calamba Mayor Severino J. Lajara and his fellow local public officials Dennis Lanzanas, Apolonio A. Elasiague, Senador C. Alcalde, Emilio C. Rodriguez, Efren M. Garcia, Frisco L. Ona, Renato A. Bunyi, Diosdado M. Lajara, Crispin M. Contreras, Jorge M. Javier were, together with Jesus V. Garcia, President of Australian Professional Realty (APRI), charged before the Sandiganbayan under three separate informations for violation of Sections 3(e), (g) and (j) of Republic Act No. 3019 (the Anti-Graft and Corrupt Practices Act) which provisions read:

SEC. 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

x x x x

(j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage or of a mere representative or dummy of one who is not so qualified or entitled.

The charges arose from private respondents public officials' entering, pursuant to Municipal Ordinance No. 497, into a Memorandum of Agreement⁴ (MOA) dated December 5, 1994 with APRI represented by respondent Garcia for the construction of the Calamba Shopping Center under the "Build-Operate-Transfer" scheme in Republic Act 6957,⁵ as amended by R.A. 7718.

The three separate Informations all dated January 18, 1996 read:

CRIMINAL CASE NO. 23153

The undersigned Special Prosecution Officer, Office of the Special Prosecutor, hereby accuses Severino Lajara, Dennis Lanzanas, Apolinio Elasiague, Senador Alcalde, Emilio C. Rodriguez, Efren M. Garcia, Frisco L. Ona, Renato A. Bunyi, Diosdado J. Lajara, Crispin M. Contreras, Jorge M. Javier and Jesus V. Garcia for violation of Section 3 (j) of Republic Act 3019, as amended, committed as follows:

That on December 5, 1994, or sometime prior or subsequent thereto, in Calamba, Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Severino Lajara, as Municipal Mayor of Calamba Laguna, and while in the performance of his official function, conniving and confederating with the other public officers namely: Dennis Lanzanas, the Vice-Mayor, Apolinio Elasiague, Frisco Ona, Senador C. Alcalde, Renato A. Bunyi, Emilio C. Rodriguez, Diosdado J. Lajara, Efren Garcia, Jorge Javier and Crispin Contreras, all Members of the Sangguniang Bayan of Calamba, Laguna, together with the private respondent, Jesus V. Garcia, President of the Australian Professional Realty, Inc., did then and there willfully, unlawfully and criminally grant to Austalian Professional Realty, Inc., the privilege of constructing the shopping center located at Calamba, Laguna despite knowledge that the said construction firm is not qualified not being accredited by the Philippine Contractor's Accreditation Board (PCAB) as Class AAA contractor because it has only a paid-up capital of ONE HUNDRED TWENTY FIVE THOUSAND PESOS (₱125,000.00), Philippine Currency, when the subject project would cost from ₱200 Million to ₱300 Million, to the prejudice of the government.

Contrary to law.⁶ (Underscoring supplied)

CRIMINAL CASE NO. 23154

The undersigned Special Prosecution Officer, Office of the Special Prosecutor, hereby accuses Severino Lajara, Dennis Lanzanas, Apolonio Elasiague, Senador Alcalde, Emilio C. Rodriguez, Efren M. Garcia, Frisco L. Ona, Renato A. Bunyi, Diosdado J. Lajara, Crispin M. Contreras, Jorge M. Javier and Jesus V. Garcia for violation of Section 3 (g) of Republic Act 3019, as amended, committed as follows:

That on December 5, 1994, or sometime prior or subsequent thereto, in Calamba, Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Severino Lajara, as Municipal Mayor of Calamba Laguna, and while in the performance of his official function, conniving and confederating with the other public officers namely: Dennis Lanzanas, the Vice-Mayor, Apolinio Elasiague, Frisco Ona, Senador C. Alcalde, Diosdado J. Lajara, Efren Garcia, Jorge Javier and Crispin Contreras, all Members of the Sangguniang Bayan of Calamba, Laguna, together with the private respondent, Jesus V. Garcia, president of the Australian Professional Realty, Inc., did then and there willfully, unlawfully and criminally enter into a Memorandum of Agreement for and in behalf of the Municipality of Calamba, Laguna with contractor Australian Professional Realty, Inc. represented by its President, private respondent Jesus V. Garcia, regarding the construction of a shopping center in Calamba, Laguna, the terms and conditions being manifestly and grossly disadvantageous to the Municipality of Calamba such that the actual operation and management of the said shopping center and the income derived therefrom for a period of twenty five (25) years will be directly under the control and supervision of the Australian Professional Realty, Inc., thus causing undue injury to the Government.

