



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

JOCELYN ELEAZAR
MONTEROS,

Petitioner,

versus

G.R. No. 258914

PRESENT:

LEONEN, *Chairperson*,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

Promulgated:

FEB 27 2023

TASK FORCE ABONO-FIELD
INVESTIGATION OFFICE,
OFFICE OF THE OMBUDSMAN,
Respondent.

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DECISION

LAZARO-JAVIER, J.:

The Case

The *Petition for Review on Certiorari*¹ assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 156295:

¹ Under Rule 45 of the Rules of Court. *Rollo*, pp. 9-30.

1) Decision² dated October 26, 2020 which affirmed the ruling of the Office of the Ombudsman (OMB) that petitioner Jocelyn Eleazar Monteros (Monteros) is guilty of *dishonesty*, *grave misconduct*, and *conduct prejudicial to the best interest of the service* for signing the questioned disbursement voucher despite the irregularities, hence, must suffer the extreme penalty of dismissal from the service and its accessory penalties; and

2) Resolution³ dated October 20, 2021 which denied Monteros' Motion for Reconsideration.

Antecedents

On February 3, 2004, the Department of Budget and Management approved the release of PHP 728,000,000.00 for the implementation of the Farm Inputs and Farm Implements Program of the Department of Agriculture (DA). From this amount, PHP 5,000,000.00 was allocated to the Local Government of Surigao City (Surigao LGU), to be released in two tranches.⁴

On May 3, 2004, the DAR-Regional Field Unit Region XIII issued a Land Bank of the Philippines check for PHP 3,250,000.00 payable to the Surigao LGU representing the first tranche or 65% of the total allocation. The transfer was covered by undated Disbursement Voucher No. 101-04-5-604 issued by DAR-Regional Field Unit Region XIII, and Official Receipt (OR) No. 0383689 dated May 8, 2004 issued by the Office of the City Treasurer of Surigao City, confirming receipt of the first tranche.⁵

Through an undated and unnumbered Purchase Request, Surigao City Mayor Alfonso S. Casurra (Mayor Casurra) approved the procurement of 2,166 boxes of Elements 15-15-30+T.E. Foliar Fertilizer (Elements Fertilizer) at PHP 1,500.00 per box, for a total of PHP 3,249,000.00, to be purchased from Rosa Mia Trading. Mayor Casurra also approved the corresponding Purchase Order No. 0689 dated May 7, 2004.⁶

On May 7, 2004, Surigao LGU issued Land Bank of the Philippines Check No. 0000648511 for PHP 3,130,854.54, net of tax, payable to Rosa Mia Trading. This was covered by Disbursement Voucher No. 401-2004-05-001, signed by Mayor Casurra, City Treasurer Leonardo L. Edera Jr., and Monteros in her capacity as City Accountant.⁷

² Id. at 189-197; Penned by Associate Justice Tita Marilyn B. Payoyo-Villordon with Associate Justices Remedios A. Salazar-Fernando and Nina G. Antonio-Valenzuela, concurring.

³ Id. at 235-238; Penned by Associate Justice Tita Marilyn B. Payoyo-Villordon with Associate Justices Remedios A. Salazar-Fernando and Nina G. Antonio-Valenzuela, concurring.

⁴ CA Decision, p. 2.

⁵ Id.

⁶ Id.

⁷ Id. at 3.

Later on, the Commission on Audit (COA) conducted a post-audit on the transactions and discovered that the boxes of Elements Fertilizer delivered to Surigao LGU were allegedly overpriced. It noted that "*fertilizers containing the essential chemicals found in Elements Fertilizer were available in the local market at lower prices.*"⁸ Consequently, it issued a Notice of Disallowance dated June 14, 2006 in relation to the questioned transactions in the procurement of fertilizer.

The Complaint

On July 4, 2011, respondent Task Force Abono-Field Investigation Office, Office of the Ombudsman (Task Force Abono) filed a Complaint⁹ against Monteros in her capacity as City Accountant of Surigao City and other city government officials involved in the transaction,¹⁰ for violations of Section 3 (e) and (g), of Republic Act No. 3019¹¹ and Section 52 (A) (1), (3), and (20) of the Uniform Rules on Administrative Case in the Civil Service¹² (Uniform Rules), dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service, respectively.¹³

The charges were in connection with the alleged irregularities in the procurement of fertilizer *vis-à-vis* the implementation of the *Ginintuang Masaganang Ani* (GMA) Program of the DA.¹⁴ Specifically, Monteros' participation involved her act of signing Disbursement Voucher No. 401-2004-05-001, in her capacity as City Accountant. This act ultimately caused the issuance of Land Bank of the Philippines Check No. 0000648511 as payment for the procurement of 2,166 boxes of Elements Fertilizer for PHP 1,500.00 each, which the Technical Audit Team of the COA flagged for being overpriced¹⁵ in its Notice of Disallowance¹⁶ dated June 14, 2006.

⁸ Id.; *rollo*, p. 191.

⁹ Dated April 11, 2011; id. at 33-54.

¹⁰ City Mayor Alfonso S. Casurra; City Treasurer Leonardo L. Edera, Jr.; City Engineer and BAC Member Maria S. Geotina; City General Services Officer and BAC Member Armano M. Elumba; and City Legal Officer and BAC Member Carlo Reynaldo F. Lozada, Jr.

¹¹ Otherwise known as the ANTI-GRAFT AND CORRUPT PRACTICES ACT; Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

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(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

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¹² CSC Resolution No. 991936.

¹³ *Rollo*, p. 12.

¹⁴ Id.

¹⁵ CA Decision, p. 3.

¹⁶ *Rollo*, p. 108; Records, p. 192.

In her Counter Affidavit dated September 5, 2011,¹⁷ Monteros denied the charges. She maintained that she signed the disbursement voucher as part of her routinary duty as City Accountant. The same was neither unusual nor extraordinary. The presumption of innocence and regularity in the performance of official functions should nonetheless prevail in her favor.¹⁸

Notably, the Counter Affidavit was the last pleading filed on record before the questioned dispositions were rendered by OMB.

Ruling of the Office of the Ombudsman (OMB)

By Decision¹⁹ dated October 9, 2016, the OMB found Monteros and City General Services Officer Armando M. Elumba (Elumba) guilty of dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service for signing the disbursement voucher despite the alleged irregularities attendant to the subject transaction; and meted on them the penalty of dismissal from the service and its accessory penalties, *viz.*:

City Accountant Monteros signed in Box B of the corresponding DV No. 401-2004-05-001 dated 7 May 2004 and certified the completeness and propriety of the supporting documents and that previous cash advances were liquidated, after Mayor Casurra signed the said DV signifying that the expenses were incurred and approved the payment to Rosa "Mia" Trading.

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WHEREFORE, JOCELYN E. MONTEROS and ARMANDO M. ELUMBA are found guilty of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.

Accordingly, they are meted the penalty of DISMISSAL FROM THE SERVICE with cancellation of their eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office, pursuant to Section 52 of The Revised Rules on Administrative Cases in the Civil Service.

In the event that the penalty of DISMISSAL FROM THE SERVICE can no longer be enforced due to respondents' retirement, resignation or separation from the service for any reason, the same shall be converted into a FINE EQUIVALENT TO ONE YEAR SALARY for each respondent, payable to the Office of the Ombudsman, and may be deductible from respondent's retirement benefits, accrued leave credits or any receivable from their office.

¹⁷ *Rollo*, pp. 56-62.

¹⁸ Joint Counter Affidavit; *id.* at 56-62.

¹⁹ *Id.* at 63-82; prepared by the SPECIAL PANEL ON FERTILIZER FUND SCAM (Per Office Order No. 368, Series of 2016) -- Graft Investigation & Prosecution Officer III Rachel T. Cariaga-Favila, Director Adoracion A. Agbada, and Deputy Ombudsman for Luzon Gerard A. Mosquera, as approved by Ombudsman Conchita Carpio Morales (Former Associate Justice of the Supreme Court).

It shall be understood that the accessory penalties attached to principal penalty of Dismissal shall continue to be imposed.

FURTHER, the charges against LEONARDO L. EDERA, JR., MARIA S. GEOTINA and CARLO REYNALDO F. LOZADA, JR., are dismissed for not acquiring jurisdiction over their persons.

SO ORDERED.²⁰

It found that *“the requirement for open competitive bidding was disregarded giving Rosa ‘Mia’ Trading unwarranted benefit through direct contracting.”* Consequently, there was overpricing as shown by the purchase price of PHP 1,500.00 against the local supplier’s canvass of PHP 150.00.²¹

Too, the surrounding circumstances showed that those involved in the transaction *“did not really lift a finger to stop the consummation of the procurement of fertilizer from Rosa ‘Mia’ Trading despite the presence of several badges of irregularities.”*²²

On May 4, 2017, Monteros filed a Motion Reconsideration.²³ Much later, on December 7, 2017, she reiterated her Motion for Reconsideration and manifested that the Sandiganbayan, in its Resolution²⁴ dated November 27, 2017, granted her Motion to Quash Information/Dismiss the Criminal Case against her for inordinate delay. Thus, the administrative case ought to be dismissed as well on the same ground of violation of her right to speedy disposition of the administrative case in question.²⁵

As it turned out, however, the OMB had already denied her Motion for Reconsideration on October 19, 2017.²⁶ She received a copy of said Resolution only on June 8, 2018.²⁷

Monteros challenged the issuances of the OMB before the Court of Appeals through her Petition for Review²⁸ dated July 2, 2018.

Proceeding before the Court of Appeals

²⁰ CA Decision, p. 4.

²¹ *Rollo*, pp. 74-78.

²² *Id.* at 78.

²³ *Id.* at 83-97.

²⁴ Penned by Justice Maria Theresa V. Mendoza-Arcega, with Associate Justices Rafael R. Lagos and Lorifel L. Pahimna, concurring; *id.* at 106-120.

²⁵ *Id.* at 98-105.

²⁶ *Id.* at 121-125.

²⁷ *Id.* at 127.

²⁸ *Id.* at 126-157.

