

THIRD DIVISION

[G.R. No. 129978, May 12, 1999]

**FELICIDAD M. ROQUE AND PRUDENCIO N. MABANGLO,
PETITIONERS, VS. OFFICE OF THE OMBUDSMAN; HON.
OMBUDSMAN ANIANO DESIERTO; AND HON. MARGARITO P.
GERVACIO, JR., DEPUTY OMBUDSMAN FOR MINDANAO,
RESPONDENTS.**

DECISION

PANGANIBAN, J.:

Consistent with the rights of all persons to due process of law and to speedy trial, the Constitution commands the Office of the Ombudsman to act promptly on complaints filed against public officials. Thus, the failure of said office to resolve a complaint that has been pending for six years is clearly violative of this mandate and the public officials' rights. In such event, the aggrieved party is entitled to the dismissal of the complaint.

The Case

Filed before this Court is a Petition for *Mandamus* praying that the respondent public officers be directed to dismiss Ombudsman Case Nos. OMB-MIN-91-0201 and OMB-MIN-91-0203 and subsequently to issue the necessary clearance in petitioners' favor.

The Facts

The undisputed facts are narrated in respondents' Memorandum^[1] as follows:

"Petitioner Felicidad M. Roque was a Schools Division Superintendent of the Department of Education, Culture and Sports (DECS), assigned in Koronadal, South Cotabato, until her compulsory retirement on May 17, 1991 (pp. 2-3, Petition).

"Petitioner Prudencio N. Mabanglo was likewise a Schools Division Superintendent of the DECS, assigned in Tagum, Davao Province, until his compulsory retirement on May 8, 1997 (ibid.)

"On January 14, 1991, Laura S. Soriano and Carmencita Eden T. Enriquez of the COA, by virtue of COA Regional Office Assignment Order No. 91-174 dated January 8, 1991, conducted an audit on the P9.36 million allotment released by the DECS Regional Office No. XI to its division offices (Annexes M and N, Petition).

"As a result of the audit, auditors Soriano and Enriquez found some

major deficiencies and violation of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019), violations of COA Circular Nos. 78-84 and 85-55A, DECS Order No. 100 and Section 88 of Presidential Decree No. 1445 (ibid.).

"Consequently, affidavits of complaint were filed before the Office of the Ombudsman-Mindanao against several persons, including petitioner Mabanglo on May 7, 1991, and against petitioner Roque on May 16, 1991 (ibid.).

"In an Order dated June 11, 1991, the Office of the Ombudsman-Mindanao found the complaints proper for a preliminary investigation. The case involving petitioner Mabanglo was docketed as OMB-MIN-91-0201 while that involving petitioner Roque was docketed as OMB-MIN-91-0203 (Annex O, Petition).

"Thereafter, petitioners filed their respective counter-affidavits (p. 4, Petition).

"On March 18, 1997, OMB-MIN-91-0201, which involved petitioner Mabanglo, was resolved by the Office of the Ombudsman-Mindanao, finding that all the respondents [were] probably guilty of violation of Section 3 (e) and (g) of the Anti-Graft and Corrupt Practices Act (Republic Act 3019). The same was approved by respondent Ombudsman Desierto on September 19, 1997.

"An Information dated March 18, 1997, for Violation of Section 3 (g) of Republic Act 3019, as amended, was filed before the Sandiganbayan, Manila, against several respondents, among them, petitioner Prudencio N. Mabanglo. The same was docketed as Criminal Case No. 24229.

"On April 30, 1997, OMB-MIN-91-0203, which involved petitioner Roque, was resolved by the Office of the Ombudsman-Mindanao, recommending the filing [of cases] and prosecution of all the respondents for violation of Section 3 (e) and (g) of Republic Act 3019. The same was approved by respondent Ombudsman Desierto on August 22, 1997.

"Two Informations similarly dated April 30, 1997, for violation of Section 3 (g) of Republic Act 3019, as amended, and for Violation of Section 3 (e) of Republic 3019, as amended, were filed before the Sandiganbayan, Manila. The Informations charged several respondents, among whom was petitioner Roque. The cases were docketed as Criminal Case No. 24105 and Criminal Case No. 24106, respectively.

"On August 14, 1997, petitioners instituted the instant petition for mandamus premised on the allegation that '[a]fter the initial Orders finding the cases proper for preliminary investigation were issued on June[,] 1991 and the subsequent submission of their counter-affidavits, until the present[,] or more than six (6) years, no resolution has been issued by the Public Respondent [and no] case [has] been filed with the appropriate court against the herein Petitioner' (par. 3, p. 4, Petition).

"On November 24, 1997, this Honorable Court issued a temporary restraining order directing respondents to cease and desist from further proceeding with the cases filed against petitioners."^[2]

On August 21, 1998, petitioners asked the Court to cite respondents in contempt, contending that a criminal information was filed in violation of the Temporary Restraining Order (TRO). In compliance with this Court's Resolution dated October 21, 1998,^[3] the respondents filed their Comment to the Petition for Contempt.^[4]

Issues

In their Memorandum,^[5] petitioners present before this Court the following issues:

"Whether or not there was undue and unjustifiable delay in resolving [the] complaints against petitioners (respondents therein) which violated their constitutional right to [a] speedy disposition of cases[; and]

Whether or not, such undue and unjustifiable delay in resolving the complaints against petitioners, would warrant dismissal of said complaints."^[6]

In addition, we shall also discuss (1) the propriety of *mandamus* as a remedy and (2) the respondent's liability for contempt for allegedly violating the Temporary Restraining Order issued by this Court on November 24, 1997.

The Court's Ruling

The Court grants the Petition for *Mandamus*, but denies the prayer to cite respondents in contempt of court.

Preliminary Issue: **Propriety of Mandamus**

Respondents argue that petitioners cannot, by this special action for *mandamus*, compel the ombudsman to dismiss the criminal charges filed against them, since such dismissal involves a discretionary, not a ministerial, duty.

The argument is not meritorious. 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 Court, however, has held that the rule does not apply "in cases where there is gross abuse of discretion, manifest injustice, or palpable excess of authority."^[7] In *First Philippine Holdings Corporation v. Sandiganbayan*, the Court explained:

"Ordinarily, *mandamus* will not prosper to compel a discretionary act. But where there is 'gross abuse of discretion, manifest injustice or palpable excess of authority' equivalent to denial of a settled right to which petitioner is entitled, and there is no other plain, speedy and adequate remedy, the writ shall issue."^[8]

The Court gave a similar ruling in *Kant Kwong v. Presidential Commission on Good Government*:^[9]

"Although as averred by respondents, the recognized rule is that, in the performance of an official duty or act involving discretion, the corresponding official can only be directed by Mandamus to act but not to act one way or another, `yet it is not accurate to say that the writ will never issue to control his discretion. There is an exception to the rule if the case is otherwise proper, as in cases of gross abuse of discretion, manifest injustice, or palpable excess of authority."

In *Angchangco, Jr. v. Ombudsman*,^[10] this Court likewise held:

"It is correct, as averred in the comment, that in the performance of an official duty or act involving discretion, the corresponding official can only be directed by mandamus to act, but not to act one way or the other. However, this rule admits of exceptions such as in cases where there is gross abuse of discretion, manifest injustice, or palpable excess of authority."^[11]

The exceptions cited apply to this case. It is undisputed that there has already been a long and unwarranted delay in the resolution of the graft charges against the two petitioners. The Complaint against Petitioner Mabanglo was filed with the Office of the Ombudsman in Mindanao way back on May 7, 1991, and that against Petitioner Roque on May 16, 1991. On June 11, 1991, the said Office found the Complaints sufficient for preliminary investigation. Significantly, no action was taken until after the lapse of almost six years. For violation of Section 3 (g) of RA 3019, the same Office recommended the filing of an Information against Petitioner Mabanglo only on March 18, 1997, and against Petitioner Roque only on April 30, 1997.

**Main Issue: Violation of Petitioners'
Constitutional Rights**

Clearly, the delay of almost six years disregarded the ombudsman's duty, as mandated by the Constitution^[12] and Republic Act No. 6770,^[13] to act *promptly* on complaints before him. More important, it violated the petitioners' rights to due process and to a speedy disposition of the cases filed against them. Although respondents attempted to justify the six months needed by Ombudsman Desierto to review the recommendation of Deputy Ombudsman Gervasio, no explanation was given why it took almost six years for the latter to resolve the Complaints.^[14] Thus, in *Angchangco, Jr. v. Ombudsman*, this Court dismissed a Complaint that had been pending before the Office of the Ombudsman for more than six years, ruling as follows:

"After a careful review of the facts and circumstances of the present case, the Court finds the inordinate delay of more than six years by the Ombudsman in resolving the criminal complaints against petitioner to be violative of his constitutionally guaranteed right to due process and a speedy disposition of the cases against him, thus warranting the dismissal of said criminal cases..."^[15]

Similarly, in *Tatad v. Sandiganbayan*,^[16] this Court dismissed the Complaints, which the then *tanodbayan* was able to resolve only after the lapse of three years since the cases had been submitted for disposition, viz.: