PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS, REPRESENTED BY ORLANDO S. SALVADOR, PETITIONERS, VS. OMBUDSMAN ANIANO A. DESIERTO, PANFILO O. DOMINGO, FRANCISCO TEOD...

G.R. No. 135482. August 14, 2001

Ponente: PARDO, J.

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PARDO, J.:

What is before the Court is a petition for review on certiorari to set aside the Ombudsman's resolution[1] dismissing the complaint for violation of R.A. 3019, Section 3(e) and (g) against respondents Panfilo O. Domingo, Francisco Teodoro and Leticia Teodoro.

On October 8, 1992, President Fidel V. Ramos issued Administrative Order No. 13, creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans. The committee was composed of the Chairman of the PCGG as Chairman; the Solicitor General; a representative from the Office of the Executive Secretary; the Department of Finance; the Department of Justice; the DBP; the PNB; the Asset Privatization Trust; the Philippine Export and Foreign Loan Guarantee Corporation; and the Government Corporate Counsel, as members. The committee was tasked to inventory all behest loans, determine the parties involved and recommend appropriate action to be pursued.[2]

On November 9, 1992, President Ramos issued Memorandum No. 61, which expanded the functions of the committee to include in its investigation the inventory and review of all non-performing loans whether behest or non-behest.[3]

Thus, a Technical Working Group (TWG) undertook to examine all documents relative to loan accounts referred by the Asset Privatization Trust to the Committee for investigation, report and recommendation. The Committee classified each account, then rendered an executive summary report thereon and submitted the report to the Committee for review. Atty. Orlando Salvador, PCGG consultant, was a coordinator of the TWG.[4]

One of the accounts referred to the TWG was that of Apparel World, Inc. (Apparel). On April 8, 1974, Apparel applied for an Import Letter of Credit with the Philippine National Bank (PNB) in the amount of DM15,000,000.00 (P40,660,114.86) for the importation of machinery, equipment and accessories for a garment factory. On May 5, 1974, PNB approved the loan applied for less than a month from the filing of the application and without collateral except the joint and solidary agreement of respondents Teodoro and chattel mortgage on the machinery. The credit agreement prohibited the debtors to convey, sell, lease, or dispose of all or substantially all its properties or assets without the prior consent of PNB.[5]

As of May 15, 1986, Apparel's unpaid loan with PNB had a deficiency amounting to P170,967,849.58.[6]

The Committee classified Apparel's account with PNB as a BEHEST LOAN.[7]

On January 26, 1998, Atty. Salvador filed with the Office of the Ombudsman a complaint for violation of Section 3(e) and (g), R. A. No. 3019 against Francisco Teodoro, Leticia Teodoro, Jose Tabora, and Panfilo O. Domingo.[8]

On April 14, 1998, the Ombudsman dismissed the complaint for lack of evidence, prescription and for the reason that Memorandum Order No. 61 and Administrative Order No. 12 were considered as ex post facto laws.

> Thus -
>
> "In the case at bar, prescription begins to run from the time the loan was executed and approved, considering the same to be in a public document and therefore was a public record, and not when it was lately discovered by the PCGG as alleged behest loan per Administrative Order No. 13 and Memorandum Order No. 61, issued by President Ramos in 1992.
>
> "When the loan was approved in 1974, there was no law classifying it as a behest or non-behest loan which has corresponding civil and criminal sanctions. Thus, the issuances of Administrative Order No. 13 and Memorandum No. 16 in 1992 by President Ramos, has the effect of an ex post facto law. The contract of loan was approved by the PNB officials who were performing their regular functions, while the borrowers are legitimate businessmen doing banking transactions with the government.
>
> "WHEREFORE, premises considered, it is hereby recommended that this case be DISMISSED, as it is hereby dismissed.
>
> "SO RESOLVED.
>
> "Manila, Philippines, August 14, 1998.
>
> "EVANGELINE GRAFIL
> "Graft Investigation Officer I
>
> x x x x x x x x x
>
> "Approved
> "ANIANO A. DESIERTO
> "Ombudsman"[9]

Hence, this petition.[10]

Verily, the lapse of twenty four (24) years since the time the loan was granted in 1974 was well beyond the fifteen-year prescriptive period prescribed in R. A. No. 3019.[11]

The law on prescription of offenses is found in Articles 90 and 91 of the Revised Penal Code for offenses punishable thereunder. For those penalized under special laws, Act No. 3326 applies.

Act No. 3326, Section 2 governs the commencement of prescription of any act in violation of R. A. No. 3019, to wit:

> "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 jeopardy."

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> "x x x 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.
>
> "The assertion by the OMBUDSMAN that the phrase 'if the same be not 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."[12]

Hence, prescription has not set in.

Under Republic Act No. 6770,[13] the Ombudsman has the power to investigate and prosecute any act or omission of a public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient.[14] In fact, the Ombudsman has the power to dismiss a complaint without going through a preliminary investigation[15] as provided in Administrative Order No. 07 of the Office of the Ombudsman, otherwise known as the "Rules of Procedure of the Office of the Ombudsman."[16]

It has been the consistent ruling of the Supreme Court not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers.[17]

In Alba v. Nitorreda,[18] we held that "it is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service".[19]

The rationale underlying the Court's ruling has been explained in numerous cases. 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 a private complainant.[20]

The Court cannot sustain petitioners' contention that the Ombudsman acted with grave abuse of discretion when he dismissed the charges against respondents herein. The Ombudsman elaborated his reasons for finding that there was no sufficient ground to engender a well-founded belief that respondents violated of R. A. No. 3019.

In 1974, when the loan was granted, Apparel's paid up capital was only P3,859,000.00. Thus, petitioners claimed that Apparel was not entitled to the loan. The Committee, however, failed to provide the proper valuation of all the property and therefore committed error in finding that the loan Apparel obtained did not sufficiently have collateral and capital.

First, the notation of PNB's acting Senior Vice President Jose B. Samson, mentioned in a Memorandum dated May 26, 1982, indicated that the appraised value of the machinery and equipment did not include those still contained in crates.

Second, the Terminal Report of the Asset Privatization Trust, dated July 15, 1992, indicated that Apparel had remaining unsold assets, which were under litigation, located in Epza, Bataan.

The Ombudsman likewise reasoned that respondents were not liable for violation of R. A. No. 3019 since it was not established that Francisco Teodoro was an associate or a known crony of President Marcos. Else, why was Apparel's mortgages with PNB foreclosed in May 1983, when President Marcos was still in power? The fact the loan was processed in only twenty seven (27) days cannot be reasonably considered manifest partiality or evident bad faith in granting petitioners' loan application as long as there was full compliance with banking laws, practices and procedures. In fact, a panel from the lending bank studied and favorably endorsed the loan.

In sum, we find the resolution of the Ombudsman to be based on substantial evidence. We cannot say that the Ombudsman committed grave abuse of discretion so as to call for the exercise of the Court's supervisory powers over his ruling. As long as substantial evidence support the Ombudsman's ruling, his decision will not be overturned.[21]

WHEREFORE, the petition is hereby DISMISSED. The resolution of the Ombudsman in Case No. OMB-0-98-0176, dated August 14, 1998, is AFFIRMED.

No costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

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[1] In OMB-0-98-0176, dated August 14, 1998.

[2] Petition, Rollo, pp. 11-12.

[3] Ibid., p. 12.

[4] Ibid., p. 13.

[5] Ibid., Rollo, pp. 13-14.

[6] Petition, Rollo, p. 14.

[7] Ibid.

[8] Petition, Annex B, Rollo, p. 51.

[9] Resolution, Office of the Ombudsman, Rollo, pp. 45-50.

[10] Filed on November 17, 1998, Rollo, pp. 9-44. On December 1, 1998, we required respondents to comment on the petition (Rollo, p. 59).

[11] Section 11. Prescription of offenses. - All offenses punishable under this Act shall prescribe in fifteen years. (Underscoring supplied)

[12] Presidential Ad Hoc Fact Finding Committee on Behest Loans represented by Magtanggol Gunigundo, PCGG Chairman and Orlando C. Salvador, as Consultant, Technical Working Group of the Presidential Ad Hoc Fact Finding Committee on Behest Loans vs. Hon. Aniano Desierto as Ombudsman; Jose Z. Osias; Pacifico E. Marcos; Eduardo V. Romualdez; Fernando C. Ordavez; and Juanito Ordaveza, Members of the Board of Directors of Philippine Seeds, Inc; Concerned Members of the Development Bank of the Philippines, 317 SCRA 272 [1999]; PCGG vs. Desierto, G. R. No. 140232, January 19, 2001.

[13] Otherwise known as “The Ombudsman Act of 1989.”

[14] SEC. 15. Powers, Functions and Duties. – The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases; xxx

[15] Knecht vs. Desierto, 353 Phil 494 [1998].

[16] SEC. 2. Evaluation. – Upon evaluating the complaint, the investigating officer shall recommend whether it may be:

a) dismissed outright for want of palpable merit;
b) referred to respondent for comment;
c) indorsed to the proper government office or agency which has jurisdiction over the case;
d) forwarded to the appropriate officer or official for fact-finding investigation;
e) referred for administrative adjudication; or
f) subjected to a preliminary investigation.

[17] PCGG vs. Desierto, et al., G. R. No. 140232, January 19, 2001; Mamburao vs. Office of the Ombudsman, G. R. No. 139141-42, November 15, 2000; Venus vs. Desierto, 358 Phil 675 [1998]; Velasco vs. Casaclang, supra, citing Republic vs. Sandiganbayan, 200 SCRA 667 [1991] and Zaldivar vs. Sandiganbayan, 160 SCRA 843 [1988]; Knecht vs. Desierto, surpa, citing Lastimosa vs. Vasquez, 313 Phil 358 [1995].

[18] 325 Phil 229 [1996].

[19] Espinosa vs. Ombudsman, G. R. No. 135775, October 19, 2000.

[20] Ocampo vs. Ombudsman, 225 SCRA 725 [1993]; Venus vs. Desierto, supra, Note 17.

[21] Morong Water Disctrict vs. Office of the Deputy Ombudsman, 328 SCRA 363[2000]; Tan vs. Office of the Ombudsman, 295 SCRA 315 [1999].

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