CONTRARY TO LAW.⁷ (Underscoring supplied)

CRIMINAL CASE NO. 23155

The undersigned Special Prosecution Officer, Office of the Special Prosecutor, hereby accuses Severino Lajara, Dennis Lanzanas, Apolonio Elasiague, Senador Alcalde, Emilio C. Rodriguez, Efren M. Garcia, Frisco L. Ona, Renato A. Bunyi, Diosdado J. Lajara, Crispin M. Contreras, Jorge M. Javier and Jesus V. Garcia for violation of Section 3 (e) of Republic Act 3019, as amended, committed as follows:

That on December 5, 1994, or sometime prior or subsequent thereto, in Calamba, Laguna, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Severino Lajara, as Municipal Mayor of Calamba Laguna, and while in the performance of his official function, conniving and confederating with the other public officers namely: Dennis Lanzanas, the Vice-Mayor, Apolinio Elasiague, Frisco Ona, Senador C. Alcalde, Renato A. Bunyi, Emilio C. Rodriguez, Diosdado J. Lajara, Efren Garcia, Jorge Javier and Crispin Contreras, Members of the Sangguniang Bayan of Calamba, Laguna, together with the private respondent, Jesus V. Garcia, president of the Australian Professional Realty, Inc., and acting with evident bad faith did then and there willfully, unlawfully and criminally enter into a Memorandum of

Agreement on behalf of the Municipality of Calamba, Laguna with contractor Australian Professional Realty, Inc. represented by its President, private respondent Jesus V. Garcia, for the construction of the shopping center in Calamba, Laguna, under the Build Operate and Transfer (BOT) scheme, despite knowledge that the Municipal Ordinance No. 497 which gave authority to respondent Mayor to enter into the Memorandum of Agreement was still under study by the Sangguniang Panlalawigan of Laguna; that Australian Realty, Inc. is not an accredited contractor; and that no pre-qualification, bidding and awarding of the project was conducted, thus, causing undue injury to the complainants and to the Government.

CONTRARY TO LAW.⁸ (Underscoring supplied)

On February 6, 1996, private respondents filed a Petition for Reinvestigation⁹ and a Motion to Suspend Proceedings and to Hold in Abeyance the Issuance of Warrant of Arrest¹⁰ due to the pendency of two civil actions for the nullification of the MOA, Civil Case No. 2180-95-C, "*Merlinda Paner, for herself and for the vendors of the Calamba Public Market v. Mayor Severino Lajara & Australian Professional Realty, Inc.*,"¹¹ and Civil Case No. 2186-95-C, "*Calamba Vendors Credit Cooperative and its Members v. The Municipality of Calamba, Laguna, Mayor Sereriano Lajara and Australian Professional Realty, Inc.*,"¹² at Branch 92 of the Regional Trial Court of Calamba City (the trial court), they alleging that the said civil cases raised prejudicial questions which must first be resolved as they are determinative of their innocence or guilt.

By Order¹³ of February 16, 1996, the Sandiganbayan held in abeyance the issuance of orders of arrest pending further study by the prosecution on whether the informations, as worded, can "reasonably produce conviction."

