

THE PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS, REPRESENTED BY FELIX M. DE GUZMAN, PCGG CHAIRMAN, ORLANDO L. SALVADOR, CONSULTANT, TECHNICAL WORKING GROUP (TWG) ...

G.R. NO. 135350. March 03, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

The Presidential Ad Hoc Fact-Finding Committee on Behest Loans[1] (petitioner Committee) filed the present Petition for Review on Certiorari seeking to reverse and set aside the Order dated September 30, 1997 of the Ombudsman in OMB-0-97-1059. The said order dismissed, on the ground of prescription, the criminal complaint for violation of Section 3(e) and (g) of Republic Act (RA) No. 3019[3] filed by petitioner Committee against respondents Aniceto Evangelista, Julio Macuja, Gregorio Licaros, Anos Fonacier, Mariano Zamora and Esperanza Zamora. Likewise sought to be reversed and set aside is the Order[4] dated August 6, 1998 dismissing petitioner Committee's motion for reconsideration.

The factual and procedural antecedents are as follows:

On October 8, 1992, then President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans composed of the Chairman of the Presidential Commission on Good Government (PCGG) as Chairman, and as members, the Solicitor General, representatives from the Office of the Executive Secretary, the Department of Finance, the Department of Justice, the Development Bank of the Philippines (DBP), the Philippine National Bank (PNB), the Asset Privatization Trust (APT), the Government Corporate Counsel, and the Philippine Export and Foreign Loan Guarantee Corporation.

Under said administrative order, petitioner Committee was tasked to:

- Inventory all behest loans; identify the lenders and borrowers, including the principal officers and stockholders of the borrowing firms, as well as the persons responsible for granting the loans or who influenced the grant thereof;
- Identify the borrowers who were granted "friendly waivers", as well as the government officials who granted these waivers; determine the validity of these waivers;
- Determine the courses of action that the government should take to recover those loans, and to recommend appropriate actions to the Office of the President within sixty (60) days from the date hereof.[5]

On November 9, 1992, Pres. Ramos issued Memorandum Order No. 61 broadening the scope of petitioner Committee's functions:

Sec. 1. The Ad Hoc Fact Finding Committee on Behest Loans shall include in its investigation, inventory, and study all non-performing loans which shall embrace both behest and non-behest loans.

The following criteria may be utilized as a frame of reference in determining a behest loan:

- It is undercollateralized (sic);
- The 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; and
- Extra-ordinary speed in which the loan release was made.

Moreover, a behest loan may be distinguished from a non-behest loan in that while both may involve civil liability for non-payment or non-recovery, the former may likewise entail criminal liability.[6]

Several loan accounts were referred to petitioner Committee for its investigation including the loan transaction between Bayview Plaza Hotel, Inc. (BPHI) and DBP.

After it had examined and studied all the documents relative to the said loan transaction, petitioner Committee determined that it bore the characteristics of a behest loan as defined under Memorandum Order No. 61 since the loan was undercollateralized while the corporation was undercapitalized.

Specifically, petitioner Committee's investigation revealed that the Bayview property was acquired by DBP through foreclosure for the amount of P16.160 million. The appraisal of said property was placed at P25,804,200 as of May 1971; hence, there was a deficiency claim in the amount of P9,644,200. However, under its Board Resolution No. 842 dated March 29, 1978, DBP dropped the bank's deficiency claim against the heirs of the late Esperanza Zamora, whose family was the majority stockholder of BPHI.

Other findings of petitioner Committee showed that the Bayview property was leased, with option to purchase, to Universal Hotels and Tourism Development Corporation (UHTDC) for 25 years effective October 6, 1974. As of April 1, 1986, the total obligation of UHTDC was P52,559,463.16. The said obligation, however, was reduced by P11 million upon the letter-request dated January 3, 1977 of respondent Anos Fonacier, one of the incorporators and President of UHTDC, which was approved by then President Ferdinand Marcos by way of a marginal note on the said letter.

On June 11, 1997, based on the Sworn Statement of Orlando Salvador, consultant of the PCGG, petitioner Committee filed with the Office of the Ombudsman the criminal complaint against respondents Aniceto Evangelista, Julio Macuja, Gregorio Licaros, Anos Fonacier, Mariano Zamora and Esperanza Zamora. Respondents Evangelista and Macuja were then Acting Manager Real Estate Development and Governor, respectively, of DBP. They approved the loan and/or accommodations granted to BPHI. As earlier mentioned, respondent Fonacier was one of the incorporators and President of UHTDC. Respondent Mariano Zamora, married to the late Esperanza Zamora, was an incorporator and majority stockholder of BPHI.

The criminal complaint reads in part:

- BPHI was registered on April 29, 1952 with the following incorporators: (Evidence 1)

Mariano Zamora
Esperanza A. Zamora

Federico Leuterio
Angelina A. Zamora
Harry Rindler

- BPHI applied for foreign loan guaranty from DBP in the amount of \$7.450 million (P29.055 million) and was approved under B/R No. 5191 dated July 6, 1967, as amended, for the purpose of financing the completion of its Bay View Annex and Rivera Hotel projects. The DBP guarantee in favor of the applicant-corporation shall include a guarantee in favor of the PNB which will in turn, issue the corresponding 10 year stand by Letter of Credit in favor of the Weston International Corporation (Evidence 9). The corresponding L/C was issued by PNB on September 12, 1967. (Evidence 5).

- The guarantee loan was without sufficient collateral and BPHI itself had no sufficient capital to be entitled to the amount of the loan considering that at the time the guarantee loan was granted BPHI[']s total collateral loan value of assets amounted to P16,112,495.77 (Evidence 12) and its paid-up capital amounted to P2.250 million. (Evidence 13).

- BPHI properties was [sic] acquired by DBP on December 5, 1972 thru foreclosure for P16.160 million. The appraisal of said property was P25,804,200.00 as of May 1971, (Evidence 22) or a deficiency claim in the amount of P9,644,200.00.

- The bank deficiency claim against the heirs of Esperanza A. Zamora was dropped by DBP under B/R No. 842 dated March 29, 1978.

- Other findings:

f-1. The Bay View Hotel, Inc. property was leased with option to repurchase, to Universal Hotels and Tourism Development Corporation (UHTDC) for 25 years effective October 6, 1974. (Evidence 20).

f-2. UHTDC was incorporated and registered with SEC on September 10, 1974 with the following incorporators:

Anos Fonacier
Jose V. Madarang
Amado V. Santos
Lamberto Ocampo
Rosauro S. Atangan

f-3. The total obligation of UHTDC as of April 1, 1986 were [sic] as follows: (Evidence 27).

Accounts Receivable — Rental P27,460,000.00

Interest (on unpaid rental) 13,731,620.13

Service Charge 355,888.22

Advances 5,512,568.36

Add'l. interest and
Penalty charges 5,499,463.16

Total 52,559,463.16

However, the total obligation was reduced by P11.0 million as per letter of Mr. Fonacier dated January 3, 1977 and approved by Ex President F. E. Marcos. (Evidence 22).

5. Pursuant to Administrative Order No. 13 dated October 18, 1992, creating the Presidential Ad Hoc

Fact-Finding Committee on Behest Loans and further defined its scope under Memorandum Order No. 61 dated November 9, 1992 (copies attached), the Committee unanimously resolved that the presence of two (2) or more of the eight (8) criteria mentioned under Memorandum Order No. 61 will classify the account as Behest Loan based on the following criteria:

1. The loans are under collateralized
2. The loans are under capitalized. x x x[7]

The criminal complaint further alleged that from the foregoing facts and circumstances it appeared that the respondents were criminally liable under Section 3(e) and (g) of RA 3019 which reads:

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 x

e. Causing 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 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.

After consideration of petitioner Committee's allegations, the Ombudsman promulgated the assailed Order dated September 30, 1997 in OMB-0-97-1059 dismissing the complaint on the ground of prescription. The Ombudsman conceded that there was ground to proceed with the conduct of preliminary investigation; however, it found that to do so would just be an exercise in futility because the offenses charged have already prescribed.

According to the Ombudsman, the transactions subject of the charge transpired: (1) in July 1967 when DBP approved BPHI's application for the foreign loan guaranty; (2) in March 1978 when DBP dropped the deficiency claim against the heirs of Esperanza Zamora in connection with the foreclosure of the Bayview property; and (3) in January 1977 when the outstanding obligation of UHTDC was reduced upon the marginal note of then Pres. Marcos on the letter-request of respondent Fonacier.

These acts being complained of, the Ombudsman noted, are governed by the law in force at the time of their commission, which was RA 3019 prior to its amendment by Batas Pambansa Blg. 195 in March 1982. The old RA 3019 provided that the offenses thereunder prescribe in ten years. Since the criminal complaint against the respondents for violation of Section 3(e) and (g) of RA 3019 was filed only in June 1997, then the offenses have long prescribed in 1977, 1988 and 1987, as the case may be. The prescriptive period commenced to run in 1967, 1978 and 1977, when the alleged transactions took place. The Ombudsman reasoned, thus:

And since a case was filed against the herein respondents only in June 1997, the offenses have long prescribed in 1977, 1988 and 1987 as the case may be.

This is so because prescription commenced to run in 1967, 1978 and 1977 when the disputed transactions took place. It bears emphasis that the instruments and documents evidencing these transactions, e.g. notarized loan guaranty, board resolutions, approved letter-request, form part of the public records, and thus become a matter of public knowledge. If the execution of these documents gave rise to unlawful acts, then, as contemplated in

People v. Sandiganbayan, 211 SCRA 241, 1992 and related case, People v. Villalon, 192 SCRA 521, 1990, from the time they exist would be the date of the violation of the law, and the reckoning period for purposes of prescription shall begin to run.[8]

Apparently, the Ombudsman relied on Section 2 of Act No. 3326,[9]as amended, which applies to special laws like RA 3019 and reads:

Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not 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 double jeopardy.

The Ombudsman accordingly dismissed petitioner Committee's criminal complaint against respondents in the assailed Order dated September 30, 1997. Petitioner Committee filed a motion for reconsideration thereof but it was denied with finality in the assailed Order dated August 21, 1998.

Forthwith, petitioner Committee elevated the case to this Court and in support of its petition alleges that:

A.

IN HOLDING THAT THE OFFENSES CHARGED AGAINST THE RESPONDENTS HAVE ALREADY PRESCRIBED, THE HONORABLE OMBUDSMAN HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT CONSIDERING THE PECULIAR CIRCUMSTANCES AND ENVIRONMENT UNDER WHICH THE OFFENSES TOOK PLACE.

B.

IN OPTING NOT TO PROCEED WITH THE CONDUCT OF THE INVESTIGATION OF THE CASE AND DISMISSING THE COMPLAINT ON ITS OWN INITIATIVE, AND IN DISMISSING THE MOTION FOR RECONSIDERATION FOR ALLEGEDLY HAVING BEEN FILED OUT OF TIME ASIDE FROM LACK OF MERIT, THE HONORABLE OMBUDSMAN HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.[10]

As petitioner Committee puts it, the basic issue to be resolved is whether or not the offenses subject of its criminal complaint have prescribed. Necessarily intertwined with this is the issue of whether the prescriptive period should be reckoned from the date of the commission of the offense or from the date of discovery thereof.

Petitioner Committee maintains that the cases[11] cited by the Ombudsman in ruling that the prescriptive period must be reckoned from the date of the commission of the crime are inapplicable. In said cases, the crimes were not concealed and could have been known by the public officials concerned at the time that they were committed. Consequently, in said cases, the Court held that prescription commenced to run from the time the offended party had constructive notice of the act complained of, i.e., at the time that the forged document was registered with the Register of Deeds.

In contrast, petitioner Committee opines, in the present case, what was concealed was not the loan per se but its nature of being a behest loan. The character of being a behest loan could not be deduced by merely looking at the documents pertaining to the loan transaction in question. Considering the multiplicity of parties and documents, not one document could readily reveal the unlawful acts.

Petitioner Committee stresses that the respondents are being charged under RA 3019 where the causes of action

are based on fraud, particularly to the government. The pertinent documents, i.e., the loan transaction between BPHI and DBP in 1967, the DBP board resolution dropping the deficiency claim against the heirs of Esperanza Zamora in 1978 and the approval by then Pres. Marcos of the letter of respondent Fonacier in 1977 requesting the reduction of UHTDC's outstanding obligation by P11 million, do not show on their faces that they (documents) are manifestly and grossly disadvantageous to the government. Neither do these documents, by themselves, show that the respondents acted with manifest partiality, evident bad faith or gross inexcusable negligence.

Further, the elements of the offenses for which respondents are being charged are allegedly provable only by prudent and detailed search and analysis not only of the public but also private records involved in the subject loan transaction. It took a Behest Loan Committee created by the President of the Republic to painstakingly search, analyze and conclude that a behest loan was granted in this case and the incidents related thereto are punishable under the law.

Petitioner Committee theorizes that the nature of behest loans calls for the application of the "discovery rule," i.e., when the gravamen of the cause of action is fraud, the statute of limitations does not begin to run against the injured person until discovery of the facts constituting the fraud or until by reasonable diligence such facts may have been discovered.[12] Such rule is an exception to the general rule that the statute of limitations begins to run from the commission of the offense or when the crime is complete and not from the date the crime is discovered.[13]

It is likewise pointed out that the Revised Penal Code (RPC) adopts the "discovery rule" for prescription of offenses. Article 91 thereof states that "the period for prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities or their agents x x x" The RPC, being supplementary in application to special laws such as RA 3019, should govern the instant case.

Applying the "discovery rule" and the RPC in supplementary manner, petitioner Committee contends that considering the discovery of the behest loan and the other related transactions during the evaluation of the pertinent documents by its Technical Working Committee, the cause of action against respondents for violation of Section 3(e) and (g) of RA 3019 has not yet prescribed.

It urges the Court to reverse and set aside the Orders dated September 30, 1997 and August 6, 1998 issued by the Ombudsman in OMB-0-97-1059. Further, petitioner Committee prays that the Court direct the latter to conduct the necessary criminal investigation and/or to file with the proper court the necessary information against respondents for violation of Section 3(e) and (g) of RA 3019.

The Court is constrained to deny the petition as it has been rendered moot and academic.

Preliminarily, it must be stated that petitioner Committee erroneously filed the present petition for review on certiorari under Rule 45 of the Rules of Court to assail the Order dated September 30, 1997 of the Ombudsman dismissing its criminal complaint on the ground of prescription. Petitioner Committee's remedy should have been to file a petition for certiorari under Rule 65 of the Rules of Court.

In any case, as mentioned earlier, the present petition must be dismissed for having been rendered moot and academic. In the case of Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,[14] docketed as G.R. No. 130140, the Court had the occasion to resolve the same issue as the one presented in the case at bar.

The facts of the said case are squarely on all fours as the present case in that the Ombudsman therein similarly dismissed, on the ground of prescription, the criminal complaint filed by the same Committee against the directors of the Philippine Seeds, Inc. (PSI) and directors of DBP. It was found that PSI obtained behest loans from DBP. The Ombudsman held that since the questioned transactions were evidenced by public instruments and were thus

open for the perusal of the public, the prescriptive period commenced to run from the time of the commission of the crime, not from the discovery thereof.[15]

Reversing the Ombudsman, the Court in G.R. No. 130140 declared that the offenses for which the respondents were charged should be computed from the discovery of the commission thereof and not from the day of such commission. The Court therein explained:

In the present case, 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 the 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.

x x x x

People v. Duque is more in point, and what was stated there stands reiteration: In the nature of things, acts made criminal by special laws are frequently not immoral or obviously criminal in themselves; for this reason, the applicable statute requires that if the violation of the special law is not known at the time, the prescription begins to run only from the discovery thereof, i.e., discovery of the unlawful nature of the constitutive act or acts.[16]

The Court thus directed the Ombudsman to proceed with the preliminary investigation of the criminal case subject of the petition therein.

When the Court required the parties to file their respective memoranda[17] in the present case, the Ombudsman filed the Manifestation and Motion In Lieu of Memorandum dated September 4, 2002, informing the Court that in light of its decision in G.R. No. 130140, the Ombudsman subsequently conducted the preliminary investigation of cases, including OMB-0-97-1059, which had been previously dismissed on the ground that prescription commenced to run from the time of the commission of the crime.

The Ombudsman avers that considering that the preliminary investigation in OMB-0-97-1059 had already been undertaken, the object of the instant petition has been attained rendering the same moot and academic. Further, upon the preliminary investigation conducted by the Ombudsman, the latter issued a Resolution dated January 12, 2001[18] dismissing anew the criminal complaint on the ground of lack of probable cause. The Ombudsman found that there was lack of evidence to establish the existence of probable cause to charge respondents with any criminal offense. Petitioner Committee moved for the reconsideration thereof but its motion was denied in the Order dated January 2, 2002.[19]

The Court agrees with the Ombudsman that this case has been rendered moot and academic. Indeed, "it is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases. And where the issue has become moot and academic, there is no justiciable controversy, so that a declaration thereon would be of no practical use or value. There is no actual substantial relief to which petitioner would be entitled and which would be negated by the dismissal of the petition." [20]

In this case, the issues presented by the petition, i.e., whether the offenses subject of the criminal complaint have prescribed and whether the prescriptive period should be reckoned from the date of the commission of the offense or from the date of discovery thereof, have already been settled by the Court in G.R. No. 130140. Moreover, the principal relief sought by petitioner Committee, i.e., for the Court to direct the Ombudsman to conduct the preliminary investigation in OMB-0-97-1059, has been rendered unnecessary and superfluous because the Ombudsman had, in fact, subsequently conducted the said preliminary investigation. No useful purpose can be

served in passing upon the merits of this case. Significantly, the issue of the existence of probable cause, or lack of it, is not the subject of the instant petition.

WHEREFORE, the petition is DENIED for having been rendered moot and academic.

SO ORDERED.

Panganiban, (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

[1] Represented by Felix M. De Guzman, then Chairman of the Presidential Commission on Good Government (PCGG), Orlando L. Salvador, Consultant of the Technical Working Group (TWG) of the Presidential Ad Hoc Fact-Finding Committee on Behest Loans, and Danilo R.V. Daniel, TWG Coordinator.

[2] Issued by Graft Investigation Officer (GIO) Lolita S. Rodas with the concurrence of Director Angel C. Mayoralgo, Jr. of the Evaluation and Preliminary Investigation Bureau (EPIB) and Assistant Ombudsman Abelardo L. Aportadera, Jr. of the Evaluation and Investigation Office. The said Order was approved by then Ombudsman Aniano A. Desierto on June 19, 1998.

[3] Otherwise known as the Anti-Graft and Corrupt Practices Act.

[4] Issued by GIO Evangeline Y. Grafil with the concurrence of Director Mayoralgo, Jr. of EPIB and Assistant Ombudsman Aportadera, Jr. of the EIO. The said Order was approved by Ombudsman Desierto on August 21, 1998.

[5] Rollo, p. 55.

[6] Id. at 56-57.

[7] Rollo, pp. 59-61.

[8] Rollo, p. 46.

[9] Entitled "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," approved December 4, 1926.

[10] Rollo, p. 21.

[11] People v. Sandiganbayan, *supra* and People v. Villalon, *supra*.

[12] Petition for Review, p. 23 citing 37 Am Jur 2d 403; rollo, p. 30.

[13] Id. citing 21 Am Jur 2d 22.

[14] 375 Phil. 697 (1999).

[15] *Supra*.

[16] Id. at 724-725.

[17] Petitioner Committee filed its Memorandum on December 13, 2002. On the other hand, only respondent Fonacier filed his Memorandum on December 12, 2002. Subsequently, petitioner Committee filed on June 10, 2003 its Comment on the Ombudsman's Manifestation and Motion In Lieu of Memorandum.

In the meantime, the Court's Resolution requiring the parties to file their respective memoranda remained unserved on the other respondents. Hence, on January 21, 2004, the Court required petitioner Committee to

submit the correct addresses of the other respondents. The petitioner Committee so complied on May 4, 2004. The Court then directed the Clerk of Court Second Division to resend to the other respondents a copy each of the resolution requiring them to file their respective memoranda.

On October 4, 2004, the Court issued the Resolution requiring respondent Evangelista to show cause why he should not be disciplinarily dealt with or held in contempt for failure to file his memorandum. In the same resolution, the returned and unserved copy of the resolution requiring him to file his memorandum was deemed served on respondent Macuja. On June 8, 2005, respondent Zamora was likewise directed to show cause why he should not be disciplinarily dealt with or held in contempt for failure to file his memorandum. In the resolution dated November 23, 2005, respondents Evangelista, Zamora and Macuja were deemed to have waived their right to file their respective memoranda.

[18] Issued by GIO Grafil with the concurrence of OIC-Director Pelagio S Apostol of EPIB and Assistant Ombudsman Aportadera, Jr. of the PAMO. The said Order was approved by Ombudsman Desierto on January 19, 2001.

[19] Issued by GIO Grafil with the concurrence of OIC-Director Apostol and Deputy Special Prosecutor and OIC Robert E. Kallos of the PAMO. The said Order was approved by Ombudsman Desierto on May 31, 2002.

[20] *Lim v. Ang*, G.R. No. 152429, 18 March 2005, 453 SCRA 802, 811, citing *Ocampo v. House of Representatives Electoral Tribunal*, G.R. No. 158466, June 15, 2004, 432 SCRA 144.

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