THE PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS, REPRESENTED BY ORLANDO SALVADOR, CONSULTANT, TECHNICAL WORKING GROUP (TWG) OF THE PRESIDENTIAL AD HOC FACT FINDIN...

G.R. No. 136192. August 14, 2001

Ponente: PARDO, J.

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PARDO, J.:

The Question Presented

May loan transactions entered into in 1968 be the basis of criminal liability considering that the complaint was filed twenty nine (29) years after the commission of the offense?

The Case

What is before the Court for consideration is a special civil action for certiorari[1] to nullify the orders of the Ombudsman[2] dismissing the complaint against respondents for violation of Republic Act No. 3019, Section 3 (e) and (g).

The Facts

On October 8, 1992, 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 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.[3]

On November 9, 1992, President Ramos issued Memorandum No. 61, expanding the functions of the committee. Section 1 provides:

> "Section 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."[4]

Thus, a Technical Working Group (TWG) was constituted 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.[5]

Among the accounts referred to the TWG were the loans of Filipinas Marble Corporation (FMC), a company engaged in quarrying and processing of marble slabs.

On September 1, 1997, Atty. Salvador filed with the Office of the Ombudsman a complaint for violation of

Republic Act No. 3019, Section 3(e) and (g) against Mrs. Alicia Ll. Reyes, Verden C. Dangilan, Casimiro Tanedo, Jose Montelibano, Pelagio M. Villegas, Sr., and Trinidad E. Villegas,[6] alleging:

> "9. It appears from the foregoing facts and circumstances on the record that the provisions of Section 3(e) and (g) of RA 3019 among other laws were violated:
>
> "Section 3. Corrupt practices of Public Officers. x x x
>
> "10. The aggregate loan account amounting to P220,143,000.00 as part of June 1986 remains unpaid up to the present."[7]

The sworn statement attached to the complaint alleged that FMC was registered with the Securities and Exchange Commission (SEC) on September 15, 1950. In September 1967, Pelagio Villegas, Sr. in behalf of the firm applied with the Development Bank of the Philippines for a loan amounting to P4,600,000.00.[8] On March 14, 1968, DBP approved the application. As of June 1986, FMC's unpaid loan account with DBP amounted to P220,143,000.00.[9]

Petitioner contended that the loan obtained in 1968 was undercollateralized and FMC was undercapitalized. Of the more than four (4) million-peso loan obtained, the collateral was valued only at P3,051,740.00, while FMC's capital totaled only P517,350.00. Both were less than the amount loaned.

On July 7, 1998, the Ombudsman dismissed the case due to lack of probable cause, and prescription.[10]

On August 17, 1998, petitioners filed with the Ombudsman a motion for reconsideration; however, on August 24, 1998, the Ombudsman denied the motion for lack of merit and for having been filed out of time.[11]

Hence, this petition.[12]

The Court's Ruling

We dismiss this petition. We agree with the Ombudsman's ruling as to lack of probable cause.

Lack of Probable Cause

We find no grave abuse of discretion on the part of the Ombudsman in deciding against filing of an information against respondents. He found that conspiracy alleged in the complaint was not supported by evidence, and that evidence was not clear as to Mrs. Alice Ll. Reyes' participation in the acts in question.

Actori incumbit onus probandi.[13] The inherent weakness of complainant's case is not a ground for the Ombudsman to conduct preliminary investigation.

