JOSE P. LOPEZ, JR., PETITIONER, VS. OFFICE OF THE OMBUDSMAN, HON. ANIANO A. DESIERTO AND HON. MARGARITO P. GERVACIO, JR. IN THEIR OFFICIAL CAPACITIES AS OMBUDSMAN AND DEPUTY OMB...

G.R. No. 140529. September 06, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before us is a Petition for Mandamus seeking: 1) the dismissal of Ombudsman Case No. OMB-3-93-2793 (now Criminal Cases Nos. 25247-25226); and 2) the issuance of a clearance in favor of petitioner Jose P. Lopez, Jr.

The facts as narrated in the memorandum of petitioner are:

> "1. The petitioner is presently the Administrative Officer of the Department of Education, Culture and Sports (DECS), Region XII, Cotabato City.
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> Because of the exigency of the service, the petitioner temporarily stays in Cotabato City although he is a resident of Parañaque City.
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> 2. On June 30, 1959, the petitioner started working with the DECS as a classroom teacher. Through hard work, exemplary performance and continuous studies, he was promoted and assigned to different positions such as Special Education Teacher; Child and Youth Specialist; 2[nd] Lt., 36 Battalion Combat Team, Philippine Army (Reserved Force); Asst. Director and concurrent Director, Child and Youth Research Center (now a defunct office); and finally, he was appointed as Administrative Officer V, DECS-Region XII, Cotabato City.
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> 3. Among the tasks of the petitioner as Administrative Officer V is to determine whether certain expenses are necessary in the attainment of the objectives of the DECS-Region XII and to pass upon, review and evaluate documents and other supporting papers submitted to him in relation to his duties.
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> 4. Between 1992 and 1993, DECS-Region XII ordered several pieces of laboratory equipment and apparati requested by different school divisions of the region.
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> 5. The concerned officers of DECS-Region XII submitted to the petitioner the documents covering the transactions.
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> 6. After careful scrutiny of the documents submitted to him, the petitioner affixed his signature on the disbursements vouchers that were accompanied by Purchase Orders, Sales Invoices, Delivery/Memorandum Receipts and proof that the transactions were post audited by the COA Resident Auditor who found them in order.
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> 7. Disregarding the findings of the COA Resident Auditor - DECS Region XII, Cotabato City, who post audited the transactions and found them in order, for reasons of his own, the COA Regional Director formed a Special Audit Team to investigate and audit the transactions.

8. Without seeking the presence of the concerned officials and employees of DECS - Region XII, the COA Special Audit Team conducted an audit of the transactions.

9. On December 20, 1993, the members of the COA Special Audit Team submitted to the COA Regional Director-Region XII, their Joint Affidavit claiming alleged deficiencies in the transactions of DECS - Region XII implicating thereto the petitioner and some concerned officials and employees of DECS-Region XII.

10. Dispensing conducting an exit conference and inviting the petitioner to clarify the allegations of the COA Special Audit Team in their Joint Affidavit-Complaint, in post-haste the COA Regional Directors indorsed it to the Office of the Ombudsman-Mindanao for preliminary investigation.

11. The Office of Ombudsman-Mindanao docketed the complaint as Case No. 3-93-27791, entitled "Commission on Audit vs. Makil Pundaodaya, et al.," for Falsification of Documents by Public Officers."

12. In her Order dated March 1, 1994, Graft Investigation Officer (GIO) Marie Dinah Tolentino directed the petitioner to submit a Counter-Affidavit without informing him of his constitutional right to counsel.

13. On April 14, 1994, without the assistance of counsel, the petitioner wrote the Office of the Ombudsman-Mindanao requesting for an extension of ten (10) days from April 19, 1994 to submit his Counter-Affidavit.

14. On April 19, 1994, Atty. Edgardo A. Camello, counsel for Makil Pundaodaya and the other respondents in Case No. OMB-3-93-8791 filed a Motion for Extension of Time to submit their Counter-Affidavits.

