528 Phil. 549

SECOND DIVISION

[G.R. NO. 139675. July 21, 2006]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), REPRESENTED BY ATTY. ORLANDO L. SALVADOR, PETITIONER, VS. HON. ANIANO DESIERTO, RECIO M. GARCIA, DON FERRY, JOSEPH CHUA, JAIME C. LAYA, RAFAEL ATAYDE, ANDRES CHENG, AND EDGAR RODRIGUEZ, RESPONDENTS.

D E C I S I O N

AZCUNA, J.:

This is a petition for *certiorari* under Rule 65 of the Rules of Court seeking to nullify the resolution[1] dated February 22, 1999 of then Ombudsman Aniano Desierto dismissing the complaint[2] against private respondents[3] in OMB-0-97-0859 for violation of Section 3(e) and (g) of Republic Act No. 3019,[4] as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, as well as the order[5] dated May 26, 1999 denying the motion for reconsideration filed by petitioner Presidential Commission on Good Government (PCGG).

The complaint was filed by Atty. Orlando L. Salvador in his official capacity as PCGG Consultant detailed with the Presidential Ad Hoc Fact-Finding Committee on Behest Loans (Committee),[6] and as Coordinator of the Technical Working Group which consisted of officers and employees of the different government financial institutions tasked to examine and study all documents pertaining to behest loan accounts referred by the Asset Privatization Trust to the Committee for investigation, report and recommendation.[7]

Memorandum Order No. 61 dated November 9, 1992 was issued by then President Fidel V. Ramos which specified the following criteria as a frame of reference for determining a behest loan:

(a) It is under-collateralized;

(b) The borrower corporation is undercapitalized;

(c) Direct or indirect endorsement by high government officials, like presence of marginal notes;

(d) Stockholders, officers or agents of the borrower corporation are identified as cronies;

(e) Deviation of use of loan proceeds from the purpose intended;

(f) Use of corporate layering;

(g) Non-feasibility of the project for which financing is being sought; and,

(h) Extra-ordinary speed in which the loan release was made.[8]

Among the accounts referred to the Committee was the loan of Sabena Mining Corporation (SABEMCOR) with the Development Bank of the Philippines (DBP) in the amount of Fifteen Million US Dollars (US$15,000,000) used to partly cover the cost of imported machineries and equipment, broken down as follows:

(1) Foreign currency loans equivalent to $5,000,000 and $2,500,000 under the International Bank for Reconstruction and Development (IBRD) and Asian Development Bank (ADB) Credit Lines respectively;[9] and,

(2) DBP guarantee in the amount of $7,500,000.[10]

The Committee alleged that there was no collateral securing these foreign currency loans except for the assets to be acquired from the loan proceeds with a value of P142.3 Million, and that at the time the loans were granted, SABEMCOR did not have sufficient capital to be entitled to the same, as in fact, the company's paid-up capital amounted to only about P12.7 Million as of March 31, 1996.[11]

The Committee likewise contended that despite the foregoing facts, SABEMCOR was able to procure additional loans from DBP amounting to P263 Million between 1978 and 1982 without giving sufficient collateral and without showing it had adequate capital to ensure the viability of its operation and its ability to repay all the loans. As of June 30, 1986, SABEMCOR purportedly still had an outstanding balance of P1,297,692,000.[12]

Hence, pursuant to Administrative Order No. 13 and Memorandum Order No. 61, the Committee classified the SABEMCOR loans as behest loans based on the criteria that the loans were under-collateralized and undercapitalized. The matter was thereafter referred to the Office of the Ombudsman for preliminary investigation to determine the existence of probable cause for violation of Republic Act No. 3019 against the officers and directors of the company and certain DBP officials who approved the loans.

