

VICTOR JOSE TAN UY, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, PEOPLE OF THE PHILIPPINES, SANDIGANBAYAN (SPECIAL DIVISION), CARLOS S. CAACBAY OF THE NATIONAL BUREAU OF INVESTIGATION...

G.R. Nos. 156399-400. June 27, 2008

Ponente: BRION, J.

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BRION, J.:

We resolve in this Decision the petition filed by petitioner Victor Jose Tan Uy (the "petitioner") under Rule 65 of the Revised Rules of Court to assail the interrelated Orders dated 13 September 2002[1] and 16 October 2002[2] of the respondent Office of the Ombudsman (the "Ombudsman") in OMB-0-00-1720[3] and OMB-0-00-1756[4] for grave abuse of discretion and/or lack or excess of jurisdiction.

THE ANTECEDENTS

The Ombudsman filed on 4 April 2001 with the Sandiganbayan an Information[5] charging former President Joseph Ejercito Estrada, together with Jose "Jinggoy" Estrada, Charlie "Atong" Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, Eleuterio Tan a.k.a. Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, John Does and Jane Does, with the crime of Plunder, defined and penalized under Republic Act (R.A.) No. 7080, as amended by Section 12 of R.A. No. 7659. The Ombudsman moved to amend the Information twice - initially, to introduce changes in the Information (including a change in the appellation of the accused Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy to John Doe a.k.a. as Eleuterio Tan or Eleuterio Ramos Tan or Mr. Uy), and thereafter, to include Jaime C. Dichaves as accused; the Sandiganbayan granted the motions.[6] The pertinent portions of the Amended Information[7] read:

That during the period from June, 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, then a public officer, being then the president of the Republic of the Philippines, by himself and/or in connivance/conspiracy with his co-accused, who are members of his family, relatives by affinity or consanguinity, business associates, subordinates and/or other persons, by taking undue advantage of his official position, authority, relationship, connection or influence, did then and there willfully, unlawfully and criminally amass, accumulate and acquire by himself, directly or indirectly, ill-gotten wealth in the aggregate amount or total value of Four Billion Ninety-seven Million Eight Hundred Four Thousand One Hundred Seventy-three Pesos and Seventeen Centavos [P4,097,804,173.17], more or less, thereby unjustly enriching himself or themselves at the expense and to the damage of the Filipino people and the Republic of the Philippines, through any or a combination or a series of overt or criminal acts, or similar schemes or means, described as follows:

(a) by receiving or collecting, directly or indirectly, on several instances, money in the aggregate amount of Five Hundred Forty-five Million Pesos (P545,000,000.00), more or less, from illegal gambling in the form of gift, share, percentage, kickback or any form of pecuniary benefit, by himself and/or in connivance with co-accused Charlie 'Atong' Ang, Jose 'Jinggoy' Estrada, Yolanda T. Ricaforte and Edward Serapio and John Does and Jane Does, in consideration of toleration or protection of illegal gambling;

(b)by diverting, receiving, misappropriating, converting OR misusing directly, or indirectly for his or their personal gain and benefit, public funds in the amount of ONE HUNDRED THIRTY MILLION PESOS (P130,000,000.00), more or less, representing a portion of the Two Hundred Million Pesos (P200,000,000.00) tobacco excise tax share allocated for the Province of Ilocos Sur under R.A. No. 7171, BY HIMSELF AND/OR in CONNIVANCE with co-accused Charlie 'Atong' Ang, Alma Alfaro, John Doe a.k.a. Eleuterio Tan or Eleuterio Ramos Tan or Mr. Uy, and Jane Doe a.k.a. Delia Rajas AND OTHER JOHN DOES AND JANE DOES; [underscores supplied]

(c)by directing, ordering and compelling, for his personal gain and benefit, the Government Service Insurance System (GSIS) to purchase 351,878,000 shares of stocks, more or less, and the Social Security System (SSS) 329,855,000 shares of stocks, more or less, of the Belle Corporation in the amount of more or less One Billion One Hundred Two Million Nine Hundred Sixty-five Thousand Six Hundred Seven Pesos and Fifty Centavos (P1,102,965,607.50) and more or less Seven Hundred Forty-four Million Six Hundred Twelve Thousand and Four Hundred Fifty Pesos (P744,612,450.00), respectively or a total of more or less One Billion Eight Hundred Forty-seven Million Five Hundred Seventy-eight Thousand Fifty-seven Pesos and Fifty Centavos (P1,847,578,057.50); and by collecting or receiving, directly or indirectly, by himself and/or in connivance with Jaime Dichaves, John Does and Jane Does, commissions or percentages by reason of said purchases of shares of stock in the amount of One Hundred Eighty-nine Million Seven Hundred Thousand Pesos (P189,700,000.00) more or less, from the Belle Corporation which became part of the deposit in the Equitable-PCI Bank under the account name "Jose Velarde";

(d)by unjustly enriching himself from commissions, gifts, shares, percentages, kickbacks, or any form of pecuniary benefits, in connivance with Jaime C. Dichaves, John Does and Jane Does in the amount of more or less, Three Billion Two Hundred Thirty-three Million One Hundred Four Thousand One Hundred Seventy-three Pesos and Seventeen Centavos (P3,233,104,173.17) and depositing the same under his account name "Jose Velarde" at the Equitable-PCI Bank.

CONTRARY TO LAW.

The case, which originated from OMB-0-00-1720 (entitled National Bureau of Investigation v. Luis Singson, et. al.) and OMB-0-00-1756 (entitled Romeo T. Capulong, et. al., v. Joseph Ejercito Estrada, et. al.), was docketed in the Sandiganbayan as Criminal (Crim.) Case No. 26558.

In the course of the proceedings, the Ombudsman filed before the Sandiganbayan an Omnibus Motion dated 8 January 2002[8] seeking, among others, the issuance of a warrant of arrest against Victor Jose Tan Uy alias Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy. The Ombudsman alleged that no warrant of arrest had been issued against the accused John Doe who was designated in the Information as Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy; and that, in order not to frustrate the ends of justice, a warrant of arrest should issue against him after he had been identified to be also using the name Victor Jose Tan Uy with address at 2041 M. J. Cuenco Avenue, Cebu City. Allegedly, a positive identification had been made through photographs, as early as the Senate Impeachment Trial against former President Joseph Ejercito Estrada, that John Doe a.k.a. Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy and VICTOR JOSE TAN UY are one and the same person.

To support this motion, the Ombudsman attached: (1) copies of the photographs identified at the Senate Impeachment Trial; and (2) the Sworn Statement of Ma. Caridad Manahan-Rodenas (the "Rodenas Sworn Statement") dated 26 June 2001 executed before Atty. Maria Oliva Elena A. Roxas of the Fact Finding and Intelligence Bureau of the Office of the Ombudsman ("FFIB"), [For purposes of this Decision, these are collectively referred to as the "identification documents."]

The Ombudsman further filed a Manifestation and Motion dated 5 March 2002[9] asking for the manual insertion

in the Amended Information of the name VICTOR JOSE TAN UY; it relied on Section 7, Article 110 of the Revised Rules of Criminal Procedure, which provides:

SEC. 7. Name of the accused. - The complaint or information must state the name and surname of the accused or any appellation or nickname by which he has been or is known. If his name cannot be ascertained, he must be described under a fictitious name with a statement that his true name is unknown.

If the true name of the accused is thereafter disclosed by him or appears in some other manner to the court, such true name shall be inserted in the complaint or information and record.

The petitioner's response was a Petition to Conduct Preliminary Investigation[10] filed with the Ombudsman. The petitioner argued that: (1) he was not subjected to a preliminary investigation or to any previous inquiry to determine the existence of probable cause against him for the crime of plunder or any other offense, as: (a) he was not included as respondent in either of the two Ombudsman cases - bases of the criminal proceeding; (b) neither his name nor his address at No. 2041 M.J. Cuenco Avenue, Cebu City was mentioned at any stage of the preliminary investigation conducted in the criminal cases; (c) the preliminary investigation in the cases that led to the filing of Crim. Case No. 26558 was conducted without notice to him and without his participation; (d) he was not served any subpoena, whether at his address at No. 2041 M.J. Cuenco Avenue, Cebu City or at any other address, for the purpose of informing him of any complaint against him for plunder or any other offense and for the purpose of directing him to file his counter-affidavit; and (2) dictates of basic fairness and due process of law require that petitioner be given the opportunity to avail himself of the right to a preliminary investigation since the offense involved is non-bailable in character.

The petitioner additionally alleged that he filed a complaint with the Regional Trial Court of Cebu City docketed as CEB-25990 against a certain Eleuterio Tan for maligning him by using his picture, address, and other personal circumstances without his consent or authority, which acts led to his alleged involvement in the tobacco excise tax scandal.[11] He also claimed that he personally visited then Senate President Aquilino Pimentel at the height of the impeachment trial to dispute his identification as Eleuterio Tan; he then expressed his willingness to testify before the Impeachment Court and subsequently wrote Senator Pimentel a letter about these concerns.[12] He claimed further that he submitted the signatures appearing on the signature cards supposedly signed by Eleuterio Tan and the two (2) company identification cards supposedly presented by the person who opened the Land Bank account for examination by a handwriting expert; the result of the handwriting examination disclosed that the signatures were not his.[13]

In a parallel Manifestation and Motion[14] dated 11 April 2002 filed with the Sandiganbayan, the petitioner asked for the suspension of the criminal proceedings insofar as he is concerned; he likewise moved for a preliminary investigation.

The Ombudsman opposed[15] the petitioner's Manifestation and Motion with a refutation of the petitioner's various claims. Among others, it claimed that it served, in the preliminary investigation it conducted, the subpoena at the purported address of Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy at Bagbaguin, Valenzuela City as indicated in the complaint-affidavits. It posited that it was the petitioner's fault that his true name was not ascertained, the petitioner having made clever moves to make it difficult to identify him with his nefarious deeds. It also argued that the petitioner could not ask for any affirmative relief from the Sandiganbayan which had not acquired jurisdiction over the petitioner's person.

