

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

G.R. No. 136225. April 23, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

ATTEMPTS to recover ill-gotten wealth acquired during the Marcos era are oft-thwarted for manifold reasons. Petitioner comes to Us in an effort to reinstate one such attempt for redress of the nation's grievance over the loss of funds possibly ill-gotten under the guise of a behest loan.

The present certiorari and mandamus petition seeks to nullify the Resolution[1] of the Ombudsman in OMB Case No. 0-96-0057 dismissing petitioner's complaint against private respondents Angel, Jose and Jose Manuel, all surnamed Romualdez, for violation of Section 3(e) and (g) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.[2]

Factual Antecedents

On October 8, 1992, then President Fidel V. Ramos issued Administrative Order No. 13[3] creating the Presidential Ad Hoc Committee on Behest Loans (Committee). The Chairman of the Presidential Commission on Good Government (PCGG) was to chair the Committee with the Solicitor General as Vice-Chairman. As members, representatives were called 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, The Asset Privatization Trust, the Government Corporate Counsel and the Philippine Export and Foreign Loan Guarantee Corporation.

The Committee was formed in response to allegations of loans, guarantees and other forms of financial accommodation granted, directly or indirectly, by government-owned and controlled banks or financial institutions at the behest of previous government officials or cronies to the detriment of the Philippine government. To address this concern, the Committee was tasked to perform the following functions:

1)

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.

2)

Identify the borrowers who were granted "friendly waivers" as well as the government officials who granted

these waivers; determine the validity of these waivers.

3)

Determine the courses of action that the government should take to recover these loans, and to recommend appropriate actions to the Office of the President within sixty (60) days from date hereof.[4]

The scope of the Committee's function was subsequently broadened under Presidential Memorandum Order No. 61[5] dated November 9, 1992 to include in its investigation, inventory and study all non-performing loans, whether behest or non-behest. The Memorandum Order then went on to provide the criteria to be used as a frame of reference in determining a behest loan, to wit:

1)

It is undercollateralized.

2)

The borrower corporation is undercapitalized.

3)

Direct or indirect endorsement by high government officials like presence of marginal notes.

4)

Stockholders, officers or agents of the borrower are identified as cronies.

5)

Deviation of use of loan proceeds from the purpose intended.

6)

Use of corporate layering.

7)

Non-feasibility of the project for which financing is sought.

8)

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]

Pursuant to the mandate of these presidential issuances, the Committee investigated the loan transactions between Agretronics, Incorporated (Agretronics[7]) and the DBP. It determined that the loan transactions between DBP and Agretronics were among those found to possess positive characteristics of a behest loan as defined under Memorandum Order No. 61.

Sometime in June 1996,[8] the Committee, through its consultant Atty. Orlando L. Salvador, filed a complaint[9] with the Ombudsman against the respondents for Violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act. The complaint was docketed as OMB 0-96-0057. The supporting documentary proof was appended as annexes.

In the complaint, the Committee alleged that:

a)

Agretonics was incorporated on September 10, 1980 with a paid-up capital of P1.25 million.

b)

Agretonics applied for foreign currency loan on December 15, 1980 in the amount of \$2,866,667 (Equivalent to P21,500,000 @ \$1.00:P7.50) and was approved by DBP under B/R 286 dated December 29, 1980.

c)

Considering date of loan application, December 15, 1980 and DBP approval on December 29, 1980 it shows that the extraordinary speed in the loan approval, a mark of behest loan.

d)

A review of the release sheet on the \$2,666,667 (P15,610,402.50) on February 1, 1981 disclosed that despite the noncompliance by Agretonics of the obligation to put-up under No. 7(d) of B/R 296, the loan was released.

e)

Agretonics was undercapitalized upon approval in December 1980 under the debt-equity ratio of 94:6 considering that the amount of loan was P21.50 million against a paid-up capital of P1.25 million.

f)

As of June 18, 1986 the date of foreclosure of Agretonics assets with an appraisal value of P13.88 million as against its total obligation of P154.97 million will show a collateral ration of 1210.07% instead of the normal banking standard equity remained unchanged to P2.0 million as of June 18, 1986 giving a Debt-Equity Ratio of 98:2.

g)

Among the incorporators/principal officers of Agretonics, brothers Angel G. Romualdez and Jose G. Romualdez and Jose Manuel G. Romualdez who are closely identified with then President Marcos, being nephews of the former First Lady.[10]

On August 18, 1998, then Ombudsman Aniano A. Desierto issued the assailed Resolution which dismissed the complaint on two grounds: lack of probable cause and prescription of the offense, disposing in the following fashion:

PREMISES CONSIDERED, it is respectfully recommended that the charges against all respondents be DISMISSED and that a study be conducted to determine if the government could still recover the questioned loan from the joint and several signatures of Angel G. Romualdez and Jose Manuel G. Romualdez.

SO RESOLVED.[11]

The Ombudsman reasoned out:

The claim of complainant that there was extraordinary speed in the loan approval, a mark of behest loan was not supported by evidence. While it is true that the loan was approved on December 29, 1980, no evidence had been presented that the loan application was filed on December 15, 1980. On the contrary, December 15, 1980 was the date of the Evaluation Report on the loan application of Agretonics. Page 4 of the evaluation report shows that the security for the loan was appraised in November 1980 while the balance sheet of Agretonics as of October 31, 1980 was submitted to show the financial condition of the borrower. These facts clearly show that the date of the loan application was not December 15, 1980.

Republic Act No. 3019, specifically Section 3(e) thereof, punishes acts which cause undue injury to any party, including the government, or giving any private party any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence. While Section 3(g) punishes the act of entering on behalf of the Government into any contract or transaction manifestly and grossly disadvantageous to the same.

A perusal of the records revealed that the loan entered into by DBP and Agretronics is not grossly disadvantageous to the government. The allegation of the complaint that the questioned transaction caused damage to the government was negated by the evidence on record. DBP Board Resolution No. 296 which approved the loan transaction clearly shows that various safety measures were imposed by the DBP Board of Governors to protect the interest of the Bank. The loan granted was \$2,866,667 (equivalent to P21,500,000 at \$1.00: P7.50) and the same was secured:

1)

By first mortgage on the following assets registered in the name of Agretronics:

a)

Land

P 5,487,000

b)

Building and improvements

8,887,000

c)

Machinery and equipment

14,587,680

d)

Transportation equipment

35,000

e)

Furniture and office equipment

692,270

Total =

P29,690,950

2)

By joint and several signatures with Agretronics, Inc. of Messrs. Angel G. Romualdez and Jose Manuel G. Romualdez;

3)

By assignment to DBP of the company's export sales proceeds in amounts sufficient to meet the company's

yearly amortizations on the loan;

4)

By an assignment to DBP of not less than 67% of the total subscribed and outstanding voting shares of the company.

Assuming that the government suffered injury by reason of the transaction under controversy, the public respondents herein cannot be made answerable for violation of Section 3(e) of R.A. 3019, in view of the absence of any evidence to prove that the respondents acted with evident bad faith, manifest partiality or gross inexcusable negligence in the discharge of their official duties.

Finally, the provision of Section 11 of the R.A. 3019 should be taken into consideration, providing that:

Section 11. Prescription of offenses. - All offenses punishable under this Act shall prescribe in ten years.

The aforequoted provision, however, was amended by B.P. Blg. 195 dated March 16, 1982, increasing the period of prescription to fifteen (15) years. Therefore, the applicable prescriptive period in the case at bar is ten (10) years since the act complained of was committed in 1980 or prior to the amendment.

The Supreme Court in the case of *People vs. Sandiganbayan*, 211 SCRA 241, ruled that in the computation of the prescriptive period, the same should be reckoned either from the date of the commission of the violation of the law, or if the same is not known, at the time of the discovery thereof.

Considering that pronouncement, in the case of *People vs. Dinsay*, C.A. 40 O.G. 12[th] Supplement 50, that when the series of transactions were by public instruments, like the case at bar, the period of prescription shall commence to run from the date of the execution of the public instruments.

Therefore, the questioned transaction herein involved has already been barred by prescription considering the lapse of more than ten (10) years from the date of the questioned transaction which happened in 1980.[12] (Underscoring supplied)

Petitioner Committee remains staunch in its view of the behest character of the subject loan. It assails the findings and conclusions of the Ombudsman as being vividly tainted with grave abuse of discretion. Hence, through the present petition, petitioner prays for the reversal of the assailed Resolution and for the issuance of an Order directing the Ombudsman to file the necessary information against respondents before the appropriate forum.

Issues

Petitioner Committee hoists two issues for Our consideration:

WHETHER OR NOT PUBLIC RESPONDENT OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AND/OR ACTED IN EXCESS OF JURISDICTION IN HOLDING THAT THERE WAS NO CAUSE TO PROCEED AGAINST ANY OF THE PRIVATE RESPONDENTS; AND

WHETHER OR NOT PUBLIC RESPONDENT OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AND/OR ACTED IN EXCESS OF JURISDICTION IN HOLDING THAT THE OFFENSE HAD ALREADY PRESCRIBED.[13] (Underscoring supplied)

Our Ruling

The petition is meritorious.

Ombudsman is subject to judicial review when there is grave abuse of discretion.

Ordinarily, the Court will not interfere with the Ombudsman's determination of the existence or non-existence of probable cause. The rule, however, finds no application if there is grave abuse of discretion,[14] or if the action taken is done in a manner contrary to the dictates of the Constitution, law or jurisprudence.[15]

We have to make it clear at the outset that it is not for the Ombudsman to try the case. He is merely supposed to establish whether there exists probable cause to file an information in court against the accused. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.[16] Considering the quantum of evidence needed to support a finding of probable cause, We hold that the Ombudsman gravely abused his discretion when he found such to be lacking here, apart from declaring that the offense charged has prescribed.

Probable cause undoubtedly exists.

Preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. Its purpose is for the presentation of such evidence as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. It is a means of discovering the persons who may be reasonably charged with a crime. The validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidences, are better ventilated during the trial proper than at the preliminary investigation level.[17]

The Ombudsman held that the alleged extraordinary speed in the loan approval was not supported by evidence. However, questions as to the existence of so-called extraordinary speed as a mark of a behest loan and what constitutes extraordinary speed are matters best left to the trial court to decide. This it would do upon the evidence presented before it. Such evidence would not only show the time periods involved in the subject transaction but also what is considered as normal speed for the grant of loans in the world of banking.

The Ombudsman also based his dismissal of the complaint on claims that standard banking procedures were followed. Again, such claims should be presented and proved before the trial court who would have an opportunity to discern from testimony and other pieces of evidence the usual practice in the processing of loan applications and whether this was complied with.

The Committee and private respondents present conflicting accounts on whether the subject loan was undercollateralized. While private respondents point to several first mortgages on both real and personal property, the Committee claims that not all the items identified as collaterals actually exist. What is more, the securities originally promised were allegedly never put up. Clearly, these conflicting claims of the Committee and private respondents should be resolved in a full-blown trial.

Private respondents Romualdez balk at their being branded as cronies. They insist that they are only distant nephews of former First Lady Imelda Marcos. This is irrelevant. Cronies need not even be distant relatives of the Marcoses. It is of no consequence that they are merely distant nephews. They may, indeed, not be nephews at all yet still be cronies. Again, these are things that should be threshed out during trial.

At any rate, there is no need for the presence of all the enumerated characteristics of a behest loan under Memorandum Order No. 61. A few will suffice. From their investigation, the Committee found that there exist several markers of a behest loan: undercapitalization, undercollateralization, extraordinary speed in loan release as well as the possibility that the incorporators and principal officers of Agretronics were cronies.

It is argued, however, that the Ombudsman's findings should be respected. It is true that the Ombudsman decides whether probable cause exists. But while respondent Ombudsman asks that We respect his findings, it behooves said official to accord also a proper modicum of respect towards the expertise of the Committee, which was formed precisely to determine the existence of behest loans.

Findings of facts of administrative bodies charged with their specific field of expertise are afforded great weight by the courts. Absent a substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.[18]

Considering the membership of the Committee, its recommendation should be given great weight as they are undoubtedly experts in the field of banking. The Committee boasts of representatives from the Department of Finance, the Philippine National Bank, the Asset Privatization Trust, the Philippine Export and Foreign Loan Guarantee Corporation and even the DBP itself. By reason of their special knowledge and expertise, the Committee is in a better position to determine whether standard banking practice were, indeed, followed in the approval of a loan or what would generally constitute as sufficient security for a given loan.

The Ombudsman also found that there is no evidence of damage to the government as a result of the transaction between Agretronics and DBP.

That is absurd. The resulting damage to the government of Agretronics' transaction with DBP is clear. As of June 1986, Agretronics' total obligation to the DBP amounted to around P154,969,000.00. Upon foreclosure and sale of the remaining assets of Agretronics, the government only realized the measly sum of around P1,942,000.00. The fact that the loan was not paid back is, by itself, enough evidence of damage to the government.

Probable cause is not an opaque concept in our jurisdiction. Continuing accretions of case law reiterate that they are facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the persons involved. Other jurisdictions utilize the term man of reasonable caution or the term ordinarily prudent and cautious man.

Petitioner Committee, with its members from the banking sector, is in a better position to determine that the loan bears the earmarks of a behest loan.

To reiterate, probable cause need not be based on clear and convincing evidence of guilt. Neither is it based on evidence establishing guilt beyond reasonable doubt or on evidence establishing absolute certainty of guilt. It simply implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.[19] A finding of probable cause need only rest on evidence showing that more likely than not a crime has been committed and was committed by the suspects..[20] There is clearly probable cause here for the suspects to stand trial.

Offense charged has not prescribed.

The Ombudsman also grounded his dismissal of petitioner's complaint on the supposed prescription of the offense.

Again, the Ombudsman is mistaken. The offense charged has not prescribed. The reckoning point for the prescriptive period of offenses in relation to R.A. No. 3019 is well-settled. In the 1999 case of Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Hon. Desierto,[21] it was ruled that:

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.[22]

The ruling was echoed in 2001 in another Presidential Ad Hoc Fact-Finding Committee on Behest Loans v.

Ombudsman Desierto,[23] where the Court explained:

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. Moreover, no person would have dared to question the legality of those transactions. Thus, the counting of the prescriptive period commenced from the date of discovery of the offense in 1992 after an exhaustive investigation by the Presidential Ad Hoc Committee on Behest Loans.[24] (Underscoring supplied)

The Court has applied the same doctrine in recent cases[25] involving the PCGG and the Ombudsman.

Based on the foregoing, the 10-year prescriptive period should be reckoned from the date of the discovery of the offense.[26] In the case under review, the violation should be deemed discovered on June 14, 1996, date of filing of the complaint with respondent Ombudsman after an exhaustive investigation by petitioner Committee.[27] It is now settled that the filing of such complaint for preliminary investigation tolls the running of the prescriptive period,[28] hence, there is no legal obstacle in filing the corresponding information in Court.

WHEREFORE, the petition is GRANTED. The assailed Resolution is REVERSED and SET ASIDE. The Ombudsman is ORDERED to file in the proper court the necessary information against private respondents Angel G. Romualdez, Jose G. Romualdez and Jose Manuel Romualdez.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, and Brion, JJ., concur.
Corona, J., on leave.

[1]Rollo, pp. 26-32.

[2] 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 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, 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.

[3]Rollo, pp. 33-34.

[4] Id. at 34. Administrative Order No. 13.

[5] Id. at 35-36.

[6]Id.

- [7] Sometimes referred to in the records as "Agretonics."
- [8] Stamp bearing the exact date of filing illegible on copy of complaint submitted as annex to petition.
- [9] Rollo, pp. 37-41.
- [10] Id. at 38-39.
- [11] Id. at 31.
- [12] Id. at 29-31.
- [13] Id. at 9-10.
- [14] Tetangco v. Ombudsman, G.R. No. 156427, January 20, 2006, 479 SCRA 249, 253.
- [15] Pilipino Telephone Corporation v. Pilipino Telephone Employees Association, G.R. No. 160058, June 22, 2007, 525 SCRA 361, 376-377; Salinguin v. Commission on Elections, G.R. No. 166046, March 23, 2006, 485 SCRA 219; Benito v. Commission on Elections, G.R. No. 134913, January 19, 2001, 349 SCRA 705.
- [16] Webb v. Drilon, G.R. No. 121234, August 23, 1995, 247 SCRA 652, 676.
- [17] Drilon v. Court of Appeals, G.R. No. 115825, July 5, 1996, 258 SCRA 280, 286.
- [18] Juan v. Commission on Elections, G.R. No. 166639, April 24, 2007, 522 SCRA 119, 129.
- [19] Ramiscal, Jr. v. Sandiganbayan, G.R. Nos. 169727-28, August 18, 2006, 499 SCRA 375, 395.
- [20] Webb v. Drilon, G.R. No. 121234, August 23, 1995, 247 SCRA 652, 675.
- [21] 375 Phil. 697 (1999).
- [22] Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Hon. Desierto, id. at 724.
- [23] 415 Phil. 723 (2001).
- [24] Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman Desierto, id. at 729-730.
- [25] Orlando L. Salvador v. Placido L. Mapa, G.R. No. 135080, November 28, 2007; Presidential Commission on Good Government v. Hon. Aniano Desierto, G.R. No. 139296, November 23, 2007; Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman, G.R. No. 138142, September 19, 2007; Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Hon. Ombudsman Aniano Desierto, G.R. No. 135687, July 24, 2007, 528 SCRA 9; Presidential Commission on Good Government v. Desierto, G.R. No. 139675, July 21, 2006, 496 SCRA 112; Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman, G.R. No. 135350, March 3, 2006, 484 SCRA 16; Atty. Salvador v. Hon. Desierto, 464 Phil. 988 (2004); Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman Desierto, 418 Phil. 715 (2001).
- [26] Orlando L. Salvador v. Placido L. Mapa, G.R. No. 135080, November 28, 2007; Presidential Commission on Good Government v. Hon. Aniano Desierto, G.R. No. 139296, November 23, 2007; Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman, G.R. No. 138142, September 19, 2007.
- [27] Rollo, pp. 245-249.
- [28] Brillante v. Court of Appeals, G.R. Nos. 118757 & 121571, October 19, 2004, 440 SCRA 541; Ingco v. Sandiganbayan, G.R. 112584, May 23, 1997, 272 SCRA 563; Francisco v. Court of Appeals, 207 Phil. 471 (1983).

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