After reinvestigation, the Office of the Special Prosecutor submitted to the Ombudsman a Memorandum¹⁴ recommending the dismissal of the criminal cases upon finding that the Calamba Shopping Center was not listed as a priority project, hence, no bidding was required; APRI was a project initiator and not a contractor, hence, it did not have to register and be accredited by the Philippine Contractors Accreditation Board (PCAB); and for the purpose of constructing the shopping center, APRI has, aside from its paid-up capital stock, credit line facilities of 150 million pesos.¹⁵

The Ombudsman disapproved the recommendation of the Office of the Special Prosecutor, however, it holding that while "prejudicial question may be attendant, it does not warrant the dismissal of the criminal cases."¹⁶

Private respondents thereupon filed an Omnibus Motion for Re-investigation,¹⁷ contending that the Ombudsman's disapproval of the Office of the Special Prosecutor's memorandum-recommendation was anchored on an erroneous appreciation of the issues and facts discussed therein, and that the recommendation was based not on the existence of prejudicial questions but on a finding that there was no violation of RA No. 3019.

By Resolution¹⁸ of August 25, 1998, the Sandiganbayan found that no prejudicial question existed in the civil cases and that, at all events, the Omnibus Motion for Reinvestigation was no longer proper since only one motion for reinvestigation may be filed under Section 27 of RA 6770.¹⁹

Private respondents subsequently filed a Motion to Quash²⁰ the informations, alleging that the Sandiganbayan has no jurisdiction over the offenses charged or over their persons; the three informations charging three different criminal offenses arising from one and the same act of entering into a MOA violate their constitutional rights against double jeopardy; the facts charged in each information do not constitute an offense, and there is no probable cause to hold them for trial.

In a separate move, private respondents filed on September 10, 1998 a Motion to Suspend Proceedings²¹ reiterating that there are prejudicial questions involved in the pending civil actions.

In the meantime, for failure to prosecute, Civil Case No. 2186-95-C was dismissed on June 30, 1999.²² As for Civil Case No. 2180-95-C, the trial court, by Decision²³ of September 8, 2000, dismissed it after it found that the MOA was not tainted with "marks of nullity." The decision was appealed by the plaintiffs to the appellate court but the appeal was withdrawn and later declared abandoned and dismissed by the said court by Resolution of January 15, 2003.²⁴

The Sandiganbayan subsequently denied private respondents' Motion to Quash, by Resolution²⁵ of February 26, 2001, for lack of merit, and unaware that a decision had already been rendered in Civil Case No. 2180-95-C, granted the Motion to Suspend Proceedings after finding that prejudicial questions exist which warrant the suspension of the criminal proceedings. The suspension of the proceedings in the criminal cases notwithstanding, private respondents Frisco L. Ona and Senador C. Alcalde were respectively arraigned on July 27, 2001²⁶ and October 11, 2002,²⁷ it being necessary for the approval of their motions to travel. Both pleaded not guilty to each of the charges in the Informations.

Private respondents later filed another Motion to Quash²⁸ alleging that "[t]he DECISION of the Regional Trial Court in the Civil Cases [*sic*] raises no iota of doubt that in these three (3) INFORMATIONS [they] cannot be prosecuted after a clear and categorical pronouncement in the said decision declaring the elements of the crime under which they are being prosecuted do not exist."²⁹

Treating the second Motion to Quash as a motion to dismiss, the Sandiganbayan, by Resolution³⁰ of September 26, 2003, granted the same and accordingly dismissed Criminal Case Nos. 23153-23155.

The People's motion for reconsideration having been denied by Resolution³¹ of January 28, 2004, the present petition for certiorari was filed, attributing to the Sandiganbayan the commission of grave abuse of discretion:

A.

. . . IN HOLDING THAT THE DECISION OF THE REGIONAL TRIAL COURT OF CALAMBA, LAGUNA, BRANCH 92, FINDING THE VALIDITY OF THE QUESTIONED MEMORANDUM OF AGREEMENT HAS RENDERED CRIMINAL CASE NOS. 23153-23155 DEVOID OF ANY PROBABLE CAUSE.

B.

. . . IN NOT RESOLVING THE ISSUES PUT FORTH BY PETITIONER AGAINST THE MOTION TO QUASH FILED BY PRIVATE RESPONDENTS THAT THERE IS [*sic*] NO IDENTITIES OF PARTIES BETWEEN CIVIL CASE NO. 2180-95-C AND CRIMINAL CASE NOS. 23153-23155, A CONDITION NEGATING THE EXISTENCE OF PREJUDICIAL QUESTION.³²

This Court notes that instead of assailing the Sandiganbayan resolutions by petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure, petitioner availed of the present petition for *certiorari* under Rule 65.

