

**ATTY. ORLANDO SALVADOR FOR AND IN BEHALF OF THE
PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST
LOANS, PETITIONER, VS. HON. ANIANO DESIERTO, AS OMBUDSMAN,
RAFAEL A. SISON, ...**

G.R. No. 135249. January 16, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Before us is a petition for certiorari[1] filed by Atty. Orlando Salvador on behalf of the Presidential Ad Hoc Fact-Finding Committee on Behest Loans, assailing the Resolution dated April 27, 1998[2] of then Ombudsman Aniano A. Desierto dismissing the complaint against respondents in OMB-0-96-2539; and his Order dated June 29, 1998[3] denying petitioner's motion for reconsideration.

From March 19, 1975 to April 22, 1977, Hotel Mirador, Inc. (Hotel Mirador) obtained three (3) loans from the Development bank of the Philippines (DBP) amounting to a total of P95,000,000.00, to finance the construction and development of its hotel building.

On October 8, 1992, then President Fidel V. Ramos issued Administrative Order No. 13[4] creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans (Committee) to inventory all behest loans, determine the parties responsible therefore, and recommend the appropriate actions to be taken by the government. In determining a behest loan, he also issued Memorandum Order No. 61[5] dated November 9, 1992, specifying the following criteria as a frame of reference:

- It is under-collateralized;
- Borrower corporation is undercapitalized;
- Direct or indirect endorsement by high government officials, like presence of marginal notes;
- Stockholders, officers or agents of the borrower corporation are identified as cronies;
- Deviation of use of loan proceeds from the purpose intended;
- Use of corporate layering;
- Non-feasibility of the project for which financing is being sought;
- Extra-ordinary speed in which the loan release is made.

Among the accounts acted upon by the Committee were the loans obtained by Hotel Mirador from the DBP. Petitioner Atty. Orlando Salvador was then the PCGG consultant detailed with the Committee.

Based on the criteria provided by Memorandum Order No. 61, the Committee, through petitioner, found that the loans obtained by Hotel Mirador from the DBP were behest loans. Thus, petitioner filed with the Office of the

Ombudsman a sworn complaint[6] dated September 18, 1996 against the directors and officers of Hotel Mirador, namely: Jose O. Cobarrubias, Armando V. Lim, Candido P. Soriente, Francisco G. Gregorio, Juan A. Sison, and Rolando Lorente; and the DBP directors who approved the loans, namely: Rafael A. Sison, Cesar Zalamea, Alicia Ll. Reyes, and Ariston S. Martinez, for violation of Section 3 (e) and (g), of Republic Act No. 3019, as amended, quoted as follows:

“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;

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.”

The complaint, docketed as OMB-0-96-2539, alleges inter alia:

“4. The evidence submitted to us show that:

‘a) Hotel Mirador was registered with the SEC on November 5, 1974 with the following incorporators:

Armando V. Lim

Quintin Lee See

Jose O. Cobarrubias

Juan A. Sison

Manuel Q. Salintes

‘b) Hotel Mirador was granted by DBP a loan on March 19, 1975 in the amount of P60 million under B/R 1206 for the following purposes:

Construction of hotel building

Purchase of machinery and equipment

Payment of interim obligation

‘c) The loan was without sufficient collateral and Hotel Mirador itself had no sufficient capital to be entitled to the amount of the loan considering that at the time the P60 million loan was granted the offered existing collateral (land) amounts to P2,025,100.00 and the rest amounting to P73 million represents assets to be acquired out of the loan and its paid-up capital amounted P17 million only as of December 31, 1976.

‘d) Despite the foregoing facts, Hotel Mirador obtained additional loans up to P35 million as shown below without sufficient capital to ensure not only viability of its operations but its ability to repay all its loans.”

On May 8, 1998, then Ombudsman Desierto issued the assailed Resolution dated April 27, 1998 dismissing

petitioner's complaint on the following grounds: (a) there is no sufficient evidence to prove that the loans in question are behest loans considering that Hotel Mirador has sufficient collateral for the loans and that the value of its properties and assets at the time was P92,025,100.00; and (b) the crime has prescribed because the latest transaction complained of occurred on April 22, 1977, thus, beyond the 15-year prescriptive period provided by Section 11 of the same law.

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

Petitioner alleges that respondent Ombudsman gravely abused his discretion in ruling that the complaint against respondent was barred by prescription and that Hotel Mirador had sufficient assets at the time the DBP loans were granted. Respondent further alleges that the right of the Republic to recover behest loans may not be barred by prescription because it is imprescriptible.[7] Even assuming it can prescribe, the offense was discovered only in 1992 when the Committee was created. Thus, the complaint was seasonably filed on September 18, 1996.

In his comment, respondent Ombudsman claims that the crime has prescribed and that the imprescriptibility clause applies only to recovery of ill-gotten wealth, not to the prosecution of criminal actions.[8] He insists that in dismissing petitioner's complaint, he did not commit any grave abuse of discretion.

The applicable laws on prescription of criminal offenses defined and penalized under the Revised Penal Code are found in Articles 90 and 91 of the same Code. For those penalized by special laws, Act No. 3326, as amended,[9] applies. Here, since R.A. 3019, the law alleged to have been violated, is a special law, the applicable law in the computation of the prescriptive period is Section 2 of Act No. 3326, as amended, which provides:

"Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same not be known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

"The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy."