As mentioned, the complaint against private respondents was subsequently dismissed by the Ombudsman who concluded that: (1) the loans granted to SABEMCOR were not insufficiently collateralized; (2) there was insufficient evidence to prove the allegation that the loans were undercapitalized; and (3) the action had already prescribed. The foregoing conclusions were explained thus:

x x x

> We evaluated the extant evidence presented on record and we conclude that the original or initial loan granted in the amount of P112,500,000, cannot be insufficiently collateralized. We noted that the First Mortgage Appraisal Valuation (*Records, page* 12) of the Assets to be Acquired (out of the amount granted), which are offered as collaterals, are valued at a total of P142,323,822.00, or higher by P29,823,822 compared to the loan amount. Therefore, the value of these collaterals can amply secure the amount of the loan requested. It appears clearly on record that all the additional loans granted were likewise backed-up by adequate collaterals as the same have total values higher than the amounts of the obtained loans. These subsequent loans were secured by collaterals from: the assets actually existing, the assets already acquired, and the assets to be acquired and offered as collaterals. The contention therefore of the complainant that these loans are under-collateralized is untenable.
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> On the other hand, the Executive Summary (Records, pages 12-18) presented by the complainant shows SABEMCOR's total Paid-up Capital of only P12,780,546.00. Complainant therefore asserted that the loans are undercapitalized. However, even assuming his claim is true, the loans will still not qualify or cannot be classified as Behest Loans, because "the Committee had unanimously resolved that the presence of two or more of the eight (8) criteria mentioned under Memorandum Order No. 61 will classify the account as (a)

> Behest Loan" (Records, page 4). In the case at bar, although it appears that the original loan is undercapitalized, however, it is established that the original and the additional loans were all sufficiently collateralized. Additionally, complainant failed to submit as evidence, the Financial Statements reflecting the Capital Accounts of SABEMCOR, to prove the allegation that the loans were undercapitalized. In the absence of these important documents, the evidence is insufficient to safely state that conclusion.
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> Moreover, the instant complaint prepared by Atty. Salvador has a condition that in addition to the documents attached thereto, "other pertinent and relevant documents may be secured from DBP, APT or COA, as the case may be." This only shows that his data in this case are incomplete.
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> Aside from the apparent absence of sufficient evidence to warrant respondents' indictment under R.A. No. 3019, as amended, we also emphasize the fact that the prosecution of the offenses charged cannot, at this point in time, prosper on grounds of prescription, particularly relative to SABEMCOR's initial or original loan and also the 1st to the 5th additional loans granted to DBP.
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> [The] SABEMCOR loan was approved by DBP on June 2, 1977 or almost 20 years ago. The 5th additional loan was made on February 24, 1982, or more than 15 years ago. The criminal complaint was filed on May 6, 1997 only; hence, the action had already prescribed. x x x[13]

Petitioner filed a motion for reconsideration but it was denied. Hence, this petition for *certiorari.*

Petitioner alleges that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that the complaint against private respondents had already prescribed and that the facts and circumstances as found by the Committee were not sufficient to show probable cause for prosecution under Section 3(e) and (g) of Republic Act No. 3019.[14]

In the comment[15] dated November 8, 1999, the Ombudsman conceded that the issue of when behest loan cases prescribe has been settled in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*[16] wherein the Court ruled that the prescriptive period commences from the date the Committee discovered the crime, and not, as

previously concluded by the Ombudsman, from the date the loan documents were registered in the Register of Deeds.

Nevertheless, the Ombudsman focused on the issues raised in connection with the merits of the case, contending that the petition should be denied upon the following grounds:

> (1) No jurisdictional error or grave abuse of discretion was committed by public respondent Ombudsman when he dismissed the criminal case against private respondents on the ground that the evidence presented by petitioner was insufficient to support an indictment for violation of R(epublic) A(ct) (No.) 3019 since the collaterals offered by Sabena Mining Corporation amply secured the latter's loans with DBP; and,
>
> (2) Public respondent Ombudsman's finding of lack of probable cause deserves great weight and respect.[17]

On the other hand, private respondents Jaime Laya and Don M. Ferry filed their separate comments to the petition. Private respondent Laya claims that petitioner failed to adduce evidence to establish the *prima facie* quantum of evidence sufficient to implicate him for the crime charged and to prove that he participated in most of the questioned transactions.[18] With respect to the third loan in which he was allegedly involved, private respondent Laya claims that such offense had already prescribed.[19]

For his part, private respondent Ferry contends that he was with DBP from September 1981 to July 1985 only and did not participate in the granting of the original loan to SABEMCOR on June 2, 1977. He likewise challenges the finding of the Committee that the loan was undercapitalized considering that it did not explain the standards upon which such finding was based. Moreover, while it was true that respondent Ferry may have been involved in the foreclosure of the SABEMCOR account in the period between 1981 to 1985 because he was then the supervising governor of the DBP for distressed accounts and acquired assets, the subsequent loans contemporaneous to the foreclosure of the assets were not behest loans.[20]

On May 30, 2002, petitioner filed its consolidated reply[21] to the comments of private respondents. With respect to the defense of private respondent Laya, petitioner pointed out that at the time the loan was granted, he (private respondent Laya) was one of the DBP representatives appointed as director of SABEMCOR. Neither can the defense of

prescription be appreciated in the latter's favor as this Court had already ruled that the prescriptive period for a behest loan charge commences only upon discovery of the offense by the Committee.[22] On the other hand, with respect to the defense of private respondent Ferry, petitioner maintains that the former actually served as a full-time member of the DBP Board of Governors and its vice-chairman from August 15, 1981 to March 31, 1986 during which the DBP Board extended additional loans to SABEMCOR.[23] Finally, petitioner disputes the finding of the Ombudsman that there was insufficient evidence to indict private respondents for violation of Republic Act No. 3019, and contends that it was able to present clear and sufficient evidence consisting of incorporation papers and DBP board resolutions establishing the fact that the original and additional loans to SABEMCOR were under-collateralized and that the company was undercapitalized.

The petition lacks merit.

The prosecution of offenses committed by public officers is vested primarily in the Office of the Ombudsman. It bears emphasis that the Office has been given a wide latitude of investigatory and prosecutory powers under the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989). This discretion is all but free from legislative, executive or judicial intervention to ensure that the Office is insulated from any outside pressure and improper influence.

Indeed, the Ombudsman is empowered to determine whether there exist reasonable grounds to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.[24] The Ombudsman may thus conduct an investigation if the complaint filed is found to be in the proper form and substance. Conversely, the Ombudsman may also dismiss the complaint should it be found insufficient in form or substance.[25]

Unless there are good and compelling reasons to do so, the Court will refrain from interfering with the exercise of the Ombudsman's powers, and respect the initiative and independence inherent in the latter who, beholden to no one, acts as the champion of the people and the preserver of the integrity of public service.[26]

The pragmatic basis for the general rule was explained in *Ocampo v. Ombudsman:*[27]

> The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon

> practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they would be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by private complainants

Upon the facts and circumstances of this case, there is no cogent reason that would justify a deviation from the general rule. It is well-settled that as long as substantial evidence supports the Ombudsman's ruling, his decision will not be overturned.[28] In the present case, the finding of the Ombudsman that there is no probable cause to sustain the charges against private respondents is supported by substantial evidence:

First, the Ombudsman appears to have relied primarily upon the contents of the Executive Summary[29] prepared by petitioner in drawing the conclusion that the original and subsequent loans were not under-collateralized. Notably, the original loan was granted upon the condition that the assets to be acquired by SABEMCOR would serve as collateral for the same. The value of the assets to be acquired upon which a mortgage was to be constituted was even higher than the value of the proposed loan amount.[30] As additional security, SABEMCOR was also required to assign the following to DBP:

> (1) The operating agreement with Lazaro Completo;
>
> (2) The export sales proceeds in an amount sufficient to cover the yearly amortizations on the DBP accommodations; and,
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> (3) Mining claims, lease contracts and/or patents to be confirmed by the Bureau of Mines.[31]

As pointed out by the Ombudsman, there is insufficient evidence to show that SABEMCOR did not comply with the requirements necessary to secure the foregoing loan. Based on the same evidence, the subsequent loans procured by SABEMCOR likewise do not appear to be under-collateralized:

1. The DBP Guarantee in the amount of P20,000,000 approved on April 5, 1978 was collateralized by a first mortgage on existing assets and assets still to be acquired with a value of P175,402,000, coupled with an assignment to DBP of (a) the company's operating agreement with Lazaro Completo; (b) the company's export sales proceeds in an amount sufficient to cover the yearly amortizations on the DBP accommodations; and (c) the company's mining claims, lease contracts and/or patents.[32]

2. The $27,000,000[33] loan approved on April 2, 1980 was secured by (a) a first mortgage on existing assets and assets still to be acquired with a value of P258,604,000; (b) the joint and several undertaking of some officers and directors of SABEMCOR to assume the obligation with the company; (c) the assignment to DBP of (i) the company's export sales proceeds in an amount sufficient to cover the yearly amortization on the DBP guaranteed loan, and (ii) the company's new mining claims, lease contracts and/or patents to be confirmed by the Bureau of Mines.[34]

3. The P23,000,000 loan approved on July 1, 1981 was secured by (a) existing collaterals held by DBP in the amount of P258,604,000; (b) a first mortgage on all fixed assets acquired and to be acquired relative to the company's gold project; (c) the joint and several undertaking of some officers and directors of SABEMCOR to assume the obligation with the company; (d) the assignment to DBP of (i) the rights and interests of the company in the claims covered by Batato Mining Group, 3 of which are covered by existing temporary permits assigned to it by RMA & Associates, (ii) the company's operating agreement dated July 11, 1980, as modified by the MOA dated December 17, 1980, covering the Arcre Mining Group, assigned to the firm by RMA & Associates, and (iii) at least 30% of the total voting shares of the company's paid-up capital.[35]

4. The P4,700,000 loan approved on November 4, 1981 was secured by (a) a joint and first mortgage with Philguarantee on existing assets and assets to be acquired worth P240,287,712 ; (b) the joint and several undertaking of some officers and directors of SABEMCOR to assume the obligation with the company; (c) assignment to DBP of (i) the rights and interest of the

company in the claims covered by Batoto Mining Corporation, (ii) the company's operating agreement dated July 11, 1980 as modified by the Memorandum of Agreement dated December 17, 1980, covering the Acru Mining Group, assigned to the firm by RMA and Associates, and (iii) at least 30% of the total voting shares of the firm's total subscribed and outstanding shares.[36]

5. The P3,700,000 loan approved on February 24, 1982 was collateralized by a first mortgage on SABEMCOR's existing assets worth P240,287,712.[37]

6. The P3,950,000 loan approved to cover the company's interim budget for the period April to June 1982 was collateralized by a first mortgage on SABEMCOR's existing assets worth P240,287,712.[38]

7. The P1,597,844 loan approved on November 24, 1982 was secured by the joint and several undertaking of Andres Cheng and Joseph Chua with SABEMCOR to assume the company's obligation.[39]

It bears emphasis that the presence of only one criterion, which in this case is the undercapitalization of SABEMCOR, out of the eight criteria enumerated in Memorandum Order No. 61 will not, according to the Committee's own resolution,[40] qualify the loan as a behest loan. Moreover, the Ombudsman found that there was insufficient evidence to even conclude that SABEMCOR was undercapitalized considering that the Financial Statements reflecting the company's Capital Accounts had not been submitted as part of the complaint. The Ombudsman can hardly be faulted for not wanting to proceed because he is clearly not convinced that he possesses the necessary evidence to secure a conviction.

Secondly, before the loans were approved, it appears that they were first studied and evaluated intensively by DBP. In fact, there is no showing that the DBP Board of Directors did not exercise sound business judgment in approving the loans or that said approval was contrary to acceptable banking practices obtaining at that time.

Thirdly, there were no circumstances indicating a common criminal design by either the officers of DBP or SABEMCOR, or that they colluded to cause undue injury to the government by giving unwarranted benefits to SABEMCOR.

In conclusion, if the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings unless the exercise

of such discretionary powers is tainted by grave abuse of discretion.[41] In this instance, the Court cannot impute grave abuse of discretion on the part of the Ombudsman in his determination of whether or not probable cause exists against private respondents.

WHEREFORE, the petition for certiorari is **DISMISSED** and the Resolution dated February 22, 1999, as well as the Order dated May 26, 1999 of the Office of the Ombudsman, are **AFFIRMED**. No costs.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and *Garcia, JJ.,* concur.

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[1] Records, pp. 218-226.

[2] *Id.* at 1.

[3] Impleaded as private respondents are Recio M. Garcia, Don Ferry, Joseph Chua, Jaime C. Laya, Rafael Atayde, Andres Cheng and Edgar Rodriguez.

[4] Republic Act No. 3019, 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:

x x x

(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.

x x x

(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.

[5] Records, pp. 252-257.

[6] The Committee was created pursuant to Administrative Order No. 13 dated October 8, 1992 issued by former President Fidel Ramos.

[7] Records, p. 219.

[8] Memorandum Order No. 61 (1992).

[9] Records, p. 74.

[10] *Ibid.*

[11] *Id*. at 4.

[12] Petitioner did not cite or attach any document showing the extent of SABEMCOR's remaining indebtedness. The Executive Summary (*Records, p. 17*) merely mentions under paragraph (C) that the company's total exposure is P1,297,692,000 based on the fact that the total acquired assets is of the same amount.

[13] Records, pp. 48-49.

[14] Rollo, pp. 6-7.

[15] *Id*. at 261-271.

[16] G.R. No. 130140, October 25, 1999, 317 SCRA 272.

[17] Rollo, p. 264.

[18] *Id.* at 294.

[19] *Id*. at 297.

[20] *Id*. at 301-302.

[21] *Id*. at 532-556.

[22] *Id*. at 536-537.

[23] *Id*. at 532-535.

[24] *Esquivel v. Ombudsman,* G.R. No. 137237, September 17, 2002, 389 SCRA 143.

[25] *PCGG v. Desierto,* G.R. No. 140358, December 8, 2000, 347 SCRA 561.

[26] *Espinosa v. Ombudsman,* G.R. No. 135775, October 19, 2000, 343 SCRA 744.

[27] G.R. Nos. 103446-447, August 30, 1993, 225 SCRA 725.

[28] *Salvador v. Desierto,* G.R. No. 135249, January 16, 2004, 420 SCRA 76; *Morong Water District v. Office of the Deputy Ombudsman,* G.R. No. 116754, March 17, 2000, 328 SCRA 363; *Tan v. Office of the Ombudsman,* G.R. Nos. 114332 & 114895, September 10, 1998, 295 SCRA 315.

[29] Records, p. 12.

[30] The appraised value of the assets to be acquired as of March 1977 was P142,323,822 while the total loan accommodation was P112,500,000.

[31] Records, pp. 63-64.

[32] *Id*. at 13.

[33] Equivalent to P206,250,000.

[34] Records, pp. 13-14.

[35] *Id*. at 15.

[36] *Id*. at 15-16.

[37] *Id*. at 16-17.

[38] *Id*. at 17.

[39] *Id*.

[40] Atty. Orlando L. Salvador referred to the resolution of the Committee in paragraph (5) of

his Sworn Statement (*Records, p. 4*) which was attached to the letter-complaint dated April 25, 1997 (*Records, p. 1*) filed with the Office of the Ombudsman. The paragraph reads as follows:

x x x

> "5. Pursuant to Administrative Order No. 13 dated October 18, 1992 creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans and further defin[ing] its scope under Memorandum Order No. 61 dated November 9, 1992 (copies attached), **the Committee unanimously resolved that the presence of two or more of the eight (8) criteria mentioned under Memorandum Order No. 61 will classify the account as (a) behest loan.**
> In the instant case, the committee endorsed the account to be (a) behest loan based on the following criteria:
>
> 1. The loans are under-collateralized;
> 2. The loans are undercapitalized. x x x" (Records, p. 4, *emphasis supplied*.)

[41] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,* G.R. No. 136192, August 14, 2001, 362 SCRA 730.

Date created: August 05, 2014