In her Petition²⁹ before the Court of Appeals, Monteros essentially argued that the OMB “committed grave and serious errors of fact and law in deciding the administrative case against [her] for being contrary to, or absent substantial [evidence] to support its findings; and the OMB grossly violated [her] Constitutional right to speedy disposition of her case when it incurred inordinate delay of more than eleven (11) long years to decide the case.”

She pleaded:

79. The grossly inordinate delay of more than 11 long years incurred by the Hon. OMB in disposing of the administrative case against petitioner is oppressive, vexatious and capricious because such delay cannot, in any manner, be attributed to ordinary processes of justice. This is so because:

79.a. All that the Hon. OMB needed to ascertain the alleged guilt of petitioner, if any, based on the COA documents related to the questionable transactions, subject matter of OMB-CC-11-0415-G, is only substantial evidence, NOT proof beyond reasonable doubt;

79.b. The TFA-OMB and the OMB itself are too familiar with all the simple and patterned documents and procedures involved in the transactions, subject matter of this case, because these are exactly the same documents and procedures involved in all other cases on national scale regarding the so-called “Fertilizer Scam”. Thus, determining existence of probable cause, or none at all is so easy task;

79.c. There is NOT a single explanation by the Hon. OMB in its Resolution of April 24, 2017 regarding the cause of such delay, nor is there a single attribution of said delay to petitioner, as respondent in OMB-CC-11-0415-G;

80. The foregoing circumstances considered, it is beyond dispute that the lengthy and unwarranted delay of more than 11 years in deciding OMB-C-A-11-0421-G caused grave prejudice, immeasurable anxiety and unwarranted disadvantage to petitioner. Thus is so because while her co-respondents were already freed from the repercussions of dismissal from service and denial of retirement benefits as they had long retired already before the Hon. OMB came up with its Decision, petitioner on the other hand, was left behind in government service to suffer from embarrassment and inconvenience of being prosecuted, aggravated by the unwarranted prospect of losing her retirement pay due to dismissal from service;

81. Had the Hon. OMB decided the administrative case with dispatch, petitioner would not have gone through the tedious and extremely difficult process of recalling accurately the events of the distant past so she could defend herself. As stated in jurisprudence, loss of memory however, is always reflected in the record because what has been forgotten can rarely be shown by deciding the case only after more than 11 years, petitioner was placed in an extremely disadvantageous position x x x³⁰

²⁹ Id.

³⁰ Id. at 154-155.

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Ruling of the Court of Appeals

The Court of Appeals, in its Decision³¹ dated October 26, 2020, affirmed the OMB Decision. It noted that a finding of guilt in administrative cases shall be sustained so long as it is supported by substantial evidence that a reasonable mind may accept as adequate to support a conclusion.

The Court of Appeals rejected Monteros' defense of lack of malice or ill-will in the performance of her duty. It emphasized that as City Accountant, it was her duty to review supporting documents before the preparation of vouchers to determine the completeness of the given requirements – which she failed to do.³²

As for her right to speedy disposition of the case against her, the Court of Appeals ruled that the same was not violated, as neither the Constitution nor Republic Act No. 6770³³ or the Ombudsman Act allegedly provides specific periods to measure promptness. There was allegedly no inordinate delay as the instant case is complex given the plurality of the persons under investigation because of the procurement of the overpriced fertilizers.³⁴

It denied reconsideration through its assailed Resolution³⁵ dated October 20, 2021.

The Present Petition

Monteros now asks the Court to exercise its discretionary appellate jurisdiction to review and reverse the assailed dispositions of the Court of Appeals. She also prays for reinstatement to her former position without loss of seniority rights; and payment of her back salaries and all other benefits that should have accrued to her since she was illegally dismissed until she is reinstated.

She faults the Court of Appeals for affirming the ruling of the OMB despite the violation of her right to speedy disposition of the case against her, as it took the OMB **almost seven years** to resolve her case; violation of her right to due process when she was not given the opportunity to cross-examine

³¹ Id. at 189-197; Penned by Associate Justice Tita Marilyn B. Payoyo-Villordon with Associate Justices Remedios A. Salazar-Fernando and Nina G. Antonio-Valenzuela, concurring.

³² Id. at 195.

³³ AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES.

³⁴ *Rollo*, p. 196.

³⁵ Id. at 235-238; Penned by Associate Justice Tita Marilyn B. Payoyo-Villordon with Associate Justices Remedios A. Salazar-Fernando and Nina G. Antonio-Valenzuela, concurring.

Task Force Abono's representative and when her defenses were ignored; and the inadmissibility of hearsay and unsubstantiated evidence offered by Task Force Abono.

She also maintains that she could not be held administratively liable for the subject disbursement since she was not included in the COA's Notice of Disallowance aside from the fact that the OMB's ruling, as affirmed by the Court of Appeals, was totally devoid of merit.

Most important, she points out that the Sandiganbayan, in its Resolution³⁶ dated November 27, 2017 had already dismissed the related criminal case which arose from the same Complaint involving the same parties and the same set of facts as here.³⁷

Assuming without admitting that she is liable as charged, the present case would be her first infraction after having served 35 years in the Government, at least 24 of which were spent with the Office of the City Accountant, Surigao City. As City Accountant, she had received an adjectival rating of "very satisfactory" during her tenure. Hence, the supreme penalty of dismissal is too harsh a penalty; mitigating circumstances ought to be taken in her favor to reduce the imposable penalty, if any.³⁸

In its Comment,³⁹ Task Force Abono, through the Office of the Solicitor General (OSG), asserts that there was no delay in the disposition of the case of Monteros; she was not denied her right to due process; and the administrative offense charged against her was supported by substantial evidence.

Our Ruling

We grant the Petition.

Issue on inordinate delay in the criminal aspect already decided in People v. Sandiganbayan, et al.

At the outset, our Decision in *People v. Sandiganbayan, et al.*⁴⁰ is a precedent as it involves the criminal aspect of the same complaint against Monteros, et al.; the same Sandiganbayan case Monteros earlier cited in her petition before the Court of Appeals, which the People, through the OSG, elevated to the Court via a Petition for *Certiorari*. There, the Court already

³⁶ Penned by Justice Maria Theresa V. Mendoza-Arcega, with Associate Justices Rafael R. Lagos and Lorifel L. Pahimna, concurring; id. at 106-120.

³⁷ Id. at 17.

³⁸ Id. at 25-26.

³⁹ Temporary Rollo, unpaginated.

⁴⁰ G.R. No. 239878, February 28, 2022.

ruled upon the same issue brought to fore here, this time by Monteros, albeit it now involves the related administrative cases. The issue in the criminal case was whether her right to speedy disposition of the criminal case against her was violated.

The Court affirmed the Sandiganbayan's finding that that there was inordinate delay in the resolution of the criminal case against Monteros, causing it to be dismissed by the Sandiganbayan with the effect of a verdict of acquittal, *viz.* :

[O]n July 4, 2011, Task Force Abono filed the Complaint against respondents for violation of Section 3 (e) and (g) of RA 3019, Sections 10, 18, and 21 of RA 9184, otherwise known as the "Government Procurement Reform Act," and its Implementing Rules and Regulations, as well as administrative charges.

The OMB issued a resolution dated October 5, 2016 finding probable cause for the filing of an Information for violation of Section 3 (e) of RA 3019. This was approved by the Ombudsman on March 22, 2017.

On September 11, 2017, an Information dated May 2, 2017 was filed before the Sandiganbayan charging respondents with violation of Section 3 (e) of RA 3019.

Then on September 22, 2017, respondent Monteros filed a motion to quash information/dismiss the case and a motion (A) to quash/hold in abeyance the release of the warrant of arrest; and (B) to defer arraignment and other proceedings. **Monteros claimed that her right to speedy disposition of cases was violated because of the length of time that had passed from the COA investigation in 2006 to the filing of the Information before the Sandiganbayan in 2017.** There was inordinate delay of 11 years and three months on the part of the OMB. This delay, according to Monteros, divested the OMB of the authority to file the case against her; the instant Information therefore is void, and the anti-graft court has no jurisdiction over the offense charged. Monteros subsequently moved to hold the release of the warrant of arrest and to defer arraignment and other proceedings as a consequence of the pendency of the question on the Sandiganbayan's jurisdiction.

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Here, it is clear that **the prescribed periods were not observed.** As can be gleaned, the case was submitted for resolution on November 4, 2013. But looking closely, records show that the last pleading was submitted on June 14, 2012, when respondents submitted their position papers. As there were no further submissions or orders for parties to submit further pleadings as well as hearings, **the case should have been submitted for resolution as early as June 14, 2012.**

It was only on October 5, 2016 when the OMB issued a resolution finding probable cause, which is almost three years after the case was submitted for resolution, or more than four years from the

date the last pleadings were submitted – clearly way beyond the 10-day period. Further, the Ombudsman herself approved the resolution only on March 22, 2017, which is **almost six months after the issuance of the resolution - again way beyond the five-day and 10-day period respectively** prescribed for the transmittal of the records to her office and for her to act upon the resolution.

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For the Court, the delay was unreasonable. Six years, two months, and seven days for the preliminary investigation of a case involving a single transaction and seven respondents is too long a period for this Court to accommodate.

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Here, the Court considers the motion for reconsideration filed by Monteros before the OMB sufficient for purposes of determining whether the respondents' right to speedy disposition had been violated. Her invocation of the right in the motion is deemed to cover the other respondents as they are co-respondents in a single case and it assails a single resolution that applies to all of them. **In any event, worthy of great consideration is respondents' immediate filing of the motions to quash before the Sandiganbayan after the filing of the Information. These circumstances show that respondents did not in any way sleep or waive their right to speedy disposition of cases.**

Considering all the foregoing, **respondents' right to speedy disposition of cases was undoubtedly infringed. The Sandiganbayan therefore did not commit grave abuse of discretion in dismissing the criminal case against them.** (Emphases supplied; citations omitted)

To be sure, the Court recognizes the general rule that dismissal of the criminal case does not foreclose administrative action involving the same facts.⁴¹ The Court, nonetheless, cannot ignore the legal conclusion based on the same facts that **there was inordinate delay** in the resolution of the case against Monteros, which ought to be similarly applied here. *Stare decisis et non quieta movere*: stand by the decisions and disturb not what is settled.⁴²

It would be the height of injustice to rule otherwise, especially considering that the resolution of the present administrative case took even longer than the criminal proceedings, as will be discussed below.