The above provisions are clear and need no interpretation. In *Presidential Ad Hoc Committee vs. Hon. Desierto*, we held:[10]

"...it was well-nigh impossible for the State, the aggrieved party, to have known the violations of R.A. No. 3019 at the time the questioned transactions were made because, as alleged, the public officials concerned connived or conspired with the "beneficiaries of the loans." Thus, we agree with the COMMITTEE that the prescriptive period for the offenses with which respondents in OMB-0-96-0968 were charged should be computed from the discovery of the commission thereof and not from the day of such commission.

"The assertion by the Ombudsman that the phrase 'if the same not be known' in Section 2 of Act No. 3326 does not mean 'lack of knowledge' but that the crime 'is not reasonably knowable' is unacceptable, as it provides an interpretation that defeats or negates the intent of the law, which is written in a clear and unambiguous language and thus provides no room for interpretation but only application."

We reiterated the above ruling in *Presidential Ad Hoc Fact Finding Committee on Behest Loans vs. Desierto*,[11] thus:

"In cases involving violations of R.A. No. 3019 committed prior to the February 1986 EDSA Revolution that ousted President Ferdinand E. Marcos, we ruled that the government as the aggrieved party could not have known of the violations at the time the questioned transactions were made (*PCGG vs. Desierto*, G.R. No. 140232, January 19, 2001, 349 SCRA 767; *Domingo vs. Sandiganbayan*, supra, Note 14; *Presidential Ad Hoc Fact Finding Committee on Behest Loans vs. Desierto*, supra, Note 16). Moreover, no person would have dared to question the legality of those transactions. Thus, the counting of the prescriptive period commenced

from the dated of discovery of the offense in 1992 after an exhaustive investigation by the Presidential Ad Hoc Committee on Behest Loans.

“As to when the period of prescription was interrupted, the second paragraph of Section 2, Act No. 3326, as amended, provides that prescription is interrupted ‘when proceedings are instituted against the guilty person.’”

Records show that the act complained of was discovered in 1992. The complaint was filed with the Office of respondent Ombudsman on September 18, 1996, or four (4) years from the time of discovery. Thus, the filing of the complaint was well within the prescriptive period of 15 years.

On the issue of whether respondent Ombudsman committed grave abuse of discretion in dismissing the complaint against respondents, let it be stressed that the Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form or substance or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance.[12]

In *Espinosa vs. Office of the Ombudsman*,[13] we held:

"The prosecution of offenses committed by public officers is vested in the Office of the Ombudsman. To insulate the Office from outside pressure and improper influence, the Constitution as well as R.A. 6770 has endowed it with a wide latitude of investigatory and prosecutory powers virtually free from legislative, executive or judicial intervention. This Court consistently refrains from interfering with the exercise of its powers, and respects the initiative and independence inherent in the Ombudsman who beholden to no one, acts as the champion of the people and the preserver of the integrity of public service."

Indeed, we have consistently ruled that unless there are good and compelling reasons, we cannot interfere in the Ombudsman's exercise of his investigating and prosecutory powers.[14]

We have examined the records of the case and found no cogent reason to deviate from that rule. The original loan proposal of Hotel Mirador was the subject of an intensive study as laid out in the DBP Memorandum dated March 11, 1975,[15] Resolution No. 1275 dated April 7, 1976[16] and Memorandum dated March 29, 1977.[17] There is no showing that the DBP Board of Directors did not exercise sound business judgment in approving the loans of Hotel Mirador or that said approval was contrary to acceptable banking practices obtaining at that time. In fact, complainant failed to point out circumstances that would indicate the criminal design by either the officers of the DBP or Hotel Mirador or a collusion between them to cause undue injury to the government by giving unwarranted benefits to Hotel Mirador.

In sum, we cannot conclude that respondent Ombudsman committed grave abuse of discretion. His Resolution being assailed by petitioner is based on substantial evidence. We have consistently held that as long as substantial evidence support the Ombudsman's ruling, his decision will not be overturned.[18]

WHEREFORE, the instant petition is DISMISSED. The challenged Resolution dated April 27, 1998 and the Order dated June 29, 1998 of respondent Ombudsman in OMB-0-96-2539 are AFFIRMED.

SO ORDERED.

Vitug, (Chairman), Corona, and Carpio-Morales, JJ., concur.

[1] Pursuant to Rule 65 of the 1997 Rules of Civil Procedure, as amended.

[2] Rollo at 27-29.

[3] Id. at 23.

[4] Id. at 30-31.

[5] Id. at 32-33.

[6] Id. at 34-37.

[7] Article XI, Section 15 of the 1987 Constitution.

[8] Id.

[9] “An Act to Establish Periods Of Prescription For Violations Penalized By Special Acts And Municipal Ordinances And To Provide When Prescription Shall Begin To Run.”

[10] Presidential Ad Hoc Committee vs. Desierto, 375 Phil. 697 (1999).

[11] G.R. No. 130817, August 22, 2001, 363 SCRA 489, 494.

[12] PCGG vs. Desierto, G.R. No. 140358, supra at 567-568.

[13] G.R. No. 135775, October 19, 2000, 343 SCRA 744, 746.

[14] Knecht vs. Desierto, G.R. No. 121916, June 26, 1998, 291 SCRA 292, 302.

[15] Rollo at 38-47.

[16] Id. at 48-56.

[17] Id. at 57-73.

[18] Presidential Ad Hoc Fact-Finding Committee on Behest Loans vs. Desierto, G.R. No. 135482, supra at 729, citing Morong Water District vs. Office of the Deputy Ombudsman, G.R. No. 116754, March 17, 2000, 328 SCRA 363 and Tan vs. Office of the Ombudsman, G.R. Nos. 114332 & 114895, September 10, 1998, 295 SCRA 315.

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