Thus, we quote:

> "Finally, the only public respondent in the case at bar is the manager of DBP, Alice Ll. Reyes, the rest are directors/officers of FMC. Presumably, the former is charged together with the private individuals on account of conspiracy. However, nothing in the complaint is an allegation of conspiracy and the entire evidence on record does not bear it out. Moreover, the evidence is not clear as to the participation of respondent Reyes in the commission of the alleged crime."[14]

The Ombudsman may dismiss the complaint if he finds it to be insufficient in form or substance,[15] or if he otherwise finds no ground to continue with the inquiry; or he may proceed with the investigation of the complaint if, in his view, it is in due and proper form.[16] In fact, the Ombudsman has the power to dismiss a complaint outright without going through a preliminary investigation.[17]

We said[18] that the prosecution of offenses committed by public officers is vested in the Ombudsman. To

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insulate the Office from outside pressure and improper influence, the Constitution as well as R. A. No. 6770[19] has endowed it with a wide latitude of investigatory and prosecutory powers,[20] virtually free from legislative, executive or judicial intervention. We consistently refrained from interfering with the exercise of the Ombudsman's powers, and respected 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.[21]

Without good and compelling reasons to indicate otherwise, the Court will not interfere with the Ombudsman's exercise of his powers.

In this case, we find no reason that would necessitate a deviation from the general rule.

First, only P1.5 million was identified as a straight loan since the others were guarantees, restructured loans, conversions, or advances.

Second, even if the entire amount of P4.6 million were a straight loan, it was not undercollateralized.

The Ombudsman found that there was no showing that FMC did not comply with all the requirements in obtaining the loans. At the time of the loan, although FMC had a capital of only P517,350.00, approval of the loans was based on sound banking practice. FMC's rights to its marble deposits amounting to P211,463,048.00 were assigned to DBP.

Third, no evidence showed that Pelagio Villegas, Sr. was a crony of former President E. Marcos, thus linking him to favored loan approvals.

If the Ombudsman, using professional judgment, finds the case dismissible, we shall respect such findings unless clothed with grave abuse of discretion. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack or excess of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[22]

The Fallo

WHEREFORE, the Court hereby DISMISSES the petition.

No costs.

SO ORDERED.

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

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[*] Now deceased.
[1] Under Rule 65 of the Revised Rules of Court.

[2] Dated July 7, 1998 and August 28, 1998.

[3] Petition, Rollo, p. 4.

[4] Ibid., p. 5.

[5] Order, Office of the Ombudsman, dated July 7, 1998, Rollo, p. 27.

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[6] Complaint dated September 1, 1997, Rollo, p. 46.

[7] Sworn Statement, Rollo, pp. 44-45.

[8] Petition, Rollo, p. 11.

[9] Order, Office of the Ombudsman, dated July 7, 1998, Rollo, pp. 26-32.

[10] Ibid.

[11] Order, Office of the Ombudsman, dated August 24, 1998, Rollo, pp. 34-36.

[12] Filed on November 24, 1998, Rollo, pp. 2-25. On December 15, 1998, we required respondents to comment on the petition (Rollo, p. 292).

[13] The burden of proof rests with the plaintiff or prosecution.

[14] Rollo, p. 32

[15] PCGG vs. Desierto, G. R. No. 140358, December 8, 2000.

[16] Ocampo vs. Ombudsman, 225 SCRA 725 [1993]; Garcia-Rueda vs. Pascasio, 344 Phil 323 [1997].

[17] Knecht vs. Desierto, 353 Phil 494 [1998]; Mamburao vs. Office of the Ombudsman, G. R. No. 139141-42, November 15, 2000.

[18] Espinosa vs. Office of the Ombudsman, G. R. No. 135775, October 19, 2000; PCGG vs. Desierto, supra.

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

[20] 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 xxx xxx

[21] Alba vs. Nitorreda, 325 Phil 229 [1996]; Ocampo IV vs. Ombudsman, 225 SCRA 725; Fernando vs. Sandiganbayan, 212 SCRA 680, 687 [1992]; Sebastian, Sr. vs. Garchitorena, G. R. No. 114028, October 18, 2000; Blanco vs. Sandiganbayan, G. R. No. 136757-58, November 27, 2000.

[22] Domondon vs. Sandiganbayan, 328 SCRA 292 [2000]; Cuison vs. Court of Appeals, 351 Phil 1089 [1998].

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