15. On April 22, 1994, without the assistance of counsel, the petitioner submitted to the Office of Ombudsman-Mindanao his Counter-Affidavit he personally prepared denying specifically each and every criminal act attributed to him by the Commission on Audit.

16. Although the petitioner did not submit any written statement authorizing Atty. Camello to represent him in Case No. OMB 3-93-8791, the Office of the Ombudsman-Mindanao erroneously assumed or deliberately made to appear that he was represented by said attorney. As a consequence thereof, the Office of Ombudsman-Mindanao did not notify him of the progress of the preliminary investigation. In fact, it did not issue any order directing COA, Region XII to furnish him with a copy of the latter's Reply-Affidavit, which explained why petitioner could not be expected to submit a Rejoinder to rebut the issues raised in said Reply-Affidavit; to summon and compel witnesses to appear and testify before the Graft Investigation Officer or to bring books, documents and other records relative to the transactions under their control and to secure the attendance or presence of any absent or recalcitrant witness.

17. More than four (4) years after he submitted his Counter-Affidavit, the petitioner was surprised that, without preliminary investigation and clarificatory question asked, on July 17, 1998, the Office of the Ombudsman-Mindanao terminated the preliminary investigation recommending that he, together with the other respondents in Case No. OMB 3-93-9791, be prosecuted for violation of Sec. 3(e) and (g) of the Anti-Graft and Corrupt Practices Act.

18. Within the reglementary period, without the assistance of counsel, the petitioner sent a letter to the Office of the Ombudsman-Mindanao dated June 8, 1999 seeking the reconsideration of the Resolution in Case No. OMB 33-93-2791 wherein he stressed that he was deprived of due process and that there was inordinate delay in the resolution of the preliminary investigation; and there was no exit conference wherein he could have explained to the Graft Investigation Officer his exculpatory participation in the transactions investigated. In addition, he also submitted to the Office of the Ombudsman-Mindanao a Motion for Reconsideration or Reinvestigation reiterating the allegations mentioned in his letter dated June 8, 1999. Unfortunately, said Motion for Reconsideration or Reinvestigation was not acted upon by the Office of the Ombudsman-Mindanao by giving the excuse that its Resolution was already forwarded to Ombudsman Aniano Desierto."[1]

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On the other hand, the facts as narrated in the Memorandum of the Office of the Ombudsman are as follows:

> "Criminal Cases Nos. 25247 to 25276 stemmed from a special audit conducted by the Commission on Audit (COA), Region XII relative to the purchase by the Department of Education, Culture and Sports (DECS), Region XII Office, Cotabato City of school equipment and laboratory apparati. The report on the special audit was received by the Office of the Ombudsman, Mindanao on December 22, 1993. Finding the audit report sufficient to conduct a preliminary investigation the same was docketed as Case No. OMB-3-93-2791.
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> In an Order dated March 1, 1994, Graft Investigation Officer (GIO) Marie Dinah Tolentino directed the concerned public officials, among whom was herein petitioner, to submit their Counter-Affidavits and controverting evidences within ten days from receipt of the Order and to furnish a copy of their counter-Affidavits to the complainant. The latter was given the same period of ten (10) days to file their reply to the Counter-Affidavits.
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> On April 19, 1994 the Office of the Ombudsman, Mindanao received a pleading denominated as "APPEARANCE With Motion for Extension of Time to Submit Counter-Affidavits" from Atty. Edgardo A. Camello, counsel for the respondents in Case No. OMB-3-93-2791. The Office of the Ombudsman, Mindanao granted the motion for extension and gave the respondents until May 4, 1994 within which to submit their Counter-Affidavits.
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> On May 10, 1994 the Office of the Ombudsman, Mindanao received the Counter-Affidavits of the respondents.
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> On August 2, 1994 the Office of the Ombudsman, Mindanao was informed through the letter of COA Director Eugenio G. Fernandez that the COA was not furnished by the respondents in Case No. OMB-3-93-2791 of their Counter-Affidavits.
>
> Subsequently, GIO Tolentino issued an Order dropping Alimot Lao Arumpac from the case in view of his death. The COA on the other hand was directed to submit its Reply-Affidavit within ten days from receipt of the Order.
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> On January 11, 1995 the Office of the Ombudsman, Mindanao received a telegram from COA, Region XII Office requesting that it be allowed until February 29, 1995 within which to submit its Reply-Affidavit on the ground that the audit team leader and members who conducted the special audit of DECS, Region XII Office were preparing for their annual audit report.
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> On February 29, 1995 the Office of the Ombudsman, Mindanao received the Reply-Affidavit of COA.
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> In a Resolution dated July 17, 1998 GIO Rachelle L. Ladrera recommended the filing of thirty (30) Informations against petitioner, Makil U. Pundaodaya, Jose T. Navera, Rogelio de los Reyes, Daud M. Adiong, Napoleon O. Cedeno, Laga S. Mangelen and Mama S. Macoming. The said recommendation was approved by public respondents Deputy Ombudsman for Mindanao Margarito P. Gervacio on February 27, 1999, and by the Honorable Ombudsman on April 30, 1999.
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> The thirty Informations docketed as Criminal Cases Nos. 25247 to 25276 were filed with the Sandiganbayan and raffled to the respondent court on May 5, 1999.
>
> On July 27, 1999 petitioner filed with the respondent court a motion for the reduction of the bail. The motion was approved by the respondent court in an Order dated August 4, 1999."[2]

In his Memorandum, petitioner presents before this Court the sole issue of: "Whether or not there was undue and unjustifiable delay on the part of the Ombudsman in resolving the complaint filed against the petitioner which violated his constitutional right to a speedy disposition of the Complaint against him; and whether or not such undue and unjustifiable delay in resolving the Complaint against the petitioner would warrant its dismissal."[3] Petitioner's main argument is that the "complaint against petitioner, Case No. OMB 3-93-2793, was filed with the

Office of the Ombudsman-Mindanao on December 10, 1993 and was resolved only on April 30, 1998,[4] resulting in a delay of 4 years, 4 months and 10 days." In addition, petitioner argues that he was deprived of due process because he did not engage a certain Atty. Edgardo Camello who filed an "Appearance with Motion for Extension of Time to Submit Counter-Affidavits" on behalf of the respondents in Case No. OMB-3-93-2791; that he was not advised by the Graft Investigation Officer of his right to attorney; and that he filed his counter-affidavit without the assistance of counsel. On the other hand, respondent Office of the Ombudsman argues that petitioners cannot, by this special civil action for mandamus, compel the ombudsman to dismiss the criminal charges filed against them, since such dismissal involves a discretionary, not a ministerial, duty.

First, we shall discuss the propriety of mandamus as a remedy, an issue which is not novel. This Court has held that, "while as a general rule, the performance of an official act or duty, which necessarily involves the exercise of discretion or judgment, cannot be compelled by mandamus, this rule does not apply in cases where there is gross abuse of discretion, manifest injustice, or palpable excess of authority."[5] Thus, in Angchangco, Jr. vs. Ombudsman[6] and Roque vs. Office of the Ombudsman[7] the writ was issued in said instances.

Second, we shall determine if the exceptions cited apply to this case. The Office of the Ombudsman narrates that the verified audit report of the COA special audit team was received on December 22, 1993, and finding the same sufficient in form and substance was docketed as OMB Case No. 34-93-2791. On the basis thereof, a preliminary investigation was conducted. On March 1, 1994, the respondents were ordered to file their counter-affidavits. On May 10, 1994, the Office of the Ombudsman received the counter-affidavits of respondents. On February 29, 1995, the Office of the Ombudsman received the reply-affidavit of COA. In a Resolution dated July 17, 1998, graft investigation officer Rachelle L. Ladrera recommended the filing of thirty (30) informations against petitioner, Makil U. Pundaodaya, Jose T. Navera, Rogelio de los Reyes, Daud M. Adiong, Napoleon O. Cedeno, Laga S. Mangelen and Mama S. Macoming. The said recommendation was approved by Deputy Ombudsman for Mindanao Margarito P. Gervacio on February 27, 1999, and by Ombudsman Aniano Desierto on April 30, 1999. The informations were filed with the Sandiganbayan on May 5, 1999. In its memorandum, the Office of the Ombudsman justified the delay in the conduct of the preliminary investigation and subsequently, in the filing of the informations by stating that:

> "Records of Case No. OMB 3-93-2791 will show that petitioner, thru his counsel, filed on April 19, 1994 with the Office of the Ombudsman, Mindanao for an extension of time to file his Counter-Affidavit. Petitioner submitted his Counter-Affidavit only on May 11, 1994.
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> However, in a letter dated August 2, 1994 the Office of the Ombudsman, Mindanao was informed by complainant COA that it was not furnished with a copy of the Counter-Affidavits of the respondents in Case No. OMB-3-93-2791 in complete disregard of the Order of GIO Tolentino.
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> Hence, the Office of the Ombudsman, Mindanao furnished the COA with a copy of the Counter-Affidavits and ordered the same office to submit its reply thereto within ten (10) days. It filed its Reply-Affidavit on February 28, 1995.
>
> It will be noted that the Office of the Ombudsman, Mindanao directed the COA to furnish the respondents in Case No. OMB 3-93-2791 with a copy of their Reply-Affidavit to afford the latter an opportunity to controvert the allegations contained therein. Petitioner however, and his other co-respondents did not file any pleading with, or notified the Office of the Ombudsman, Mindanao that they were waiving their right to refute the contents of the Reply-Affidavit. Thus, it is clear that petitioner's averment that this case has been pending for more than six (6) years has no basis.
>
> It should also be considered that there were several transactions involved in Case No. OMB 3-93-2791. This fact is proven by the thirty (30) Informations filed before the respondent court. Added to this is the fact that

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> from the time the July 17, 1998 Resolution was approved by public respondent Deputy Ombudsman Gervacio in his office in Mindanao the records of the case still has to be sent to Manila for the review of the Ombudsman. The basic rule therefore that in applying the constitutional guarantee of the right to speedy disposition of cases particular regard must also be take on the facts and circumstances peculiar to each case, finds meaning herein."[8]

We find for petitioner.

Article III of the Constitution provides that:

> Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

The constitutional right to a "speedy disposition of cases" is not limited to the accused in criminal proceedings but extends to all parties in all cases, including civil and administrative cases, and in all proceedings, including judicial and quasi-judicial hearings."[9] Hence, under the Constitution, any party to a case may demand expeditious action on all officials who are tasked with the administration of justice.[10]

However, the right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceedings is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or even without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant is weighed, and such factors as the length of the delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay. The concept of speedy disposition is a relative term and must necessarily be a flexible concept.[11]

In this case, the preliminary investigation was resolved close to four (4) years from the time all the counter and reply affidavits were submitted to the Office of the Ombudsman. After the last reply-affidavit was filed on February 28, 1995, it was only on July 17, 1998 that a resolution was issued recommending the filing of the corresponding criminal informations against the petitioner and the others. It took eight months or on February 27, 1999 for Deputy Ombudsman Margarito P. Gervacio, Jr. to approve the same and close to another year or on April 30, 1999 for Ombudsman Aniano Desierto to approve the recommendation. During this interval, no incidents presented themselves for resolution and the delay could only be attributed to the inaction on the part of the investigating officials. Indeed, we find that without cause or justifiable motive, a long period of time was allowed to elapse at the preliminary investigation stage before the informations were filed.

True, the prosecution is not bound by the findings of the COA and it must rely on its own independent judgment in the determination of probable cause.[12] However, we find that the cases are not sufficiently complex to justify the length of time for their resolution. Neither can the long delay in resolving the case under preliminary investigation be justified on the basis of the number of informations filed before the Sandiganbayan nor of the transactions involved. The thirty informations consist of sixteen (16) counts of violations of Section 3 (g) of RA 3019 relative to the overpricing and lack of public bidding of laboratory apparatus and school equipment; while the fourteen (14) counts are for violations of Section 3 (e) of the same law relative to the certification in the inspection reports that the subject items have already been delivered and received, when in fact they have not yet been actually delivered and received, in order to facilitate payment to the suppliers. There is no statement that voluminous documentary and testimonial evidence were involved. On the contrary, the Office Ombudsman itself claimed in its memorandum filed before this Court that "the Complaint and the Counter-Affidavits submitted by the complainant and the accused respectively, as well as the documents on hand" were sufficient to establish the

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existence of probable cause for violation of Section 3 (e) and (g) of RA 3019. Hence, a clarificatory hearing was no longer conducted. Indeed, it appears that the COA special audit team had already come up and provided the Office of the Ombudsman with the facts and figures on the alleged overpricing, lack of public bidding and irregular inspection reports, so much so that a delay of almost four years in terminating the preliminary investigation is not justified.

Verily, the delay in this case disregarded the Ombudsman's duty, as mandated by the Constitution and Republic Act No. 6770, to enforce the criminal liability of government officers or employees in every case where the evidence warrants in order to promote efficient service to the people.[13] The failure of said office to resolve the complaints that have been pending for almost four years is clearly violative of this mandate and the rights of petitioner as a public official. In such event, petitioner is entitled to the dismissal of the cases filed against him.

In Tatad vs. Sandiganbayan,[14] this Court dismissed the informations pending before the Sandiganbayan, after finding the delay of three years in the termination of the preliminary investigation by the Tanodbayan to be violative of the constitutional right of the accused to a speedy disposition of cases. It was held therein:

> "xxx. A delay of close to three (3) years can not be deemed reasonable or justifiable in the light of the circumstances 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 the 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."

Similarly, we hold that the circumstances obtaining in the instant case do not warrant or justify the length of time, that is four years, it took the Ombudsman to resolve the preliminary investigation. What glares from the pleadings of both the petitioner and the public respondent Ombudsman is that from the submission of the last reply-affidavit, there was an unexplained interval or inactivity of close to four years, prior to the issuance of the resolution finding probable cause and directing the filing of the corresponding informations.

Lastly, petitioner prays for the dismissal of Ombudsman Case No. OMB-3-93-2791, and this Court, applying the ruling in the Roque case,[15] citing Tatad,[16] likewise resolves to directly dismiss the informations already filed before the Sandiganbayan against petitioner "in the interest of the speedy disposition of cases" and considering that "the long and unexplained delay in the resolution of the criminal complaints against petitioner was not corrected by the eventual filing of the informations."

WHEREFORE, the Petition for Mandamus is GRANTED and Ombudsman Case No. OMB-3-93-2791 is accordingly DISMISSED. The Office of the Ombudsman is further directed to issue the corresponding clearance in favor of petitioner.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

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[1] Rollo, pp. 214-219.

[2] Rollo, pp. 201-203.

[3] Rollo, p. 220.

[4] Should be July 17, 1998.

[5] Roque vs. Office of the Ombudsman, 307 SCRA 106 (1999).

[6] Supra.

[7] 307 SCRA 105 (1999).

[8] Rollo, pp. 206-207.

[9] Cadalin vs. POEA's Administrator, 238 SCRA 722 (1994).

[10] Ibid.

[11] Binay vs. Sandiganbayan, 316 SCRA 65 (1999).

[12] Ibid.

[13] Abardo vs. Sandiganbayan, G.R. No. 139571-72, March 28, 2001.

[14] 159 SCRA 70 (1988).

[15] Supra.

[16] Supra.

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