

**CASIANO A. ANGCHANGCO, JR., PETITIONER, VS. THE
HON.OMBUDSMAN, ZALDY TAMAYO, GILDA NAVARRA, ODELIA
LEGASPI, SALVADOR TAMAYO, GASPABORQUE, ROEL ABAS,
REMEDIOS OLITA, ET AL., T...**

G.R. No. 122728. March 21, 1997

Ponente: MELO, J.

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MELO, J.:

Before us is a petition for mandamus seeking to: a) compel the Ombudsman Cases No. MIN-3-90-0671, MIN-90-0132, MIN-90-0133, MIN-90-0138, MIN-90-0188, MIN-90-0189, MIN-90-0190, MIN-90-0191, and MIN-90-0192; and b) direct the Ombudsman to issue a clearance in favor of petitioner Casiano A. Angchangco.

The facts are as follows:

Prior to his retirement, petitioner served as a deputy sheriff and later as Sheriff IV in the Regional Trial Court of Agusan del Norte and Butuan City.

On August 24, 1989, the Department of Labor and Employment (Region X) rendered a decision ordering the Nasipit Integrated Arrastre and Stevedoring Services Inc. (NIASSI) to pay its workers the sum of P1,281,065.505. The decision having attained finality, a writ of execution was issued directing the Provincial Sheriff of Agusan del Norte or his deputies to satisfy the same. Petitioner, as the assigned sheriff and pursuant to the writ of execution issued, caused the satisfaction of the decision by garnishing NIASSI's daily collections from its various clients.

In an attempt to enjoin the further enforcement of the writ of execution, Atty. Tranquilino O. Calo, Jr., President of NIASSI, filed a complaint for prohibition and damages against petitioner. The regional trial court initially issued a temporary restraining order but later dismissed the case for lack of jurisdiction.

In addition to the civil case, Atty. Calo likewise filed before the Office of the Ombudsman a complaint against petitioner for graft, estafa/malversation and misconduct relative to the enforcement of the writ of execution. Acting on the complaint, the Ombudsman, in a Memorandum dated July 31, 1992, recommended its dismissal for lack of merit.

Meanwhile, from June 25 to 28, 1990, several workers of NIASSI filed letters-complaints with the Office of the Ombudsman-Mindanao alleging, among others things, that petitioner illegally deducted an amount equivalent to 25% from their differential pay. The Office of the Ombudsman-Mindanao endorsed to the Court the administrative aspect of the complaints which was docketed hereat as A.M. No. 93-10-385-OMB. The Court in an En Banc Resolution dated November 25, 1993 dismissed the case for lack of interest on the part of the complainants to pursue their case.

Although the administrative aspect of the complaints had already been dismissed, the criminal complaints remained pending and unresolved, prompting petitioner to file several omnibus motions for early resolution.

When petitioner retired in September 1994, the criminal complaints still remains unresolved, as a consequence of which petitioner's request for clearance in order that he may qualify to receive his retirement benefits was denied.

With the criminal complaints remaining unresolved for more than 6 years, petitioner filed a motion to dismiss, invoking *Tatad vs. Sandiganbayan* (G.R. No. 72335-39, March 21, 1988). Sad to say, even this motion to dismiss, however, has not been acted upon.

Hence, the instant petition.

Acting on the petition, the Court issued a resolution dated December 20, 1995 requiring respondents to comment thereon. In compliance therewith, the Office of the Solicitor General filed a Manifestation and Motion (in lieu of Comment.), which is its way of saying it agreed with the views of petitioner. On July 22, 1996, we issued another resolution requiring the Ombudsman to file his own comment on the petition if he so desires, otherwise, the petition will be deemed submitted for resolution without such comment. After several extensions, respondent Ombudsman, through the Office of the Special Prosecutor, filed a comment dated October 7, 1996.

The Court finds the present petition to be impressed with merit.

Mandamus is a writ commanding a tribunal, corporation, board, or person to do the act required to be done when it or he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use of enjoyment of a right or office to which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law (Section 3 of Rule 65 of the Rules of Court).

After a careful review of the facts and circumstances of the present case, the Court finds the inordinate delay of more than six years by the Ombudsman in resolving the criminal complaints against petitioner to be violative of his constitutionally guaranteed right to due process and to a speedy disposition of the cases against him, thus warranting the dismissal of said criminal cases pursuant to the pronouncement of the Court in *Tatad vs. Sandiganbayan* (159 SCRA 70 [1988]), wherein the Court, speaking through Justice Yap, said:

We find the long delay in the termination of the preliminary investigation by the Tanodbayan in the instant case to be violative of the constitutional right of the accused to due process. Substantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law. Not only under the broad umbrella of the due process clause, but under the constitutional guarantee of "speedy disposition" of cases as embodied in Section 16 of the Bill of Rights (both in the 1973 and the 1987 Constitutions), the inordinate delay is violative of the petitioner's constitutional rights. A delay of close to three (3) years can not be deemed reasonable or justifiable in the light of the circumstance obtaining in the case at bar. We are not impressed by the attempt of the Sandiganbayan to sanitize the long delay by indulging in the speculative assumption that "the delay may be due to a painstaking and gruelling scrutiny by the Tanodbayan as to whether the evidence presented during the preliminary investigation merited prosecution of a former high-ranking government official." In the first place, such a statement suggests a double standard of treatment, which must be emphatically rejected. Secondly, three out of the five charges against the petitioner were for his alleged failure to file his sworn statement of assets and liabilities required by Republic Act No. 3019, which certainly did not involve complicated legal and factual issues necessitating such "painstaking and gruelling scrutiny" as would justify a delay of almost three years in terminating the preliminary investigation. The other two charges relating to alleged bribery and alleged giving of unwarranted benefits to a relative, while presenting more substantial legal and factual issues, certainly do not warrant or justify the period of three years, which it took the Tanodbayan to resolve the case.

It has been suggested that the long delay in terminating the preliminary investigation should not be deemed fatal, for even the complete absence of a preliminary investigation does not warrant dismissal of the information. True-- but the absence of a preliminary investigation can not be corrected, for until now, man has not yet invented a device for setting back time.

Verily, the Office of the Ombudsman in the instant case has failed to discharge its duty mandated by the Constitution "to promptly act on complaints filed in any form or manner against public officials and employees of the government, or any subdivision, agency or instrumentality thereof."

Mandamus is employed to compel the performance, when refused, of a ministerial duty, this being its chief use and not a discretionary duty. It is nonetheless likewise available to compel action, when refused, in matters involving judgment and discretion, but not to direct the exercise of judgment or discretion in a particular way or the retraction or reversal of an action already taken in the exercise of either (Rules of Court in the Philippines, Volume III by Martin, 4th Edition, page 233).

It is correct, as averred in the comment that in the performance of an official duty or act involving discretion, the corresponding official can only be directed by mandamus to act, but not to act one way or the other. However, this rule admits of exceptions such as in cases where there is gross abuse of discretion, manifest injustice, or palpable excess of authority (Kant Kwong vs. PCGG, 156 SCRA 222, 232 [1987]).

Here, the Office of the Ombudsman, due to its failure to resolve the criminal charges against petitioner for more than six years, has transgressed on the constitutional right of petitioner to due process and to a speedy disposition of the cases against him, as well as the Ombudsman's own constitutional duty to act promptly on complaints filed before it. For all these past 6 years, petitioner has remained under a cloud, and since his retirement in September 1994, he has been deprived of the fruits of his retirement after serving the government for over 42 years all because of the inaction of respondent Ombudsman. If we wait any longer, it may be too late for petitioner to receive his retirement benefits, not to speak of clearing his name. This is a case of plain injustice which calls for the issuance of the writ prayed for.

WHEREFORE, the Court RESOLVED to give DUE COURSE to the petition and to GRANT the same. Ombudsman Cases No. MIN-3-90-0671, MIN-90-0132, MIN-90-0133, MIN-90-0138, MIN-90-0188, MIN-90-0189, MIN-90-0190, MIN-90-0191, and MIN-90-0912 are ordered DISMISSED. The Office of the Ombudsman is further directed to issue the corresponding clearance in favor of petitioner.
SO ORDERED.

Narvasa, C.J., Davide, Jr., Francisco, and Panganiban, JJ., concur.

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