There was inordinate delay in the conduct of the administrative proceedings

⁴¹ *Paredes v. Court of Appeals*, 555 Phil. 538, 552-553 (2007).

⁴² *Lazatin, et al. v. Hon Desierto*, 606 Phil. 271, 282-283 (2009).

Even without the determination of inordinate delay in the criminal proceedings, the Court finds sufficient evidence to establish such inordinate delay in the present administrative case.

Foremost, Article III, Section 16 of the 1987 Constitution guarantees the right to speedy disposition of cases, *viz.*:

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

Campa v. Hon Paras,⁴³ citing *Cagang v. Sandiganbayan*,⁴⁴ is apropos:

The right to speedy disposition of cases **may be invoked against all judicial, quasi-judicial or administrative bodies, in civil, criminal, or administrative cases before them;** inordinate delay in the resolution of cases warrant their dismissal. Delay is determined through the examination of the facts and circumstances surrounding each case, not through mere mathematical reckoning. To be sure, courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case.

To aid the courts in determining whether there is inordinate delay, our jurisdiction has adopted the **Balancing Test** first introduced in *Barker v. Wingo*. The Balancing Test involves the assessment of four (4) criteria: *first*, the **length of delay**; *second*, the **reason for delay**; *third*, the **defendant's assertion or non-assertion of his or her right**; and *fourth*, the **prejudice to the defendant as a result of the delay**. But in the more recent case of *Cagang v. Sandiganbayan*, the Court refined the guidelines..., thus:

This Court now clarifies the mode of analysis in situations where the right to speedy disposition of cases or the right to speedy trial is invoked.

First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. **The right to speedy disposition of cases, however, may be invoked before any tribunal**, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. **Delays beyond this period will be taken against the prosecution.** The period taken for

⁴³ G.R. No. 250504, July 12, 2021.

⁴⁴ 837 Phil 815, 880-882 (2018).

fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

Third, courts must first determine which party carries the burden of proof. **If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.**

If the defense has the burden of proof, it must prove first, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and second, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove first, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; second, that the complexity of the issues and the volume of evidence made the delay inevitable; and third, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. **The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods.** Otherwise, they are deemed to have waived

their right to speedy disposition of cases. (Emphases supplied; citations omitted)

A finding of inordinate delay is not limited to criminal cases *vis-à-vis* the determination of probable cause and the filing of an Information. Both law and jurisprudence are clear in saying that the right to speedy disposition of cases, which is the basis of inordinate delay, may also be invoked in administrative cases before administrative bodies.

We must also be mindful of the shifting burdens when the right to speedy disposition is invoked. As referenced above, the timelines set by the OMB itself already provide the allocation of burdens between a respondent and the said office. Verily, an administrative proceeding that exceeds the timelines set by the OMB is **presumptively prejudicial to the respondent**. This means that the OMB is duty-bound to explain why the timelines were not followed.

We now apply this Balancing Test, as refined in *Cagang*, to the present case:

a. First Test: The Length of Delay

Contrary to the ruling of the Court of Appeals, the Ombudsman Act provides guiding principles and specific periods to act upon administrative cases, *viz.*:

Section 13. Mandate. – The Ombudsman and his Deputies, as protectors of the people, **shall act promptly** on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their **administrative**, civil and criminal liability in every case where the evidence warrants in order **to promote efficient service** by the Government to the people.

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Section 28. Investigation in Municipalities, Cities and Provinces. — The Office of the Ombudsman may establish offices in municipalities, cities and provinces outside Metropolitan Manila, under the immediate supervision of the Deputies for Luzon, Visayas and Mindanao, where necessary as determined by the Ombudsman. The investigation of complaints may be assigned to the regional or sectoral deputy concerned or to a special investigator who shall proceed in accordance with the rules or special instructions or directives of the Office of the Ombudsman. Pending investigation the deputy or investigator may issue orders and provisional remedies which are immediately executory subject to review by the Ombudsman. **Within three (3) days after concluding the investigation, the deputy or investigator shall transmit, together with the entire records of the case, his report and conclusions to the Office of the Ombudsman. Within five (5) days after receipt of said report, the**

Ombudsman shall render the appropriate order, directive or decision.
(Emphases and underscoring supplied)

Too, Administrative Order No. 07 or the Rule of Procedure of the OMB decrees:

**RULE III
PROCEDURE IN ADMINISTRATIVE CASES**

Section 6. Rendition of decision. – **Not later than thirty (30) days after the case is declared submitted for resolution**, the Hearing Officer shall **submit a proposed decision containing his findings and recommendation for the approval of the Ombudsman**. Said proposed decision shall be reviewed by the Directors, Assistant Ombudsmen and Deputy Ombudsmen concerned. With respect to low ranking public officials, the Deputy Ombudsman concerned shall be the approving authority. Upon approval, copies thereof shall be served upon the parties and the head of the office or agency of which the respondent is an official or employee for his information and compliance with the appropriate directive contained therein. (Emphasis supplied)

Verily, the Ombudsman Act itself ordains that the investigator shall transmit his or her report within three days after concluding the investigation and the OMB *shall* render the appropriate order, directive, or decision within five days after receipt of said report. Notably, the provision does not distinguish the kinds of cases governed by these periods, hence, we should not distinguish. Consequently, the aforesaid periods apply to all kinds of investigations by the Ombudsman and his or her deputies and investigators.

Here, it took **more than five years** from July 4, 2011, when the complaint of Task Force Abono was filed, until October 9, 2016 when the OMB finally rendered its Decision of even date.

In *Javier and Tumamao v. Sandiganbayan*,⁴⁵ the Court considered the five-year period from the filing of the complaint until the Ombudsman's approval of the resolution finding probable cause against therein petitioner as unreasonably long. Meanwhile, in *Catamco v. Sandiganbayan Sixth Division*,⁴⁶ preliminary investigation took almost five years. In both cases, the Court ruled there was inordinate delay.

To be sure, the resolution of the criminal aspect of this case took **almost three years after the case was submitted for resolution, or more than four years from the date the last pleadings were filed**. But the administrative resolution which requires a less stringent quantum of evidence **took even longer** to be resolved on the merits.

⁴⁵ G.R. No. 237997, June 10, 2020.

⁴⁶ G.R. Nos. 243560-62 & 243261-63, July 28, 2020.

b. Second Test: The reason for delay

To repeat, the OMB took about **five years** to resolve an administrative issue after the Complaint was filed, together with a complete report. Clearly, this was way beyond the period set forth under Section 28 of the Ombudsman Act. In accordance with *Cagang*, therefore, the OMB has the burden of proving that the delay in the resolution of petitioner's cases was not unreasonable. As it was, the OMB failed in this regard.

In its Comment, the OSG states "*there is nothing on record which shows that respondent Office of the Ombudsman failed to exercise due diligence in deciding Petitioner's case. As such, Petitioner's contention that the case should be dismissed on account of the Ombudsman's supposed delay deserves scant consideration...*"

This is barely an excuse, let alone an acceptable one to explain the five-year delay. Even the OMB's Decision dated October 9, 2016 contains no explanation, procedural or otherwise, or any event or reason that contributed to the delay. Although the Court in *Cagang* recognized institutional delay as a reality that must be addressed and should not be taken against the State, the Court, nonetheless, qualified that such institutional delay must be taken in the proper context, *viz.*:

Institutional delay, in the proper context, should not be taken against the State... The prosecution should not be prejudiced by private counsels' failure to protect the interests of their clients or the accused's lack of interest in the prosecution of their case.

For the court to appreciate a violation of the right to speedy disposition of cases, **delay must not be attributable to the defense. Certain unreasonable actions by the accused will be taken against them.** This includes delaying tactics like failing to appear despite summons, filing needless motions against interlocutory actions, or requesting unnecessary postponements that will prevent courts or tribunals to properly adjudicate the case. When proven, this may constitute a waiver of the right to speedy trial or the right to speedy disposition of cases.

To be sure, Monteros neither caused nor contributed to the delay – no dilatory tactics were employed, nor needless motions filed. Hence, institutional delay could not be validly considered in favor of the OMB.

c. Third Test: Assertion of petitioners' right

Campa also teaches:

[P]etitioners **had actually timely asserted their right to speedy disposition of their cases before the trial court.** As borne in the records, the DOJ issued its Resolution finding probable cause on February 8, 2019. Thereafter, petitioners **timely assailed said resolution** through a

Manifestation with Motion to Adopt dated May 28, 2019 and Entry of Appearance with Motion to Dismiss dated June 18, 2019. And when the trial court denied their motions, petitioners **did not take much time in assailing the Orders of denial through the present Petition for Certiorari dated December 9, 2019. To reiterate, they did not use any dilatory tactic nor contribute to the delay.** (Emphases supplied)

Here, Monteros likewise timely asserted her right to speedy disposition of the case against her before the Court of Appeals and promptly challenged the adverse rulings against her at every stage. As borne in the records, the timelines are as follows:

July 4, 2011	Task Force Abono filed the complaint against Monteros, et al., for both criminal and administrative charges;
September 5, 2011	Monteros denied the charges through joint counter affidavit;
October 9, 2016	OMB issued its Decision finding Monteros guilty of dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service for signing the disbursement voucher;
April 24, 2017	Monteros received a copy of the Ombudsman Decision;
May 4, 2017	Monteros sought reconsideration;
October 19, 2017	The OMB denied reconsideration, but Monteros had yet to receive her copy of the resolution;
November 27, 2017	The Sandiganbayan dismissed the criminal charge against Monteros for inordinate delay;
December 7, 2017	Monteros reiterated her motion for reconsideration and manifested that the criminal charge had already been dismissed;
June 8, 2018	Monteros received a copy of the OMB Resolution dated October 19, 2017, denying reconsideration;
July 2, 2018	Monteros challenged the issuances of the OMB before the Court of Appeals through a Petition for Review;
October 26, 2020	The Court of Appeals affirmed;
October 20, 2021	The Court of Appeals denied reconsideration;
December 13, 2021	Monteros filed the present Petition for Review on <i>Certiorari</i> .

Indeed, Monteros was not remiss in asserting her right to speedy disposition throughout the proceedings. In fact, it did not take much time for her to assail the dispositions against her and she even proactively kept abreast of the developments in her case throughout the proceedings. When the Court of Appeals ultimately denied her Petition, Monteros did not take much time in assailing its dispositions through the present Petition for Review on *Certiorari* which she filed via registered mail on December 13, 2021. To reiterate, she neither used any dilatory tactic nor contributed to the delay.

While, notably, Monteros did not seek the timely resolution of the case while it was pending before the OMB through a motion or by simply asking about the status of the case, her non-assertion of her right during the five-year period cannot be considered as an acquiescence to the delay.

Javier and Tumamao elucidates that it is not respondents' duty to follow up on the status of their cases, viz.:

The reason why the Court requires the accused to assert his right in a timely manner is to **prevent construing the accused's acts, or to be more apt, his inaction, as acquiescence to the delay.** x x x

x x x x

Here, the Court holds that Javier and Tumamao's acts, or their inaction, did not amount to acquiescence. **While it is true that the records are bereft of any indication that Javier and/or Tumamao "followed-up" on the resolution of their case, the same could not be construed to mean that they acquiesced to the delay of five years.**

For one, the case of *Coscolluela v. Sandiganbayan* (*Coscolluela*) provides that **respondents in preliminary investigation proceedings do not have any duty to follow up on the prosecution of their case.** The Court categorically stated:

Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it.

The Court in *Cagang* did not explicitly abandon *Coscolluela* — considering that it explicitly abandoned *People v. Sandiganbayan* in the said case — and even cited it in one of its discussions. Thus, the pronouncements in *Coscolluela* remain good law, and may still be considered in determining whether the right to speedy disposition of cases was properly invoked.

x x x [R]espondents like Javier and Tumamao have **no legitimate avenues to assert their fundamental right to speedy disposition of cases at the preliminary investigation level.** It would be unreasonable to hold against them — and treat it as acquiescence — the fact that they never

followed-up or asserted their right in a motion duly filed.

Lastly, the Court holds that Javier and Tumamao timely asserted their rights because they filed the Motion to Quash at the earliest opportunity. Before they were even arraigned, they already sought permission from the Sandiganbayan to file the Motion to Quash to finally be able to assert their right to speedy disposition of cases. To the mind of the Court, this shows that Javier and Tumamao did not sleep on their rights, and were ready to assert the same given the opportunity. Certainly, this could not be construed as acquiescence to the delay. (Emphases supplied; citations omitted)

Even then, going back to the timeline of the proceedings proves that Monteros raised her right to speedy disposition of her cases at the earliest opportunity possible. Just as in *Javier and Tumamao*, Monteros had no other avenue to assert her right, but she actively participated in the proceedings and wasted no time in filing her Counter Affidavit in the administrative case and Motion to Quash in the criminal case. She also sought timely reconsiderations and appeals where proper, all the way to the present Petition. Most importantly, she asserted her right as soon as it became available — after the OMB belatedly acted on the administrative complaint.

Clearly, Monteros promptly and repeatedly asserted her right and in no way acquiesced to the delay.

d. Fourth Test: Prejudice as a result of the delay

*Corpuz v. Sandiganbayan*⁴⁷ guides the Court on how to assess the prejudice caused by the delay, thus:

Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; **to minimize anxiety and concerns of the accused to trial**; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. **Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.** (Emphases supplied)

Here, Monteros was unduly prejudiced by the five-year delay because she was unceremoniously dismissed from her permanent position in the service with forfeiture of retirement benefits after her almost 35 years of government service, 24 of which were spent with the Office of the City

⁴⁷ 484 Phil. 899, 918 (2004).

Accountant, Surigao City. During her tenure as accountant, she had a rating of “very satisfactory” and had no prior infraction. She also pointed out that among all the respondents in the administrative case, she is the only one left. While her co-respondents had been freed from the fear of dismissal and/or denial of retirement benefits, she is now left alone to suffer from the embarrassment, inconvenience, anxiety, and disadvantage attached to the present case. Too, the huge time gaps in between the events and transactions which transpired in 2004, and the Complaint which was filed by Task Force Abono in 2011, and the rendition of the assailed Decision only in 2016 speak volumes of such suffering by Monteros during the longest five years of her life. *People v. Sandiganbayan, et al.*⁴⁸ is apropos:

Respondents suffered prejudice.

In addition to the discussion, the prosecution must show that respondents did not suffer prejudice as a result of the delay. **In this regard, the prosecution failed to show that respondents did not suffer prejudice. The Court recognizes that the inordinate delay places the accused in a protracted period of uncertainty which may cause “anxiety, suspicion, or even hostility.” The Court also recognizes that the lengthy delay would result to the accused’s inability to adequately prepare for the case which would result to the deterioration or loss of evidence, leading to impairment of the accused’s defense.**

Thus, it is inevitable that respondents in this case suffer the same predicament. Surely, they suffered anxiety due to the long period of uncertainty while waiting for the resolution of the case. The delay affected their ability to prepare for their defense. As found by the Sandiganbayan, respondents suffered public humiliation and embarrassment as a result of the case dragging on for so long. These circumstances constitute the actual prejudice that respondents have suffered as a result of the delay. (Emphases supplied; citations omitted)

In sum, the Court concludes that the OMB’s unjustified delay in the resolution of the administrative case violated the right of Monteros to the speedy disposition of her administrative case.

Monteros is entitled to backpay and should be reinstated to her former position as city accountant

The effects of exoneration on administrative penalties are decreed in Civil Service Commission Resolution No. 1701077 or the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS), viz.:

SECTION 58. Effects of Exoneration on Certain Penalties. — The following rules shall govern when the decision is for exoneration:

X X X X

⁴⁸ G.R. No. 239878. February 28, 2022.

d. In case the penalty imposed is **dismissal**, the respondent **shall immediately be reinstated without loss of seniority rights and with payment of back wages and all benefits which would have accrued as if the respondent has not been illegally dismissed.**

e. The respondent who is **exonerated on appeal shall be entitled to the leave credits for the period the respondent had been out of the service.**

The grant of back wages and other benefits may be subject of settlement and/or compromise. (Emphases supplied)

The Rule of Procedure of the Office of the Ombudsman also provides:

Section 7. Finality and execution of decision. - x x x

An appeal shall not stop the decision from being executory. In case the penalty is suspension or **removal** and the **respondent wins such appeal**, he shall be **considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.** (Emphases and underscoring supplied)

x x x x

In *Lee v. Sales, et al.*,⁴⁹ where the OMB found petitioner guilty of dishonesty and grave misconduct and ordered him to be dismissed from the service, the Court noted that petitioner therein was deemed preventively suspended and should his motion for reconsideration be granted or his eventual appeal win, he will be entitled to the salary and emoluments he did not receive in the meantime.

Cobarde-Gamallo v. Escandor,⁵⁰ as cited in *Lee*, is also in point:

Here, Escandor was ordered dismissed from the service. Undoubtedly, such decision against him is appealable via Rule 43 to the CA. Nonetheless, the same is immediately executory even pending appeal or in his case even pending his motion for reconsideration before the OMB as that is the clear mandate of Section 7, Rule III of the OMB Rules of Procedure, as amended, as well as the OMB's MC No. 01, Series of 2006. As such, Escandor's filing of a motion for reconsideration does not stay the immediate implementation of the OMB's order of dismissal since "a decision of the [OMB] in administrative cases shall be executed as a matter of course" under the afore-quoted Section 7.

Further, in applying Section 7, there is no vested right that is violated as the respondent in the administrative case is **considered preventively suspended while his case is on appeal and, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not**

⁴⁹ 835 Phil. 594 (2018).

⁵⁰ 811 Phil. 378, 386-387 (2017).

receive by reason of the suspension or removal. To note, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Except for constitutional offices that provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office. Hence, no vested right of Escandor would be violated as he would be considered under preventive suspension and entitled to the salary and emoluments that he did not receive, by reason of his dismissal from the service, in the event that his Motion for Reconsideration will be granted or that he wins in his eventual appeal. (Emphasis supplied)

Applying *Cobarde-Gaballo* and *Lee* to the present case, Monteros is entitled to her prayer for reinstatement to her former position as City Accountant of Surigao City without loss of seniority rights; as well as payment of back salaries and other emoluments and such other benefits that should have accrued to her since she was invalidly dismissed until she is reinstated.

ACCORDINGLY, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated October 26, 2020 and Resolution dated October 20, 2021 of the Court of Appeals in CA-G.R. SP No. 156295 are **REVERSED**.

OMB-C-A-11-0421-G is **DISMISSED** as against **Jocelyn Eleazar Monteros** on ground of **inordinate delay**.

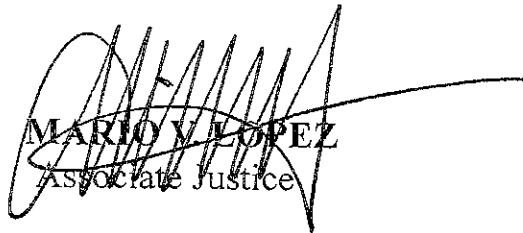
Petitioner **Jocelyn Eleazar Monteros** is **REINSTATED** to her former position as City Accountant of Surigao City without loss of seniority rights. She is entitled to all back salaries and benefits that should have accrued to her from the time she got dismissed from the service until her reinstatement.

SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

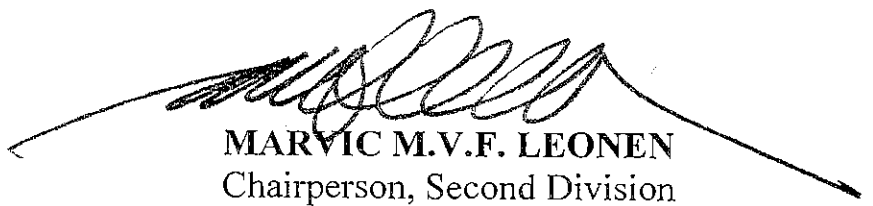

MARIO V. LOPEZ
Associate Justice


JHOSEP V. LOPEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the above Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice