

## SECOND DIVISION

[ G.R. No. 225404, September 14, 2020 ]

**MELCHOR M. QUEMADO, SR., PETITIONER; VS. SANDIGANBAYAN  
[SIXTH DIVISION] AND PEOPLE OF THE PHILIPPINES,  
RESPONDENTS.**

### R E S O L U T I O N

**INTING, J.:**

This resolves the Petition for *Certiorari* and Prohibition<sup>[1]</sup> filed by Melchor M. Quemado, Sr. (petitioner) pursuant to Rule 65 of the Rules of Court assailing the Resolutions<sup>[2]</sup> dated April 11, 2016 and June 13, 2016<sup>[3]</sup> issued by the *Sandiganbayan* (SB)-Sixth Division in SB-16-CRM-0051 for violation of Section 3 (e) of Republic Act No. (RA) 3019.<sup>[4]</sup> The assailed Resolution denied petitioner's Motion to Dismiss<sup>[5]</sup> on the ground of inordinate delay in the disposition of the case.

#### *The Antecedents*

In a Letter<sup>[6]</sup> dated September 25, 2006, addressed to the Office of the Ombudsman (OMB)-Visayas, the members of the *Sangguniang Bayan* of the Municipality of Sta. Fe, Leyte called attention to the "irregular and unnecessary transaction" entered into by petitioner, who was then the mayor of the municipality. The letter, which the OMB received on the same date, alleged, among others, that: (1) as local chief executive, petitioner approved the rental of an office space in Hayward Travelodge to be used by those involved in the preparation of a feasibility study of the municipality's Infrastructure for Rural Productivity Enhancement Sector Project; (2) the rental was unnecessary since an office space is readily available in the municipality, while Hayward Travelodge is 21 kilometers away; (3) Hayward Travelodge is owned by petitioner's brother, Anastacio M. Quemado; (4) the payment for the rent in the amount of P16,000.00 was made out to petitioner who also received the check therefor. The letter was docketed as CPL-V-06-0627 and treated as a regular complaint requiring further factual inquiry.<sup>[7]</sup>

On October 20, 2006, the OMB-Visayas endorsed the letter to the Commission on Audit (COA)-Regional Office No. VIII for the conduct of an audit examination on the alleged conflict of interest in the contract executed by and between petitioner and Hayward Travelodge.<sup>[8]</sup>

As it appeared that the COA took no action on the endorsement, Graft Investigation & Prosecution Officer (GIPO) II Alfred Yann G. Oguis (GIPO Oguis) submitted a Final Evaluation Report<sup>[9]</sup> dated October 23, 2012. In the report, GIPO Oguis recommended that CPL-V-06-0627 be "considered closed and terminated, without prejudice to the COA adverse report on the matter."<sup>[10]</sup> The recommendation was

based on an evaluation of the letter dated September 25, 2006 and the finding that therein complainants "appear to be reporting a case for Malversation of Public Funds" against petitioner, but the concurrence of the elements of the crime is wanting.<sup>[11]</sup>

On February 1, 2013, Ombudsman Conchita Carpio-Morales (Ombudsman Carpio-Morales) approved with modification the recommendation of the OMB-Visayas. Ombudsman Carpio-Morales wrote the following marginal note:

Dismissal of malversation case is in order. But DO Visayas is directed to consider if violation of Sec. 3(e) of RA 3019 and of the provisions of RA 9184 lies against respondent. DO Visayas is given thirty (30) days to submit its report hereon.<sup>[12]</sup> (Underscoring in the original.)