The petitioner reiterated in his Reply to Opposition[16] (filed with the Sandiganbayan) the points he raised before the Ombudsman. He additionally stressed that: (1) the fundamental issue is whether or not a preliminary investigation was conducted with respect to him; as the records show, he was never subjected to any preliminary

investigation; (2) he was never given by the prosecution the opportunity to prove in any preliminary investigation that he is not Eleuterio Tan; had he been given such opportunity, petitioner would have shown that he wasted no time and took immediate steps to establish his innocence shortly after the illegal use and submission of his photo and usurpation of his identity surfaced at the impeachment proceedings; (3) he timely invoked his right to a preliminary investigation, as motions or petitions for the conduct of preliminary investigation may be entertained by the Sandiganbayan even before the movant or petitioner is brought under its jurisdiction under the rule that any objection to a warrant of arrest or procedure in the acquisition by the court of jurisdiction over the person of the accused must be made before plea; (4) while the invalidity of the preliminary investigation does not affect the jurisdiction of the Sandiganbayan, it should however suspend the proceedings and remand the case for the holding of a proper preliminary investigation; and (5) a preliminary investigation is imperative because the offense involved is non-bailable.

The Ombudsman denied in an Order dated 10 May 2002[17] the petition for the conduct of a preliminary investigation. It rejected the petitioner's claims, reasoning out that the petitioner's requested preliminary investigation had long been terminated and the resulting case had already been filed with the Sandiganbayan in accordance with the Rules of Criminal Procedure; hence, the petitioner's remedy is to ventilate the issues with the Sandiganbayan.

The Sandiganbayan, on the other hand, granted in a Resolution dated 19 June 2002[18] the petitioner's motion and directed the Ombudsman to conduct a preliminary investigation with respect to the petitioner. It also held in abeyance - until after the conclusion of this preliminary investigation - action on the Ombudsman's motion to amend the Information to insert the petitioner's name and to issue a warrant for his arrest.

In compliance with the Sandiganbayan Resolution, the Ombudsman issued an Order[19] requiring the petitioner to file his counter-affidavit, the affidavits of his witnesses, and other supporting documents. Attached to the Ombudsman's Order were the Complaint-Affidavit in OMB-0-00-1756 and the NBI Report in OMB-0-00-1720. The petitioner filed his counter-affidavit,[20] pertinent portions of which read:

- With respect to the Complaint-Affidavit in OMB-0001720, it may be noted that the same was originally filed with the Department of Justice as I.S. No. 2000-1829, with the National Bureau of Investigation as complainant and the following as respondents, namely: (1) Luis `Chavit' Singson, (2) Deogracias Victor B. Savellano, (3) Carolyn M. Pilar, (4) Antonio A. Gundran, (5) Dr. Ernie A. Mendoza II, Ph. D., (6) Leonila Tadena, (7) Estrella Mercurio, (8) Dionisia Pizarro, (9) Cornelio Almazan, (10) Erlita Q. Arce, (11) Maricar Paz, (12) Marina Atendido, (13) Nuccio Saverio, (14) Alma Aligato Alfaro, (15) Eleuterio Tan or Eleuterio Ramos Tan, and (16) Delia Rajas. (I.S. No. 2000-1829 was thereafter referred to the Office of the Ombudsman as per the 1[st] indorsement of Secretary Artemio G. Tuquero dated 14 December 2000).

2.1. As may easily be gleaned from the documents served upon me with the 08 August 2002 Order, I am not among the respondents named or included in either I.S. No. 2000-1829 or OMB-0-00-1720. Neither has there been any mention of my name in the Complaint-Letter dated 14 November 2000 of Carlos Caacbay, Deputy Director for Special Investigation Services or in any of its supporting documents.

2.2. Neither has any allegation been made in the Complaint-Letter dated 14 November 2000 of Carlos S. Caacbay, Deputy Director for Special Investigation Services, or in any of its supporting documents that I have been identified as being among the named respondents therein.

2.3. Moreover, there has been no allegation linking me to any criminal act for any of the offenses charged or any other criminal offense.

- With respect to the Complaint-Affidavit in OMB-0-00-1756 filed by Romeo T. Capulong, Leonard de Vera and Dennis B. Funa, the only respondents named are: (1) (former) President Joseph E. Estrada, (2) (former)

First Lady Luisa Estrada, (3) Jinggoy Estrada, (4) Charlie Ang, (5) Delia Rajas, (6) Eleuterio Tan, and (7) Alma Alfaro.

3.1. As may easily be gleaned from the documents served upon me with the 08 August 2002 Order, I am not among the respondents named or included in OMB-0-00-1756. Neither has there been any mention of my name in the Complaint-Affidavit dated 28 November 2000 or in any of its supporting documents marked Annexes 'A-1' to 'A-5' (consisting of 523 pages, more or less, of the transcripts of stenographic notes of Gov. Luis Singson's testimony before the Senate Blue Ribbon Committee and the Senate Committee on Justice) and Annex 'B' (the 25 September 2000 Affidavit of Gov. Luis Singson).

3.2 Neither has any allegation been made in the Complaint-Affidavit dated 28 November 2000 nor any of its supporting documents that I have been identified as being among the named respondents therein.

3.3. Moreover, there has been no allegation linking me to any criminal act for any of the offenses charged or any other criminal offense.

- In view of the foregoing, it is submitted that the instant cases ought to be dismissed with respect to me, there being no factual allegation or basis in the instant cases to warrant any further action thereon. The instant cases should thus be dismissed outright for want of palpable merit.

The Ombudsman thereafter issued an order requiring the attendance of Rodenas and the petitioner in a clarificatory hearing.[21] The petitioner filed a Manifestation and Motion,[22] arguing that considering the thrust of his counter-affidavit, there is no need for a hearing because there is nothing that would require clarification as to matters stated in his counter-affidavit and there is also no point for a clarificatory hearing on the complaints-affidavits given the patent want of probable cause as against him. The petitioner did not personally attend the clarificatory hearing. Rodenas did not also show up. The petitioner then filed a Motion to Resolve[23] the case.

At this point, the Ombudsman issued the first of the orders assailed in the present petition; it found probable cause to charge the petitioner before the Sandiganbayan. The basis for the finding runs:

It has to be emphasized that during the investigation conducted by the Fact-Finding and Intelligence Bureau (FFIB), this Office, and referred to on page 2 of the Resolution of the Sandiganbayan dated June 19, 2002, granting the motion for preliminary investigation of respondent Victor Jose Tan Uy, Ma. Caridad Manahan-Rodenas of the Land Bank of the Philippines identified the picture bearing the name Victor Jose Tan Uy as Eleuterio Tan who presented to her two identification cards (IDs), which were found to exactly match the picture of the said respondent with his LTO license. Verily, the identification made by Rodenas based on pertinent documents which respondent presented when he opened the account at Land Bank remains credible, and that Victor Jose Tan Uy was the same person who appeared and introduced himself as Eleuterio Tan or Eleuterio Ramos Tan to Ma. Caridad A. Manahan-Rodenas of the Land Bank, thereby establishing his true identity. It is therefore, clear that the person mentioned in OMB-0-00-1720 and OMB-0-00-1756, during the preliminary investigation thereof, as Eleuterio Tan or Eleuterio Ramos Tan is no other than Victor Jose Tan Uy. [underscoring supplied]

Further, a perusal of the allegations in respondent's counter-affidavit [sic] the same has not proffered any material evidence to contradict the allegations that Eleuterio Tan or Eleuterio Ramos Tan refers to Victor Jose Tan Uy as one and the same person. What are contained in the counter-affidavit are mere general denials without defenses on why respondent is distinct and different from Eleuterio Tan. In all likelihood, respondent used the name of Eleuterio Tan or Eleuterio Ramos Tan in making his transaction with Land Bank to hide his real identity. Notwithstanding the concealment, there were available pieces of evidence unearthing respondent's true identity thus, arriving to the firm conclusion that Eleuterio Tan or Eleuterio Ramos Tan is the same person as herein respondent Victor Jose Tan Uy.[24]

The petitioner moved to reconsider the Ombudsman's Order,[25] but the latter denied the motion in the second order assailed in this petition.[26] The second assailed order in part reads:

After an assiduous evaluation of the grounds and arguments raised by the movant in his motion, we find no cogent reason to disturb the resolution and order finding probable cause to indict respondent Victor Jose Tan Uy.

x x x

It has to be emphasized that the fact of identifying Victor Jose Tan Uy as one and the same person as Eleuterio Tan or Eleuterio Ramos Tan by Landbank employee, Ma. Caridad Rodenas, has already formed part of the preliminary investigation conducted by the Office of the Ombudsman. In the said preliminary investigation, Victor Jose Tan Uy was ordered to appear in a clarificatory conference to confront Rodenas. But Uy did not appear. Instead, his counsel submitted a manifestation to dispense with the clarificatory hearing and submit the case for resolution. The scheduled conference could have provided opportunity for Victor Jose Tan Uy to dispute the findings that Eleuterio Tan or Eleuterio Ramos Tan is one and the same person. Instead, per information and admission of counsel, accused Victor Jose Tan Uy was in the United States. As to the exact date of departure, counsel refused to divulge. The skill and cleverness of accused in playing hide and seek is putting a heavy toll in the proper administration of justice.

Further, Victor Jose Tan Uy did not submit any evidence, documentary or otherwise, that would lead the Office of the Ombudsman to believe that Victor Jose Tan Uy is different from Eleuterio Tan or Eleuterio Ramos Tan.

Moreover, previously before the Honorable Court, the accused-movant, through counsel, was already confronted with pieces of evidence. He was identified through an I.D. with computer-generated photograph marked as Exhibit "J" by previous prosecution witnesses: Jemis Singson, Atty. David Yap and Ilonor Madrid as the same person Victor Jose Tan Uy.

Due process cannot be compartmentalized. The court proceedings participated in by the accused-movant form part and parcel of such due process, in the same manner that the further preliminary investigation is inseparable from the said court proceedings. [emphasis supplied]

Finally, if only to highlight the redundant opportunity given to the accused-movant to controvert the pieces of evidence against him, in the hearing on the "Motion to Expunge and Opposition" last 9 October 2002, the accused-movant's counsel was directly confronted with the same ID that identified his client as the very same person using the pseudonym Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy. However, again the accused-movant through counsel literally refused to admit or deny if the person depicted in the I. D. is his client Victor Jose Tan Uy. This indicates the futility of pursuing another round of such repetitious opportunity to controvert the said evidence.

THE PETITION AND THE PARTIES' SUBMISSIONS

Faced with the Ombudsman's rulings, the petitioner filed the present petition based on grounds that are rehashes of the issues already ventilated below. For clarity, the petitioner alleged grave abuse of discretion in the Ombudsman's finding of probable cause on the grounds that:

- (a) he was not among the respondents named or included in either OMB-0-00-1720 or OMB-0-00-1756; neither has there been any mention of his name in the respective complaint-affidavits or in any of their supporting documents; neither has any allegation been made in the respective complaint-affidavits or in any of their supporting documents that he had been identified as being among the named respondents; and there has been no allegation linking him to any criminal act for any of the offenses charged or any other criminal offense; and
- (b) the Ombudsman relied on evidence and findings that were never part of the complaints-affidavits or their

supporting documents served upon the petitioner and were never adduced or presented in the course of the preliminary investigation conducted with respect to the petitioner.

The petitioner's supporting arguments essentially center on the irregularity of the Sandiganbayan-ordered preliminary investigation and the worth and efficacy of the evidence the complainants presented with respect to his identification as Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy. He questions the regularity of the preliminary investigation for having been attended by shortcuts and for being a sham proceeding that violates his right to due process. Specifically, he claims that the duty of the Ombudsman is to determine the existence of probable cause based on the evidence presented, not to fill up the deficiencies of the complaint, nor to remedy its weaknesses. He objects to the use of the FFIB investigation results to support the finding of probable cause since these investigation results were never presented at the preliminary investigation of OMB-0-00-1720 and OMB-0-00-1756, and reliance thereon violates his due process rights. He adds that the FFIB was never a complainant heard in either of these cases. He emphasizes that the Rodenas sworn statement in the FFIB investigation identifying him as Eleuterio Tan is a mere scrap of paper that does not constitute evidence in the preliminary investigation since it was never presented therein, and that the burden of proving at the preliminary investigation that he is Eleuterio Tan rests with the complainants.

The Ombudsman counters all these with the position that the first preliminary investigation, conducted prior to the filing of the Sandiganbayan charges, was conducted fully in accordance with the rules and thus carried no infirmities. Specifically, the order for the petitioner to file his counter- and supporting affidavits was regular because it was issued in his assumed names and was sent to the addresses stated in the complaint as required by the procedural rules on preliminary investigations.

The respondent posits further that the issue of the validity of the first preliminary investigation with respect to the petitioner has been rendered academic by the subsequent reinvestigation that the Sandiganbayan ordered. At this subsequent investigation, the complaint-affidavits were duly furnished the petitioner who merely alleged general denials in the counter-affidavit he filed. The petitioner failed to attend the clarificatory hearing where he could have controverted the identification made by Rodenas in the FFIB investigation; he likewise had at least seven opportunities in the totality of the proceedings to controvert his identification as Eleuterio Tan,[27] but failed to avail himself of any of these opportunities. These opportunities were:

First, when he received copies of the identification documents attached to the Ombudsman's Omnibus Motion (dated 8 January 2002) and Manifestation and Motion (dated 5 March 2002), he then filed his petition to conduct a preliminary investigation with the Ombudsman;

Second, when he filed his Manifestation and Motion (dated 11 April 2002) with the Sandiganbayan wherein he refused to directly controvert the identification issues, although he quoted the Ombudsman's previous motions;

Third, when the petitioner filed his "Reply to Opposition" to the Ombudsman's "Manifestation and Motion" with the Sandiganbayan, his averments therein were in the nature of denials that met head on the positive identification made by Rodenas; thus, the identification issues were joined and it then became the petitioner's duty to confront the evidence of identification;

Fourth, when the Sandiganbayan ordered the preliminary investigation, this proceeding presented an opportunity to confront the identification documents, but he did not;

Fifth, when a clarificatory hearing was called during the Sandiganbayan-ordered preliminary investigation, the hearing presented another opportunity, but the petitioner's counsel filed a manifestation that his client did not wish to participate;

Sixth, when the petitioner filed his motion for reconsideration of the first assailed order in the present petition, he could have controverted the identification documents therein but he did not; and

Seventh, at the hearing of an incident before the Sandiganbayan, when the petitioner's counsel was asked whether the man in the photograph shown him was his client, he refused to answer the question although he could have simply denied it.

The respondent Ombudsman further argues that fault can be imputed only to the petitioner who demands equity but has not come to Court with clean hands; through various machinations and by his own fault, he has avoided confronting the evidence of his identification. The Ombudsman stresses finally that its factual finding of the existence of probable cause against the petitioner has full basis in evidence and, being factual, should be accorded respect, if not finality.

OUR RULING

We find the petition impressed with merit.

We clarify at the outset that the present petition is filed under Section 1, Rule 65 of the Revised Rules of Court whose scope of review is limited to the question: was the order by the tribunal, board or officer exercising judicial or quasi judicial functions rendered without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of or excess of jurisdiction? The "grave abuse of discretion" that the petitioner alleges in this case is defined by jurisprudence to be a "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or [an] exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility, or an exercise of judgment so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act in a manner not at all in contemplation of law." [28]

At the core of the present controversy is the regularity, in the context of accepted standards of due process, of the Ombudsman's conduct of the Sandiganbayan-ordered preliminary investigation. The petition must fail if the Ombudsman complied with the basic requirements of due process and the prevailing rules and jurisprudence on preliminary investigation.

A preliminary investigation is held before an accused is placed on trial to secure the innocent against hasty, malicious, and oppressive prosecution; to protect him from an open and public accusation of a crime, as well as from the trouble, expenses, and anxiety of a public trial. It is also intended to protect the state from having to conduct useless and expensive trials. While the right is statutory rather than constitutional, it is a component of due process in administering criminal justice. The right to have a preliminary investigation conducted before being bound for trial and before being exposed to the risk of incarceration and penalty is not a mere formal or technical right; it is a substantive right. To deny the accused's claim to a preliminary investigation is to deprive him of the full measure of his right to due process. [29]

Thus, as in a court proceeding (albeit with appropriate adjustments because it is essentially still an administrative proceeding in which the prosecutor or investigating officer is a quasi-judicial officer by the nature of his functions), a preliminary investigation is subject to the requirements of both substantive and procedural due process. This view may be less strict in its formulation than what we held in *Cojuangco, Jr. vs. PCGG, et al.* [30] when we said:

It must be undertaken in accordance with the procedure provided in Section 3, Rule 112 of the 1985 Rules of Criminal Procedure. This procedure is to be observed in order to assure that a person undergoing such preliminary investigation will be afforded due process.

x x x

Although such a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair. The officer conducting the same investigates or inquires into the facts concerning the commission of the crime with the end in view of determining whether or not an information may be prepared against the accused. Indeed, a preliminary investigation is in effect a realistic judicial appraisal of the merits of the case. Sufficient proof of the guilt of the accused must be adduced so that when the case is tried, the trial court may not be bound as a matter of law to order an acquittal. A preliminary investigation has then been called a judicial inquiry. It is a judicial proceeding. An act becomes judicial when there is opportunity to be heard and for the production and weighing of evidence, and a decision is rendered thereon.[31]

but we commonly recognize the need for the observance of due process. We likewise fully agree with Cojuangco in terms of the level of scrutiny that must be made - we do not expect the rigorous standards of a criminal trial, but "[s]ufficient proof of the guilt of the accused must be adduced so that when the case is tried, the trial court may not be bound as a matter of law to order an acquittal."

In light of the due process requirement, the standards that at the very least assume great materiality and significance are those enunciated in the leading case of *Ang Tibay v. Court of Industrial Relations*.^[32] This case instructively tells us - in defining the basic due process safeguards in administrative proceedings - that the decision (by an administrative body) must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them; it should not, however, detract from the tribunal's duty to actively see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy.^[33]

Mindful of these considerations, we hold that the petitioner's right to due process has been violated.

We firstly note that the question of the petitioner's entitlement to a preliminary investigation - apart from the earlier preliminary investigation conducted by the Ombudsman in OMB-0-00-1720 and OMB-0-00-1756 - has been fully settled by the Sandiganbayan Resolution of June 19, 2002. None of the parties questioned this ruling which, in its material points, provides:

- The preliminary investigation conducted in OMB-0-00-1720 and OMB-0-00-1756 which led to the filing of the above-entitled case never mentioned the name of herein movant Jose Victor Tan Uy. Instead, the preliminary investigation involves one "Eleuterio Tan" a. k. a. "Eleuterio Ramos Tan" with address at Brgy. Bagbaguin, Valenzuela City, Metro Manila or on [sic] No. 20 Pilar St. Mandaluyong City. As declared by the prosecution itself, Barangay Chairman Jose S. Gregorio, Jr. of Brgy. Bagbaguin, Valenzuela, Metro Manila certified that "Eleuterio Tan" a.k.a. "Eleuterio Ramos Tan" is non-existent within the jurisdiction of their barangay. While the prosecution asserted that "Eleuterio Tan" and 'Eleuterio Ramos Tan' are the aliases of herein movant, we agree in the latter's observation that the one charged before the Office of the Ombudsman was "Eleuterio Tan" alias "Eleuterio Ramos Tan" which indicates that the real name of the person charged is "Eleuterio Tan", not an alias only and his alias is "Eleuterio Ramos Tan." We find merit in the contention of the movant that there was no showing of any effort on the part of the Office of Ombudsman to determine whether the names "Eleuterio Tan" and "Eleuterio Ramos Tan" are mere aliases of an unidentified person. Further, as aptly observed by the movant, while 'Eleuterio Tan' has other [sic] address at No. 20 Pilar St. Mandaluyong City, there was no showing that subpoena or copies of the complaints-affidavits were sent at the said address and no explanation was submitted by the prosecution for such omission. [italics supplied]
- The claim of the prosecution that movant's address at No. 2041 M. J. Cuenco Avenue, Cebu City was not indicated because the said address was not yet discovered by the investigation panel during the preliminary investigation was rebutted by the movant. Movant was able to show that his address at Cebu City was made known during the hearing before the Impeachment Court on December 22, 2000. Yet, despite knowledge of

the movant's address, no subpoena or copies of the complaints-affidavits had been served upon him at said address by the prosecution. We understand the clamor of herein movant that while the prosecution did not give him the opportunity to present his side, it already formed a conclusion that he and "Eleuterio Tan" are one and the same person. [italics supplied]

- Movant, after learning from media reports that he was being identified as "Eleuterio Tan", immediately took steps to disprove the same, as follows:

- On December 29, 2000, he filed a complaint before the RTC of Cebu City, entitled "Victor Jose Tan Uy, v. Eleuterio Tan," docketed as CEB-25990 x x x

- Movant, through counsel, wrote a letter dated January 5, 2001 to Senate President Aquillino Pimentel, disputing the claim that he is "Eleuterio Tan" and expressed his willingness to testify at the Senate Impeachment Proceeding to clear his name as to the imputation that he is "Eleuterio Tan" (Annex "E," Reply)

- Movant, through counsel, sent a letter dated January 8, 2001 to the Regional Chief, PNP Crime Laboratory, Cebu City, requesting for examination of the handwriting appearing on the signature cards as supposedly signed by Eleuterio Tan and on the two (2) identification cards (IDs) from two (2) different companies supposedly presented to the Land Bank of the Philippines by the person who opened the account (Annex "F," Reply). As shown in the Questioned Document Report of Romeo Varona, handwriting expert who conducted the examination, "the questioned signatures/handwritings of Mr. Jose [sic] Victor Jose Tan Uy appearing in the signature cards of Land Bank of the Philippines, ET Enterprises Inc., I. D. San Juan, Metro Manila and Solid Builders Center Mandaluyong City I. D. No. 19-0198 with their corresponding date marked "Q-1" and "Q-8" inclusive and the standard signatures/handwritings submitted for comparison marked "S-1" to "S-49" inclusive were written by two different persons" (Annex "G," Reply). Relative hereto, Mr. Varona executed an affidavit dated April 16, 2002 (Annex "B," Reply)." [34]

We quote this ruling as it contains the premises that justified the holding of the Sandiganbayan-ordered preliminary investigation specifically for the petitioner. To restate the Sandiganbayan reasoning in simple terms: the petitioner was never identified in the previous preliminary investigation to be the person identified by assumed names or aliases in the supporting complaint-affidavits; hence, a new preliminary investigation should be conducted to identify him as the person who, using the aliases Eleuterio Tan, Eleuterio Ramos Tan or Mr. Uy, opened and withdrew from the Landbank account in the course of a series of acts collectively constituting the crime of plunder.

The critical evidence linking the petitioner to the plunder case is his identification through the identification documents. This notwithstanding and quite inexplicably, the identification documents - despite the fatal infirmity the Sandiganbayan found in the first preliminary investigation - were once again not given to the petitioner in the subsequent Sandiganbayan-ordered preliminary investigation to inform him of his alleged links to the charges under the complaint-affidavits.[35]

How and why this happened was never satisfactorily explained in the parties' various submissions. Based on the records of what actually transpired at the Sandiganbayan-ordered preliminary investigation, we can glean the Ombudsman's intent to either confront and identify the petitioner through Ma. Caridad Manahan-Rodenas, or at least to introduce the Rodenas sworn statement and the identification documents into the preliminary investigation records through her own personal appearance. For these purposes, the Ombudsman specifically called the petitioner and Rodenas to a clarificatory hearing that unfortunately did not result in either of these possibilities; the petitioner did not personally attend the hearing and Rodenas herself failed to show up. At the same time, the Ombudsman was forced, upon the insistence of the petitioner's counsel, to consider the inquiry submitted for resolution based on the records then existing.[36] Thus, the Ombudsman still failed to establish in the Sandiganbayan-ordered preliminary investigation the direct link between the individual identified by aliases and

the petitioner.

Unfortunately for the Ombudsman, the holding of the clarificatory hearing, in which Rodenas and the petitioner were the invitees, is replete with implications touching on the existence of probable cause at that stage of the proceedings. To be sure, the prosecutor (Ombudsman) cannot be faulted for calling the clarificatory hearing as it is within his authority to do so.[37] As a rule, however, no clarificatory hearing is necessary if the evidence on record already shows the existence of probable cause; conversely, a clarificatory hearing is necessary to establish the probable cause that up to the time of the clarificatory hearing has not been shown. This implication becomes unavoidable for the present case, given the reason for the Sandiganbayan's order to conduct another preliminary investigation for the petitioner, and in light of the evidence so far then presented which, as in the first preliminary investigation, did not link the petitioner to the assumed names or aliases appearing in the Information.

Under the above circumstances, the respondent Ombudsman could only fall back on the simple response that due process cannot be compartmentalized; the court proceedings participated in by the accused-movant (the petitioner) form part and parcel of such due process in the same manner that the further preliminary investigation is inseparable from the said court proceedings.[38] We do not however find this response sufficiently compelling to save the day for the respondent. That the petitioner may have actual prior knowledge of the identification documents from proceedings elsewhere is not a consideration sufficiently material to affect our conclusion. Reasonable opportunity to controvert evidence and ventilate one's cause in a proceeding requires full knowledge of the relevant and material facts specific to that proceeding. One cannot be expected to respond to collateral allegations or assertions made, or be bound by developments that transpired, in some other different although related proceedings, except perhaps under situations where facts are rendered conclusive by reason of judgments between the same parties[39] - a situation that does not obtain in the present case. Otherwise, surprise - which is anathema to due process - may result together with the consequent loss of adequate opportunity to ventilate one's case and be heard. Following *Ang Tibay*, a decision in a proceeding must be rendered based on the evidence presented at the hearing (of the proceeding), or at least contained in the record (of the proceeding) and disclosed to the parties affected (during or at the proceeding).

Thus, we cannot agree with the Ombudsman's position that the petitioner should controvert the identification documents because they already form part of the records of the preliminary investigation, having been introduced in various incidents of Crim. Case No. 26558 then pending with the Sandiganbayan. The rule closest to a definition of the inter-relationship between records of a preliminary investigation and the criminal case to which it relates is Section 8 (b), Rule 112 of the Revised Rules of Court which provides that the record of the preliminary investigation, whether conducted by a judge or a prosecutor, shall not form part of the record of the case; the court, on its own initiative or on motion of any party, may order the production of the record or any of its parts when necessary in the resolution of the case or any incident therein, or when it is introduced as an evidence in the case by the requesting party. This rule, however, relates to the use of preliminary investigation records in the criminal case; no specific provision in the Rules exists regarding the reverse situation. We are thus guided in this regard by the basic due process requirement that the right to know and to meet a case requires that a person be fully informed of the pertinent and material facts unique to the inquiry to which he is called as a party respondent. Under this requirement, reasonable opportunity to contest evidence as critical as the identification documents should have been given the petitioner at the Sandiganbayan-ordered preliminary investigation as part of the facts he must controvert; otherwise, there is nothing to controvert as the burden of evidence lies with the one who asserts that a probable cause exists. The Ombudsman's failure in this regard tainted its findings of probable cause with grave abuse of discretion that effectively nullifies them. We cannot avoid this conclusion under the constitutional truism that in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former.[40]

WHEREFORE, premises considered, we hereby GRANT the petition and accordingly ANNUL the Ombudsman's inter-related Orders dated 13 September 2002 and 16 October 2002 in OMB-0-00-1720 and OMB-0-00-1756.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, and Leonardo-De Castro, JJ., concur.

[1] Rollo, pp. 97-102.

[2] Id., pp. 103-110.

[3] National Bureau of Investigation, Rep. by Atty. Carlos S. Caacbay versus Luis "Chavit" Singson, Deogracias B. Victor Savellano, Antonio A. Gundran, Carolyn M. Pilar, Erlita Q. Arce, Ernie A. Mendoza, Leonila Tadena, Estrella Mercurio, Dionisio Pizarro, Cornelio Almazan, Marina Atendido, Maricar Paz, Nuccio Saverio, Alma A. Alfaro, Eleuterio Tan or Eleuterio Ramos Tan, and Delia Rajas.

[4] Romeo T. Capulong, Leonardo de Vera and Dennis B. Funa versus Joseph Ejercito Estrada, Dr. Luisa "Loi" Ejercito, Jose "Jinggoy" Estrada, Charlie "Atong" Ang, Delia Rajas, Eleuterio Tan and Alma Alfaro.

[5] Apart from this Information, the Ombudsman filed two (2) others charging Former President Estrada with the crimes of Illegal Use of Alias and Perjury. These cases, which do not include the present petitioner either as Eleuterio Tan, Eleuterio Ramos Tan, or Mr. Uy, or Mr. Victor Jose Tan Uy, are irrelevant to the issues raised in the petition and are, therefore, not discussed here.

[6] Rollo, pp. 160-164; Sandiganbayan Resolution dated 30 October 2001.

[7] Ibid.

[8] Id., pp. 137-149; The other grounds for the Omnibus Motion were the following: (1) the issuance of a warrant of arrest for accused Jaime Dichaves; (2) the arraignment at pre-trial of accused Joseph Ejercito Estrada for Illegal Use of Alias in Criminal Case No. 26565 and for Perjury in Criminal Case No. 26905; and (3) the transfer of the accused Estradas to Fort Sto. Domingo, Sta. Rosa, Laguna.

[9] Id., pp. 150-159.

[10] Id., pp. 112-126.

[11] Id., p. 120.

[12] Id., p. 121.

[13] Id.

[14] Id., pp. 262-269.

[15] Id., pp. 273-293.

[16] Id., pp. 294-358.

[17] Id., pp. 366-368.

[18] Id., pp. 359-365.

[19] Id., p. 370.

[20] *Id.*, pp. 1050-1062.

[21] *Id.*, pp. 1063-1064.

[22] *Id.*, pp. 1065-1068.

[23] *Id.*, pp. 1069-1072.

[24] *Supra*, note 1.

[25] *Rollo*, pp. 1073-1087.

[26] *Supra*, note 2.

[27] *Rollo*, pp. 1183-1190.

[28] See: *Lalican v. Vergara*, G.R. No. 108619, July 31, 1997, 276 SCRA 518; *Intestate Estate of Carmen de Luna v. Intermediate Appellate Court*, G.R. No. 72424, February 13, 1989, 170 SCRA 246.

[29] *Duterte v. Sandiganbayan*, G.R. No. 130191, April 27, 1998, 289 SCRA 721, 737-738.

[30] G.R. No. 92319-201, October 2, 1990, 190 SCRA 226.

[31] See also *Cruz v. People of the Philippines*, G.R. No. 110436, June 27, 1994, 233 SCRA 439, 449-450. (Boldface supplied)

[32] 69 Phil. 635 (1940).

[33] *Id.*, p. 642.

[34] *Supra*, note 18.

[35] Memorandum of Petitioner, pp. 17-19, *rollo*, pp. 1534-1536.

[36] See narration at pp. 10-11 hereof.

[37] Section 4 (f), Rule II of Administrative Order No. 7 (Rules of Procedure of the Office of the Ombudsman).

[38] *Supra*, note 2, Order dated 16 October 2002, quoted at pp. 11-12 of this Decision.

[39] *Res judicata* under Rule 39, Section 47, pars. (a) and (b) of the Revised Rules of Court or conclusiveness of judgment under Section 47, par. (c) of the same Rule, under which the underlying facts are conclusive on the same parties.

[40] *Allado v. Diokno*, G.R. No. 113630, May 5, 1994, 232 SCRA 192, 210.

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