

REPUBLIC OF THE PHILIPPINES (THROUGH THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT) PETITIONER, VS. HON. ANIANO DESIERTO, OMBUDSMAN, IMELDA R. MARCOS, LUCIO C. TAN, HARRY C. TA...

G.R. NO. 131397. January 31, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant petition for certiorari and mandamus filed by the Republic of the Philippines, through the Presidential Commission on Good Government (PCGG), against the above-named private respondents. Petitioner alleged that the Ombudsman acted with grave abuse of discretion in issuing his Resolution dated September 5, 1997 dismissing its (petitioner's) complaint for violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, against the above-named private respondents.

The facts of the case are not in dispute, thus:

In 1984, the Development Bank of the Philippines (DBP), a government-owned and controlled financial institution, found itself in dire financial straits. In order to address its liquidity problems, DBP decided to sell some of its assets. One of these was its equity holdings in the Maranao Hotel Resort Corporation (MHRC), which then owned the Century Park Sheraton Hotel in Manila. Accordingly, pursuant to its Resolution No. 1937 dated August 22, 1984, the DBP Board of Governors offered to sell the said shares for US\$8.33 million (or P150 million at the exchange rate then prevailing) either on a cash basis or upon a down payment of thirty percent (30%) of the selling price, the balance payable for a term not longer than five (5) years, with an interest rate of five percent (5%) per annum.

Upon the recommendation of private respondent Maria Estela M. Ladrido, then Acting Executive Officer of the DBP, the Board of Governors approved the sale of the said equity holdings to PCI Management Consultants, Inc. (PCI), acting for an undisclosed foreign buyer, for US\$8.4 million. However, the sale did not push through.

Meanwhile, Lucio Tan, one of the herein private respondents, wrote then President Ferdinand E. Marcos that he was interested in purchasing the equity holdings of DBP in the MHRC. Tan's written offer was supposedly found by the PCGG among the documents left behind by the Marcoses in Malacañang Palace when they fled during the EDSA revolution.

Lucio Tan set up the Sipalay Trading Corporation (STC) for the purpose of acquiring the DBP equity in the MHRC. At the time of its formation, STC had an authorized capital stock of P5 million. The stockholders were Leoncio M. Giron, Fred V. Fontanilla, Benjamin S. Jimenez, Fermin O. Hebron and Joel C. Ibay, also private respondents herein.

On January 30, 1985, STC offered to buy the DBP shareholdings in the MHRC for US\$8.5 million. By that time, PCI, the former purchaser, had abandoned its negotiations with DBP.

On March 1, 1985, DBP accepted STC's offer to buy. STC then made a deposit of US\$1.7 million to be held in an escrow account. It was agreed that the balance would be payable within five (5) years. Eventually, STC paid the purchase price in full.

In charging herein private respondents with violation of R.A. No. 3019 (the Anti-Graft and Corrupt Practices Act), petitioner alleged that private respondents conspired and acted fraudulently in order to accumulate ill-gotten wealth to the prejudice of the government; and that they effected the sale of the P340.7 million equity holding of DBP in MHRC to STC, a newly-organized and undercapitalized firm, for only P150 million, a price grossly disadvantageous to the government.

In his counter-affidavit, Lucio Tan alleged that he has no participation in the negotiations with DBP for the purchase of its MHRC holdings nor in the execution of the contract; that it was STC which paid the agreed price; and that the new set of officials installed by the Aquino government in DBP found no deficiencies in the sale of its MHRC holdings.

For his part, private respondent Don M. Ferry alleged that it was the DBP Board of Governors which decided to sell its equity holdings to STC; that all the terms of the sale had been carefully studied by the bank's staff who acted in good faith and in accordance with sound business practices; and that he had no dealing with Lucio Tan or the Marcoses.

On September 5, 1997, the Ombudsman dismissed petitioner's complaint, finding that the acts of the DBP Board of Governors should "not be condemned as a crime but should even be lauded for their boldness in trying their very best to save not only Century Park Sheraton Hotel but DBP itself, and ultimately protected the interests of the government." [1] The Ombudsman found no evidence of conspiracy among the private respondents and that the negotiations between STC and the DBP were aboveboard.

Hence, the instant petition anchored on this sole ground:

PETITIONER RESPECTFULLY SUBMITS THAT THE HON. ANIANO DESIERTO, OMBUDSMAN, COMMITTED GRAVE ABUSE OF DISCRETION AND ACTED WHIMSICALLY, CAPRICIOUSLY, ARBITRARILY AND OPPRESSIVELY IN DISMISSING THE COMPLAINT DESPITE CLEAR FACTS INFERRING THAT RESPONDENTS ACTING IN CONSPIRACY CAUSED UNDUE INJURY TO THE GOVERNMENT THROUGH MANIFEST PARTIALITY, EVIDENT BAD FAITH OR GROSS INEXCUSIBLE NEGLIGENCE.[2]

The only issue before us is whether the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing petitioner's complaint for lack of probable cause.

Section 3(e) of the Anti-Graft and Practices Act provides:

SEC. 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.

The elements of the crime charged are:

(a)

The accused is a public officer or a private person charged in conspiracy with the former;

(b)

The said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public position;

(c)

That he or she causes undue injury to any party, whether the government or a private party;

(d)

Such undue injury is caused by giving unwarranted benefits, advantage, or preference to such parties; and

(e)

That the public officer has acted with manifest partiality, evident bad faith, or gross inexcusable negligence.

[3]

From the foregoing, it may be inferred that there are two modes of committing the offense, thus: (1) the public officer caused any undue injury to any party, including the government; or (2) the public officer gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[4] An accused may be charged under either mode[5] or under both should both modes concur.[6]

There is no question that private respondents here are either officers of DBP, a government-owned and controlled financial institution, or private persons. But did the DBP cause injury to the Government or give a private party unwarranted benefits or preference in the discharge of its functions?

In addressing this question, we consider the prevailing conditions at the time of the sale in 1984, as found by the Ombudsman.

Following the assassination of former Senator Benigno Aquino in August 1983, a deepening socio-economic crisis casts its shadow over this country. The stability of the Marcos regime was in doubt and the economy was in doldrums. Government financial institutions, such as the DBP, found themselves mired in liquidity problems. To remain solvent, DBP had to take the drastic step of unloading its shareholdings in seven (7) five-star hotels in Metro Manila, including the Century Park Sheraton Hotel. The shares of DBP in MHRC, which owned the Century Park Sheraton Hotel, carried a book value at P340.7 million. However, these shares were saddled with uncollected interests, penalties, and surcharges, which made it difficult to offer them for sale. After the study and evaluation conducted by the DBP staff, they recommended that those shares should be sold for at least P150 million. The DBP Board of Governors adopted the recommendation. There were no offers, aside from that of PCI, until STC came along. The DBP Board of Governors then accepted the offer of STC to buy the shares. These findings of the Ombudsman are not disputed by petitioner.

Under the circumstances then prevailing, the private respondent DBP officers, in selling's shares to STC, acted in good faith and sound exercise of judgment. Significantly, the selling price agreed upon by DBP and STC was virtually the same figure approved by the DBP Board of Governors.

We agree with the Ombudsman that in approving the sale of the shareholdings, private respondent DBP officials did not give "unwarranted benefits, advantage, or preference" to STC. It should be recalled that at the time of the sale, PCI had already abandoned its negotiations with DBP. STC was the only entity which expressed an interest in acquiring the shares of DBP. There is thus no showing that private respondent DBP officials favored STC over other bidders or prospective buyers. Indeed, there can be no manifest partiality to speak of when DBP accepted the offer of STC.

Likewise, evident bad faith cannot be imputed to the private respondents. Bad faith "does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of a fraud." [7] In short, it is a manifest deliberate intent on the part of the accused to do wrong or to cause damage. There is nothing on record to show that private respondent DBP officials were spurred by any corrupt motive or that they received any material benefit from the sale of the DBP shareholdings to STC.

As a general rule, this Court will not interfere with the investigatory and prosecutorial powers of the Ombudsman without any compelling reason. [8] However, this non-interference does not apply when there is grave abuse of discretion in the exercise of its discretion. [9] By grave abuse of discretion is meant "such capricious and whimsical exercise of judgment which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and so gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where power is exercised in an arbitrary and despotic manner by reason of passion or hostility." [10]

In the case at bar, we hold that the Ombudsman committed no grave abuse of discretion in finding that there was no probable cause against the private respondents to hold them liable for violation of Section 3(e), R.A. No. 3019. Probable cause signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged. [11] The grounds for suspicion must be reasonable and supported by sufficiently strong circumstances. [12] As previously discussed, the Ombudsman correctly found that some of the essential elements of the offense charged are not present. Verily, we cannot attribute any arbitrariness or despotism to him.

WHEREFORE, the petition is DISMISSED. The Resolution of the Ombudsman dated September 5, 1997 dismissing petitioner's complaint against private respondents in OMB Case No. 0-91-0382 is AFFIRMED. No costs.

SO ORDERED.

Puno, (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

[1] Rollo, p. 23.

[2] *Id.*, pp. 8-9.

[3] *Suller v. Sandiganbayan*, G.R. No. 153686, July 22, 2003, 407 SCRA 201, 209, citing *Garcia-Rueda v. Amor*, 365 SCRA 456 (2001); *Poso v. Mijares*, 436 Phil. 305, 317 (2002), citing *Arroyo v. Alcantara*, 368 SCRA 467 (2001).

[4] *Bautista v. Sandiganbayan*, 387 Phil. 872, 881 (2000).

[5] See for instance, *Pilapil v. Sandiganbayan*, G.R. No. 101978, April 7, 1993, 221 SCRA 349 (causing undue injury to a municipal government), and *Diaz v. Sandiganbayan*, G.R. Nos. 101202 & 102554, March 8, 1993, 219 SCRA 675 (giving undue advantage and unwarranted benefits to a corporate officer of a sequestered corporation by approving his loan application from the same sequestered corporation).

[6] See *Pareño v. Sandiganbayan*, G.R. Nos. 107110-20 & 108037-39, April 17, 1996, 256 SCRA 242 (causing undue injury to the government and giving unwarranted benefit to the taxpayer by failing to verify a claim for a tax credit filed with the Bureau of Internal Revenue).

[7] *Villanueva v. Sandiganbayan*, G.R. No. 105607, June 21, 1993, 223 SCRA 543, 550, citing *Marcelo v. Sandiganbayan*, 185 SCRA 346 (1990).

[8] *Presidential Commission on Good Government v. Desierto*, G.R. No. 140232, January 19, 2001, 349 SCRA 767, 775, citing *Knecht v. Desierto*, 291 SCRA 292 (1998), *Alba v. Nitoreda*, 254 SCRA 753 (1996).

[9] *Rodrigo, Jr. v. Sandiganbayan*, 362 Phil. 646, 659 (1999).

[10] *Duero v. Court of Appeals*, 424 Phil. 12, 20 (2002), citing *Cuison v. Court of Appeals*, 289 SCRA 159 (1998).

[11] *Baylon v. Ombudsman*, 423 Phil. 709, 720 (2002), citing *Garcia-Rueda v. Pascasio*, 344 Phil. 323 (1997).

[12] *Baylon v. Ombudsman*, *supra*, citing *People v. Chua Ho San*, 367 Phil. 703 (1999).

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