Subsequently, GIPO Oguis submitted another Final Evaluation Report<sup>[13]</sup> dated February 25, 2013, which treated the letter dated September 25, 2006 as a complaint for: (1) malversation of public funds; and (2) violation of RA 3019. In the report, GIPO Oguis found sufficient basis for further proceedings and recommended that:

x x x the subject CPL be UPGRADED for preliminary investigation for possible violation of Sec. 3(e) of RA 3019, as amended, in relation to RA 9184, and administrative adjudication for a possible offense of Grave Misconduct/Conduct Prejudicial to the Best Interest of the Service against Melchor M. Quemado, Sr., Municipal Mayor of Sta. Fe, Province of Leyte.  
<sup>[14]</sup>

On June 17, 2013, Ombudsman Carpio-Morales approved the Final Evaluation Report dated February 25, 2013.<sup>[15]</sup>

Meanwhile, on February 28, 2013, Graft Investigation Officer (GIO) III Rosemarie Semblante Tongco (Tongco) of the OMB-Visayas executed an Affidavit<sup>[16]</sup> to support the upgrading of the case for purposes of conducting a preliminary investigation on the alleged violation of Section 3(e) of RA 3019, as amended, in relation to RA 9184 known as the "Government Procurement Reform Act."<sup>[17]</sup> GIO Tongco's Affidavit was filed before the OMB-Visayas on March 11, 2013 and docketed as OMB-V-C-13-0185.<sup>[18]</sup> In view thereof, the Public Assistance and Corruption Prevention Office (PACPO) of the OMB-Visayas became the nominal complainant in the case against petitioner for violation of RA 3019.<sup>[19]</sup>

Preliminary investigation ensued. On September 2, 2013, the OMB-Visayas issued an Order<sup>[20]</sup> directing petitioner to file his counter- affidavit and other controverting evidence within 10 days from receipt thereof. Despite due receipt on October 18, 2013, petitioner did not file a counter-affidavit.<sup>[21]</sup>

In the Resolution<sup>[22]</sup> dated April 25, 2014, GIPO II Portia Pacquiao-Suson (Pacquiao-Suson) found probable cause against petitioner for one count of violation of Section 3(e) of RA 3019, in relation to RA 9184, with respect to the questionable rental of office space in Hayward Travelodge. Ombudsman Carpio-Morales approved GIPO Pacquiao-Suson's Resolution on December 15, 2014.<sup>[23]</sup>

In the course of the preparation and review of the Information against petitioner, the Office of the Special Prosecutor submitted a Memorandum<sup>[24]</sup> dated December 22, 2015, forwarding the revised Information<sup>[25]</sup> to Ombudsman Carpio-Morales. In turn, Ombudsman Carpio-Morales approved the Information on December 29 2015.<sup>[26]</sup> Subsequently, it was filed before the SB on February 2, 2016.<sup>[27]</sup>

Petitioner was arraigned on March 9, 2016. Thereafter, on April 8, 2016, he filed a Motion to Dismiss<sup>[28]</sup> alleging that there was inordinate delay in the disposition of the case amounting to a violation of his constitutional right to the speedy disposition of his case.

On April 11, 2016, the SB rendered the assailed Resolution<sup>[29]</sup> denying the Motion to Dismiss and striking down the claim of inordinate delay. Petitioner filed a Motion for Reconsideration,<sup>[30]</sup> but the SB denied it in the subsequent Resolution<sup>[31]</sup> dated June 13, 2016.

Hence, this petition raising a lone issue for resolution, to wit:

WHETHER OR NOT THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED RESOLUTIONS WITHOUT CONSIDERING THE ENTIRE FACTS OF THE CASE AND IN CONTRAST TO THE SUPREME COURT DECISION OF WHICH THE CHAIRMAN OF THE RESPONDENT COURT WAS THEN AN ASSOCIAQTE [*sic*] JUSTICE OF THE SANDIGANBAYAN FIRST DIVISION.<sup>[32]</sup>

Petitioner contends that there was an unreasonable delay of almost 10 years, counted from the letter dated September 25, 2006 sent by the members of the *Sangguniang Bayan* of the Municipality of Sta. Fe, Leyte to the OMB-Visayas until the filing of the Information before the SB on February 2, 2016. Petitioner also asserts that the SB gravely abused its discretion when it selected facts that would support its Resolution denying his Motion to Dismiss. Further, he avers that the pronouncement of the SB is not consistent with the Court's Decision in *People v. Sandiganbayan, et al.*,<sup>[33]</sup> which declared as follows:

The guarantee of the speedy disposition of cases under Section 16 of Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. Thus, the fact-finding investigation should not be deemed separate from the preliminary investigation conducted by the Office of the Ombudsman if the aggregate

time spent for both constitutes inordinate and oppressive delay in the disposition of any case.<sup>[34]</sup>

### *The Court's Ruling*

The petition has no merit.

