

THIRD DIVISION

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

**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 OMBUDSMAN FOR MINDANAO,
RESPECTIVELY, AND THE SANDIGANBAYAN, RESPONDENTS.**

D E C I S I O N

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.

Because of the exigency of the service, the petitioner temporarily stays in Cotabato City although he is a resident of Parañaque City.

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; 2nd 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.

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.

4. Between 1992 and 1993, DECS-Region XII ordered several pieces of laboratory equipment and apparati requested by different school divisions of the region.

5. The concerned officers of DECS-Region XII submitted to the petitioner

the documents covering the transactions.

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.

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]

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.

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.

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.

On May 10, 1994 the Office of the Ombudsman, Mindanao received the Counter-Affidavits of the respondents.

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.

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.

On February 29, 1995 the Office of the Ombudsman, Mindanao received the Reply-Affidavit of COA.

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.

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]