Under Rule 65, petitioner must show that there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. In this case, an appeal from the resolution of the Sandiganbayan granting the motion to quash, which the Sandiganbayan treated as a motion to dismiss, being a final, not merely interlocutory³³ order, was not only available but was also a speedy and adequate remedy.

Section 7 of Presidential Decree No. 1606 (Revising Presidential Decree No. 1486 Creating a Special Court to be Known as "Sandiganbayan" and For Other Purposes"), as amended by Republic Act No. 8249, provides that decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on *certiorari* raising pure questions of law in accordance with Rule 45 of the Rules of Court. Likewise, Section 1, Rule 45 of the Rules of Court provides that a judgment or final order or resolution of the Sandiganbayan may be appealed to the Supreme Court on a petition for review on *certiorari*.

While in the interest of justice, a petition for *certiorari* under Rule 65 may be treated as having been filed under Rule 45, a liberal application of the rules does not herein lie for the present petition for *certiorari* was filed beyond the reglementary period for filing a petition for review. Parenthetically, petitioner did not even endeavor to explain why it failed to adopt the proper remedy.³⁴

But even gratuitously resolving the petition on the issue of grave abuse of discretion,³⁵ the petition just the same fails as no grave abuse of discretion can be appreciated from the Sandiganbayan's quashal of the informations.

While the filing of Criminal Case Nos. 23153-23155 was premised on the alleged violation by private respondents of Sections 3 (j), (g), and (e) of RA No. 3019 for entering, in behalf of the

municipality, into a MOA with APRI, and the filing of Civil Case No. 2180-95-C was instituted to invalidate the MOA, the following issues, identified by the trial court in the said civil case as necessary to determine the validity or nullity of the MOA:

1. Whether or not SB Resolution No. 497 of the Municipality of Calamba is valid in that it was ratified or not ratified by the Sangguniang Panlalawigan;
2. Whether or not the questioned MOA is valid when APRI is not accredited with the Philippine Contractors Accredita[tion] Board (PCAB) and has an authorized capital stock of only 2 Million Pesos and a paid up capital stock of only ₱125,000.00;
3. Whether or not the questioned MOA is valid without public bidding of the project;
4. Whether or not the execution of the questioned MOA complies with the mandatory requirement of the Buil[d] [*sic*] Operate and Transfer (BOT) RA 6957 as amended by RA 7718 and its implementing rules and regulations (IRR);
5. Whether or not the questioned MOA is grossly disadvantageous to the Municipality of Calamba.,³⁶

are logical antecedents of the following issues raised in the criminal cases, the resolution of which logical antecedents belongs to the trial court in the civil case: (1) whether private respondents granted in favor of APRI the privilege of constructing the Calamba Shopping Center despite knowledge that APRI was not qualified - not having been accredited by the PBAC as Class AAA contractor because its paid up capital only amounts to ₱125,000 [Information in Criminal Case No. 23153]; (2) whether the terms and conditions of the MOA entered into by private respondents for and in behalf of the municipality were manifestly and grossly disadvantageous to the municipality [Information in Criminal Case No. 23154]; and (3) whether private respondents through evident bad faith caused undue injury to the complainants and to the government for entering into a MOA, knowing that (a) Municipal Ordinance No. 497 which gave authority to the Mayor to enter into said agreement was still under study by the Sangguniang Panlalawigan of Laguna, (b) APRI was not an accredited contractor, and (c) no pre-qualification, bidding and awarding of the project was conducted.

While the resolution of Civil Case No. 2180-95-C by the trial court of the issues raised therein do not conclusively determine the guilt or innocence

of private respondents, still it puts to test the sufficiency of the allegations in the informations, particularly whether further prosecution of the criminal cases may be sustained.³⁷ A challenge to the allegations in the informations on account of the issues posed for resolution in the trial court, which are deemed prejudicial questions, is in effect a question on the merits of the criminal charge through a non-criminal suit.³⁸

Indeed, there would be no reason to proceed with the criminal cases in light of the trial court's findings, which had become final and executory after the appellate court considered the appeal therefrom abandoned and dismissed, that the MOA was valid as APRI was qualified to enter into the same; APRI and the municipality through private respondents complied with all the procedural requirements necessary for entering into the MOA; and the terms and conditions of the MOA were not grossly disadvantageous to the municipality.

. . . The fact that APRI is not accredited with the P[hilippine C[ontractors] A[djudication] B[oard] or has only a capital stock of only 2 Million Pesos and a paid-up capital of only P125,000.00 will not by itself nullify the MOA. A contractor may or may not be the project proponent (Sec. 2 (e) RA 7718). A project proponent is the private sector entity which shall have contractual responsibility for the project which shall have an adequate financial base to implement said project consisting of equity and firm commitments from reputable financial institutions to provide sufficient credit lines to cover the total estimate cost of the project (Sec. 2(k) RA 7718). APRI is a BOT project proponent and not a contractor to undertake actual construction for the project and thus, APRI need not register with and be accredited by the PCAB (p. 9, TSN of November 11, 1999). . . .

x x x x

The Court is convinced by the defendant's evidence that APRI has sufficient financial base or capability to implement the project with a[n] estimated project cost of 150 Million Pesos (Exh. "16-A"). The initial authorized capital stock of APRI of 2 Million Pesos is supplemented by Brilliant Star Capital Lending in the amount of 150 Million Pesos (p. 10 TSN September 5, 1999 and Exh. "11"). On top of this, the initial authorized capital stock of 2 Million Pesos is in the process of being increased (pages 3 to 6 TSN of November 11, 1999).

x x x x

. . . The requirement of public bidding, as well as the process and procedures thereof, mandated by the BOT law do not apply to unsolicited proposals for projects.

Projects to be implemented under unsolicited proposals need not comply with the requirements, process and procedures of public bidding. Sec. 4 of amendatory RA 7718 provides as follows to wit:

"Unsolicited Proposals – Unsolicited proposals for projects may be accepted by any government agency or local government unit on a negotiated bases: Provided, that, all the following conditions are met: (1) such project involve[s] a new concept or technology and/or not part of the list of priority projects, (2) no direct government guarantee, subsidy or equity is required, and (3) the government agency or local government unit has invited by publication, or three (3) consecutive weeks, in a newspaper of general circulation, comparative or competitive proposals is [sic] received for a period of sixty (60) working days: Provided, further, that in the event another proponent submits a lower price proposal, the original proponent shall have the

right to match that price within thirty (30) working days" (Reiterated in Rule 10, Section 10.2 and Rule 11, Section 11.1 of the IRR).

x x x x

. . . Atty. Marciano likewise testified that the proposal for the construction of the Calamba Shopping Center is under the Unsolicited Proposal and that there is no need for bidding based on the letter dated August 17, 1995 to APRI by NEDA Regional Director Mr. Catalino Boquiren to the effect that the Calamba Shopping Center is not covered by ICC/NEDA review and approval (p. 9, TSN of September 2, 1999). NEDA Regional Director Mr. Catalino Boquiren was presented by the plaintiffs as their witness and he identified his August 17, 1995 letter to APRI marked as Exhs. "10" and "10-A" (pages 7 to 8, TSN of March 20, 1997). . . .³⁹ (Underscoring supplied)

The qualification of APRI to enter into the MOA with the municipality having been duly established, private respondents could no longer be held accountable under Section 3 (j) which punishes the act of public officers of knowingly granting a license, permit, privilege or advantage to a person not qualified or legally entitled thereto.

The absence of the element under Section 3 (g) that the MOA was grossly or manifestly disadvantageous to the municipality reflected in the following findings of the trial court bears noting:

. . . The Calamba Shopping Center Project, as an Unsolicited Proposal, does not require government guarantee, subsidy or equity. Indeed the very provisions of the questioned MOA in its whereas show in unmistakable terms that no cost or expenses [*sic*] [o]n the part of the Municipality of Calamba shall be required in the construction of the project in this wise: WHEREAS, the first party (The Municipality of Calamba) desires to have a shopping center for the residents of Calamba, Laguna and the nearby towns and cities that would serve as one of the major trading point[s] in the Province of Laguna; WHEREAS, the second party (APRI) is willing and able to help the FIRST PARTY in achieving its aforementioned objectives by constructing and operating a shopping center with modern and sleek design without cost or expense on the part of the first party pursuant to Buil[d]-Operate-Transfer Scheme" under RA 6957, as amended by RA 7718; WHEREAS, the first party sees the benefits and economic advantages of such project of the second party...."

This very clear and unmistakable terms of the questioned MOA belie the claim of the plaintiffs that said MOA is grossly disadvantageous to the municipality. On the contrary, the Court sees the construction of the Calamba Shipping Center under the MOA [as] a rare happening with tremendous benefits to the citizenry not only of Calamba but also of the neighboring towns of the province, and this without any cost or expense on the coffers of the municipality. The Court takes judicial notice of the fact that at present, the Calamba Shopping Center, which is just about a stone-throw away from this Court, has been already in operation, albeit still

incomplete, with buildings and infrastructures in modern design constructed without cost to the municipality to be enjoyed by the constituents now and in the years to come.

As matters stand now, the Municipality of Calamba is the beneficiary of all the improvements constructed by APRI on its former market site. The parties may differ as to how to recompense APRI for such improvements and what will guide them in view of the re[s]cission of the BOT Contract. Certainly, the parties did not sustain damage by such re[s]cission and they cannot be heard to complain about it.

To the mind of the Court, the BOT Contract did not work any damage to the municipality, much more placed the municipality in any kind of disadvantageous position. It did not either place the APRI in any disadvantageous situation, now that the contract [wa]s rescinded by the municipal council.⁴⁰ (Underscoring supplied)

For the charge of Section 3 (e) to prosper, the following elements must be present: (1) the accused is a public officer or private person charged in conspiracy with the former; (2) the public officer commits the prohibited acts during the performance of his official duties or his relation to his public positions; (3) he causes undue injury to any party, whether the Government or a private party; (4) such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.

Assuming *arguendo* that an ordinance awarding a contract to an unqualified entity not having been ratified by the Sangguniang Panlalawigan could result to prejudice to the government, the findings of the trial court that (1) the ordinance was indeed ratified, (2) no public bidding was required, (3) the MOA complied with the mandatory requirements under RA 6957, as amended by RA No.7718 (Build, Operate and Transfer Law), and (4) there was no evident bad faith on the part of the parties in executing the MOA negate the existence of probable cause to justify haling private respondents into court for violation of above-said Section 3 (e). Pertinent portions of the trial court's decision are reproduced hereunder:

. . . Plaintiffs contends (sic) that said SB No. 497 is not valid for the reason that the Sangguniang Panlalawigan of Laguna disapproved or did not ratify the same. Plaintiffs offered Exh. "C" which defendants likewise marked and offered as Exh. "3" to prove that the Sangguniang Panlalawigan approved Resolution No. 497. The very Exh. "C" and Exh. "3" recites [sic] the fact of the approval by the Sangguniang Panlalawigan in this wise –

"January 13, 1995

CERTIFICATION

This is to certify that Resolution No. 497 S. 1994 of the Sangguniang Bayan of Calamba, Laguna was received by this Office on November 07, 1994, and calendared in the agenda of December 14, 1994 and was approved by the Sangguniang Panlalawigan on the same day.

It is further certified that the approval of said Resolution was with[he]ld by [the] Sangguniang Panlalawigan in its session on January 11, 1995, and was referred to the Committee on Laws and Rules for further study, in view of a letter-request filed by the Public Market Vendors Association of Calamba."

The approval by the Sangguniang Panlalawigan of Resolution No. 497 is not shrouded by any doubt. The fact [that] the resolution was later referred to the Committee on Laws and Rules (Exh. "C-1") was only made by the Provincial Board in order to appease the public vendors association of Calamba after the provincial board received a letter-request stating that Resolution No. 497 was implemented without public hearing.

Moreover, SB Resolution No. 497 having been received by the Sangguniang Panlalawigan on November 7, 1994, then on December 8, 1994 or after thirty (30) days from November 7, 1994, without the Sanggunian Panlalawigan's action declaring SB Resolution No. 497 invalid, then said SB Resolution No. 497 shall be presumed consistent with law and therefore valid. (Sec. 56 (a) Local Government Code). Thus, it can be said that SB Resolution No. 497 was approved twice, first by the positive action of approval on December 14, 1994 and second, by inaction on December 8, 1994 upon the lapse of thirty (30) days from receipt on November 7, 1994. The reliance by plaintiffs on Exh. "C-1" (the second par. of Exh. "C") stating that on [sic] January 11, 1995 session of the Sangguniang Panlalawigan the approval of the Resolution No. 497 was with[h]eld and referred to the Committee on Rules for study is of no moment nor of any significance because as stated hereinbefore, there was a positive approval on December 14, 1994 and approval by inaction on December 8, 1994.

Moreover, the establishment, construction and maintenance of municipal markets are undoubtedly pure proprietary function of the municipality (Mendoza vs. De Leon[,] 33 Phil.[.] 508) with[in] the power of any municipality under the provision of Sec. 22 of the Local Government Code, thus:

"(d) Local government units shall enjoy full autonomy in the exercise of their proprietary functions in the management of their economic enterprises . . ."

It is the opinion of this Court that the Sangguniang Panlalawigan may not restrict or frustrate the exercise of the proprietary function of the municipality because the power to review of the Sangguniang Panlalawigan is limited only to a finding that an ordinance or resolution is beyond the power conferred upon the Sangguniang Panlungsod or Pangbayan (Sec. 56 (c) Local Government Code).⁴¹

The . . . letter of NEDA Regional Director Boquiren should dispel any doubt that the proposed shopping center is under the unsolicited proposal and is in conformity with the IRR of the BOT law. At the very least, said letter the good faith (sic) on the part of APRI and of the municipality in entering into an agreement (the MOA) for the Calamba Shopping Center under the unsolicited proposal scheme. This witness Boquiren was presented by the plaintiffs as their witness and therefore plaintiffs are bound by his testimony. The attempt of the plaintiffs to

impeach their own witness, Mr. Igancio Santos, Jr., cannot be allowed nor considered by the Court under the mandate of Rule 132, Sec. 12 of the Revised Rules of Court which provided (sic) that: "Party may not impeach his own witness – except to witnesses referred to in par. (d) and (e) of Sec. 10. the party producing a witness is not allowed to impeach his credibility."

It is also observed that when the MOA was entered into between the Mayor and APRI, the full implementation of the BOT Law and the Amendatory Act (RA 7718) was not clearly defined, this Court was guided by Exh. "10", the official communication of Mr. Boqueren categorically stating that the construction of the Calamba Shopping Center falls under the Unsolicited Proposal of the BOT Law quoted herein before.

In addition to the citation in the letter of Mr. Boquiren, the ICC guidelines and procedures in Annex B-2 of IRR provides that project of the private sector under relending program vis special credit facilities are excluded from the ICC review/decision (III Scope of ICC Review).

The pretension of witness Ignacio Santos, Jr., for the plaintiffs that the Calamba Shopping Center should be endorsed to Regional Development Council for approval is not in accord with the provision of the BOT Law because such [e]ndorsement to and approval by the Regional Development Council is required only on priority projects (Sec. 4[,] RA 7718, Rule 27[,] IRR).⁴²

x x x x (Underscoring supplied)

Contrary to the contention of petitioner, a prejudicial question is different from the concept of *res judicata*. That there is no identity of parties between the civil case and the criminal cases does not abate the application of a prejudicial question.

A prejudicial question is defined as that which arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. The prejudicial question must be determinative of the case before the court but the jurisdiction to try and resolve the question must be lodged in another court of tribunal. It is a question based on a fact distinct and separate from "the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined. It comes into play generally in **a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed**, because howsoever the issue raised in the civil action is resolved would be determinative juris et de jure of the guilt or innocence of the accused in the criminal case.⁴³ (Emphasis and underscoring supplied)

Finally, petitioner, not having assailed the Sandiganbayan Resolution⁴⁴ dated February 26, 2001 that "there exists a prejudicial question which warrants the suspension of the proceedings . . . [i]n view of the similarity or close relation of the facts and issues, the issues to be resolved

herein [Criminal Case Nos. 23153-23155] may be rendered moot by a finding in the Civil cases that, under the circumstances, the award of the contract and/or execution of the Memorandum of Agreement was proper, legal, valid, and beyond question,"⁴⁵ is now precluded from questioning the existence of a prejudicial question.

WHEREFORE, the petition for certiorari is **DISMISSED**. The September 26, 2003 Resolution of the Sandiganbayan is **AFFIRMED**.

No pronouncement as to costs.

SO ORDERED.

CONCHITA CARPIO MORALES

Associate Justice

WE CONCUR:

LEONARDO A. QUISUMBING

Associate Justice

Chairperson

ANTONIO T. CARPIO

Associate Justice

DANTE O. TINGA

Associate Justice

ATTESTATION

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

LEONARDO A. QUISUMBING

Associate Justice

Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ARTEMIO V. PANGANIBAN

Chief Justice

Footnotes

¹ *Rollo*, pp. 38-42; Penned by Justice Diosdado M. Peralta with the concurrence of Justices Teresita Leonardo-De Castro and Francisco H. Villaluz, Jr.

² *Id.* at 89-100.

³ *Id.* at 43-44.

⁴ Sandiganbayan *rollo*, Vol. 1, pp. 229-234.

⁵ An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for the other Purposes.

⁶ Sandiganbayan *rollo*, Vol. 1, pp. 1-2.

⁷ *Rollo*, pp. 48-49.

⁸ *Id.* at 51-52.

⁹ Sandiganbayan *rollo*, Vol. 1, pp. 32-36.

¹⁰ *Id.* at 42-44.

¹¹ *Id.* at 45-55.

¹² *Id.* at 56-64.

¹³ *Id.* at 89-90.

¹⁴ *Id.* at 139-141.

¹⁵ *Id.* at 140.

¹⁶ *Id.* at 141.

¹⁷ *Id.* at 264-270.

¹⁸ *Id.* at 309-318.

¹⁹ An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman and for other Purposes.

²⁰ Sandiganbayan *rollo*, Vol. 1, pp. 331-341.

²¹ *Id.* at 353-365.

- ²² Sandiganbayan *rollo*, Vol. 3, p. 25.
- ²³ Records (Civil Case No. 2180-95-C), Vol. 3, pp. 766-786.
- ²⁴ Sandiganbayan *rollo*, Vol. 3, p. 46.
- ²⁵ Sandiganbayan *rollo*, Vol. 2, pp. 276-300.
- ²⁶ *Id.* at 378.
- ²⁷ *Id.* at 467.
- ²⁸ Sandiganbayan *rollo*, Vol. 3, pp. 10-21.
- ²⁹ *Id.* at 20.
- ³⁰ *Rollo*, pp. 38-42.
- ³¹ *Id.* at 43-44.
- ³² *Id.* at 11.
- ³³ *Milo v. Salanga*, L-37007, July 20, 1987, 152 SCRA 113, 122 (1987).
- ³⁴ *People v. Sandiganbayan*, G.R. No. 156394, January 21, 2005, 449 SCRA 205, 217 (2005).
- ³⁵ *Hon. Vasquez v. Hon. Hobilla-Alinio*, 337 Phil. 513, 519 (1997).
- ³⁶ *Rollo*, p. 115.
- ³⁷ *Marbella-Bobis v. Bobis*, 391 Phil. 648, 653 (2000).
- ³⁸ *Ibid.*
- ³⁹ Records (Civil Case No. 2180-95-C), Vol. 3, pp. 781-783.
- ⁴⁰ *Id.* at 786.
- ⁴¹ *Id.* at 780-781.
- ⁴² *Id.* at 785.
- ⁴³ *Tuanda v. Sandiganbayan*, 319 Phil. 460, 469-470 (1995).
- ⁴⁴ Sandiganbayan *rollo*, Vol. 2, pp. 276-300.
- ⁴⁵ *Id.* at 289.