In *Magante v. Sandiganbayan (Third Division)*<sup>[35]</sup> (*Magante*), the Court (Third Division) clarified that delay in the disposition of cases before the OMB begins to run on the date of the filing of a formal complaint by a private complainant or the filing by the Field Investigation Office with the OMB of a formal complaint based on an anonymous complaint or as a result of its *motu proprio* investigations.<sup>[36]</sup> Thus, the period spent for fact finding investigations of the OMB prior to the filing of the formal complaint by the Field Investigation Office is irrelevant in determining inordinate delay.<sup>[37]</sup>

Consistent with *Magante* is the subsequent En Banc Decision in *Cagang v. Sandiganbayan (Fifth Division)*<sup>[38]</sup> (*Cagang*). It declared as abandoned the ruling in *People v. Sandiganbayan, et al.*<sup>[39]</sup> that fact-finding investigations are included in the period for the determination of inordinate delay.

Significantly, the abandoned ruling in *People v. Sandiganbayan, et al.* is the one being invoked by petitioner in the instant case. In deciding to abandon the ruling, the Court in *Cagang* ratiocinated that the proceedings at the fact-finding stage are not yet adversarial. This period cannot be counted even if the accused is invited to attend the investigations since these are merely preparatory to the filing of a formal complaint. At this point, the OMB will not yet determine if there is probable cause to charge the accused.<sup>[40]</sup>

In addition, *Cagang* pronounced:

The period for the determination of whether inordinate delay was committed shall commence from the filing of a formal complaint and the conduct of the preliminary investigation. The periods for the resolution of the preliminary investigation shall be that provided in the Rules of Court, Supreme Court Circulars, and the periods to be established by the Office of the Ombudsman. Failure of the defendant to file the appropriate motion after the lapse of the statutory or procedural periods shall be considered a waiver of his or her right to speedy disposition of cases.<sup>[41]</sup>

Applying the foregoing pronouncements in the case at bar, the Court affirms the SB's finding that there was no inordinate delay. The SB aptly ruled, thus:

The Court is not inclined to give due course to the Motion it appearing that the complaint-affidavit of the *PACPO* was filed before the [OMB] on March 11, 2013. and the corresponding Information was filed in Court on February 2, 2016.

Thus, it took the [OMB] less than three (3) years to conduct and terminate the preliminary investigation. Such period of time can hardly be considered "inordinate" delay that would violate the right of the accused-movant to a speedy disposition of his case and warrant the dismissal of the case.

That the letter-complaint of the six (6) SB Members of Sta. Fe Leyte dated September 25, 2006, was presumably filed before the *PACPO* on said date should not be considered in computing the period in the conduct of the preliminary investigation as it was only a fact finding examination/investigation; and hence, the preliminary investigation proper commenced to run only on March 11, 2013, after the *PACPO* terminated its fact finding examination/investigation and filed before the [OMB] its complaint-affidavit against the accused-movant for preliminary investigation.<sup>[42]</sup> (Italics omitted.)

The Court is mindful of the duty of the OMB under the 1987 Constitution (Constitution) and RA 6770,<sup>[43]</sup> otherwise known as "The Ombudsman Act of 1989," to act promptly on complaints brought before it. Specifically, Section 16, Article III of the Constitution guarantees to all persons the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. This constitutional right is available not only to the accused in criminal proceedings but to all parties in all cases, whether civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial.<sup>[44]</sup> Thus, any party to a case may demand expeditious action by all officials who are tasked with the administration of justice,<sup>[45]</sup> including the Ombudsman.

Further, the Constitution expressly tasks the OMB to resolve complaints lodged before it with dispatch from the moment they are filed. Section 12, Article XI of the Constitution commands:

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

To magnify the above constitutional mandate, Section 13 of RA 6770 provides: