

THE PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS AND PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, PETITIONERS, VS. OMBUDSMAN ANIANO A. DESIERTO, ALICIA LL. REYES, L...

G.R. No. 138142. September 19, 2007

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for certiorari[1] seeking to nullify the resolution of then Ombudsman Aniano A. Desierto dated October 12, 1998[2] dismissing the complaint against private respondents in OMB-0-98-0364, as well as the order dated January 5, 1999[3] denying the motion for reconsideration. On February 17, 1998, a complaint was filed by Orlando L. Salvador in his official capacity as consultant of petitioner Presidential Commission on Good Government (PCGG) detailed with the Presidential Ad Hoc Fact-Finding Committee on Behest Loans (Fact-Finding Committee) against the following private respondents, all former officers of the Development Bank of the Philippines (DBP) and Pagdanan Timber Products, Inc. (PTPI):

- Leonides S. Virata (chairperson of the Board of Governors of DBP)
- Alicia Ll. Reyes (manager of Industrial Projects, Department I of DBP)
- Rodolfo D. Manalo and Verden C. Dangilan (both executive officers of DBP),[4]
- Jose Y. Campos
- Francisco de Guzman
- Ismael A. Mathay, Jr. and
- Erwin G. Vorster[5]

The latter four were officers and stockholders of PTPI.

All eight were charged with violation of Section 3 (e) and (g) of RA 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

In our resolution dated August 29, 2001, we dismissed the case insofar as private respondent Virata was concerned since he had passed away.

Petitioner Presidential Ad Hoc Fact-Finding Committee on Behest Loans was created pursuant to Administrative Order No. 13 dated October 8, 1992 issued by former President Fidel V. Ramos, with the chairman of PCGG as chairman, the Solicitor General as vice chairman and one representative each from the Office of the Executive Secretary, Department of Finance, Department of Justice, DBP, Philippine National Bank, Asset Privatization Trust, Office of the Government Corporate Counsel and the Philippine Export and Foreign Loan Guarantee

Corporation as members. It was tasked to inventory all behest loans, identify the lenders and borrowers and recommend the course of action that the government should take to recover such loans.

On November 9, 1992, President Ramos issued Memorandum Order No. 61 which provided the following criteria to indicate a behest loan:

- it was undercollateralized;
- the borrower corporation was undercapitalized;
- direct or indirect endorsement by high government officials like presence of marginal notes;
- stockholders, officers or agents of the borrower corporation were 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 was sought and
- extraordinary speed at which the loan release was made.

The Fact-Finding Committee determined that the loan transaction between DBP and PTPI bore the characteristics of a behest loan. Specifically, petitioners alleged that PTPI was a joint venture of Anchor Estate Corporation and Jardine Group of Companies. It was organized on August 9, 1974 to take over the properties acquired by DBP from Fil-Eastern Wood Industries, Inc. On the same date, PTPI applied for a foreign guarantee loan in the amount of US \$13.5 million to purchase these and other brand-new equipment such as sawmill, veneering plant and logging equipment. The financial accommodation was approved on August 14, 1974 or after only five days.[6]

According to petitioners, PTPI had no sufficient capital at the time the loan was granted since its paid-up capital amounted to P25,000 only. However, it was able to obtain additional accommodations and restructuring of accounts up to July 18, 1979. As of June 30, 1986, it had an outstanding and unpaid balance of P454.85 million.[7] In addition, the loan was undercollateralized since there were no existing assets offered as security except for assets to be acquired using the loan proceeds, assignment of the forest concessions of PTPI and the joint and several undertaking of MacMillan Jardine. Petitioner claimed that the processing of the original loan application was attended with haste and that there was a deviation of the loan funds to other purposes.[8] They contended that there was evidence that the loan was granted at the urging of former President Marcos.[9] They also asserted that DBP leased the properties it acquired by foreclosure to PTPI beyond five years which was a violation of Section 25 of the General Banking Act.[10]

Accordingly, a complaint was filed in the Office of the Ombudsman for violation of RA 3019, section 3 (e) and (g). In a resolution dated October 12, 1998, the Office of the Ombudsman dismissed the complaint. It held that :

- (1) there was no evidence that the loan was granted at the behest, command or urging of previous government officials;
- (2) PTPI complied with the DBP requirement that it would increase its paid-up capital from P25,000 to P1 million;
- (3) the loan was not under collateralized and
- (4) the complaint was barred by prescription. It denied reconsideration in an order dated January 5, 1999.

Hence this petition for certiorari. The issue for our resolution is whether the Ombudsman committed grave abuse

of discretion in (1) holding that the offenses charged in the complaint had already prescribed and (2) dismissing the complaint for lack of probable cause to indict private respondents for violation of Section 3 (e) and (g) of RA 3019. Had the Offenses Prescribed. The Ombudsman held that the ten-year prescriptive period commenced on the date of the violation of law under Section 11 of RA 3019. The transaction occurred in 1974. Hence, the complaint was allegedly barred by prescription when it was filed on February 17, 1998. This issue had previously been resolved in Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto.[11] The Court held:

Since the law alleged to have been violated, i.e., paragraphs (e) and (g) of Section 3, R.A. No. 3019, as amended, is a special law, the applicable rule 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 be not known at the time, from the discovery thereof and 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. This simply means that if the commission of the crime is known, the prescriptive period shall commence to run on the day it was committed.

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.[12] (Emphasis supplied)

This doctrine was reiterated in subsequent cases also involving petitioners and public respondent and is now well-settled.[13] Therefore, the counting of the prescriptive period commenced from the date of discovery of the offenses in 1992 after the investigation of the Fact-Finding Committee.[14] When the complaint was filed in 1998 or after six years, prescription had not set in.[15] Was There Probable Cause? The Ombudsman did not act with grave abuse of discretion when he found that there was no evidence to establish probable cause to sustain the charges against private respondents. Section 3 (e) and (g) of RA 3019 provide:

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:

xxx xxx xxx

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. xxx xxx xxx

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.[16]

Grave abuse is defined as:

... such capricious and whimsical exercise of judgment on the part of the public officer concerned which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[17]

The Ombudsman explained his reasons for dismissing the complaint:

There is no evidence on record to prove that the loan was granted to PTPI at the behest, command or urging by previous government officials. As appearing from its Corporate Profile, PTPI is a company organized on August 9, 1974 to take over the properties acquired by DBP from Fil-Eastern Wood Industries, Inc. (FEWI). The foreign currency loan of US \$13.5 million will be used to purchase brand new sawmill and veneering plant and additional logging equipment since the old equipment were found to be obsolete. Although at the inception or at the time the loan was applied, its paid-up capital amounted to P25,000.00 only, DBP required, under Board Resolution No. 2415, that prior to the issuance of letter of guarantee and execution of deed of sale, in order to cover the pre-operating expenses, PTPI shall first increase its paid-up capital from P25,000.00 to P1.0 million. The traditional equity requirement equivalent to 25% of investment was waived in view of the joint and several signature of Macmillan Jardine and the guarantee of Macmillan Bloedel and Jardine Matheson. In addition, PTPI should also comply with DBP's requirement that the 80% collateral ratio is maintained. Moreover, the loan granted to PTPI was not undercollateralized. Based on the evidence on record, the financial accommodation was secured by the assets to be acquired; the forest concession and the joint and several signature of Macmillan Jardine. In fact, DBP Board of Governors Chairman Leonides S. Virata stated in his Memorandum to then President Ferdinand E. Marcos, that "the guarantee being requested will be more than the value of the assets since the working capital requirement of about US \$1.5 million and pre-operating expenses of another US \$350 million will be funded out of the US\$14 million." [18]

Under Sections 12 and 13, Article XI of the 1987 Constitution and RA 6770 (The Ombudsman Act of 1989), 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. [19] It has been the consistent ruling of the Court not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers as long as his rulings are supported by substantial evidence. [20] Envisioned as the champion of the people and preserver of the integrity of public service, he has wide latitude in exercising his powers and is free from intervention from the three branches of government. This is to ensure that his Office is insulated from any outside pressure and improper influence. [21]

We find no reason to deviate from this rule.

First, the loan accommodation was not undercollateralized. The assets to be acquired by PTPI would serve as collateral for the loan.

The value of these assets, when added to PTPI's existing properties (which would also serve as collaterals) was higher than the value of the loan.

Second, PTPI complied with the DBP requirement to increase its paid-up capital from P25,000 to P1 million.

Third, the loan proposal was studied and evaluated by DBP. There was no showing that the DBP officials did not exercise sound business judgment in approving said loan.

Fourth, petitioners did not point out circumstances or overt acts indicating a criminal design on the part of the DBP and PTPI officials. In fact, they did not specify the particular roles or participation of each of the private respondents in the commission of the alleged violation of RA 3019. [22] Last, the fact that the loan was approved after only five days did not necessarily prove manifest partiality or evident bad faith because there was full compliance with banking laws, practices and procedures. [23]

In sum, from the facts presented, we cannot conclude that the Ombudsman committed grave abuse of discretion in finding lack of probable cause. The complaint against the private respondents should therefore be dismissed.

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 should he find it otherwise, to continue with the inquiry; or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance.[24]

In fact, the Ombudsman has the power to dismiss a complaint without going through a preliminary investigation.[25]

WHEREFORE, the petition is hereby DISMISSED. The resolution dated October 12, 1998 and order dated January 5, 1999 of respondent Ombudsman in OMB-0-98-0364 are AFFIRMED.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

[1] Under Rule 65 of the Rules of Court.[2] Penned by Graft Investigating Officer I Marydel B. Jarlos and approved by the Ombudsman; rollo, pp. 30-34.[3] Id., pp. 35-38.

[4] Respondent Dangilan was Executive Officer for Agriculture from 1966 to 1981. Afterwards, he became Executive Officer in charge of the Special Management Unit IV. Id., pp. 30, 170, 171, 173.[5] Respondent Vorster never submitted any pleading before this Court.[6] Under DBP Board Resolution No. 2415, as amended by Board Resolution No. 3062 dated October 16, 1974; id., p. 31.[7] Id.

[8] Id., p. 7.[9] Id., p. 462.

[10] Id., pp. 464-465.[11] G.R. No. 130140, 25 October 1999, 317 SCRA 272.[12] Id., pp. 296-297.

[13] Presidential Commission on Good Government (PCGG) v. Hon. Aniano A. Desierto, G.R. No. 140231, 9 July 2007; Presidential Commission on Good Government (PCGG) v. Desierto, G.R. No. 139675, 21 July 2006, 496 SCRA 112; Atty. Salvador v. Hon. Desierto, 464 Phil. 988 (2004); PAFFC on Behest Loans v. Ombudsman Desierto, 418 Phil. 715 (2001); Pres. Ad Hoc Fact Finding Com. On Behest Loans v. Ombudsman Desierto, 415 Phil. 135 (2001); Presidential Commission on Good Government v. Desierto, G.R. No. 140232, 19 January 2001, 349 SCRA 767; Presidential Commission on Good Government v. Desierto, G.R. No. 140358, 8 December 2000, 347 SCRA 561.

[14] According to petitioners, the Fact-Finding Committee conducted its investigation during the period of October 1992 to January 1994 and submitted its report to President Ramos on March 1994; rollo, p. 25.[15] This is true whether the prescriptive period is ten or fifteen years. In *People v. Pacificador*, G.R. No. 139405, 13 March 2001, we explained:

“Section 11 of R.A. No. 3019, as amended by B.P. Blg. 195, provides that the offenses committed under the said statute shall prescribe in fifteen (15) years. It appears however, that prior to the amendment of Section 11 of R.A. No. 3019 by B.P. Blg. 195 which was approved on March 16, 1982, the prescriptive period for offenses punishable under the said statute was only ten (10) years. The longer prescriptive period of fifteen (15) years, as provided in Section 11 of R.A. No. 3019 as amended by B.P. Blg. 195, does not apply in this case for the reason that the amendment, not being favorable to the accused (herein private respondent), cannot be given retroactive effect. Hence the crime prescribed on January 6, 1986 or ten (10) years from January 6, 1976.”

[16] In *Singian, Jr. v. Sandiganbayan* (G.R. Nos. 160577-94, 16 December 2005, 478 SCRA 348), we enumerated the elements of these offenses: The elements of the offense defined under Section 3(e) of Rep. Act No. 3019 are the following:

- 1) that the accused are public officers or private persons charged in conspiracy with them;
- 2) that the prohibited act/s were done in the discharge of the public officer's official, administrative or judicial functions;
- 3) that they cause undue injury to any party, whether Government or a private person;
- 4) that such injury is caused by giving any unwarranted benefits, advantage or preference to such party; and
- 5) that the public officers acted with manifest partiality, evident bad faith or gross inexcusable negligence.

To be indicted of the offense under Section 3(g) of Rep. Act No. 3019, the following elements must be present:

- 1) that the accused is a public officer;
- 2) that he entered into a contract or transaction on behalf of the government; and
- 3) that such contract or transaction is grossly and manifestly disadvantageous to the government. (Id., pp. 358-359, citations omitted.)

[17] *Soria v. Desierto*, G.R. Nos. 153524-25, 31 January 2005, 450 SCRA 339, 345, citing *Duero v. Court of Appeals*, G.R. No. 131282, 4 January 2002, 373 SCRA 11, 17; *Perez v. Office of the Ombudsman*, G.R. No. 131445, 27 May 2004, 429 SCRA 357.

[18] *Rollo*, pp. 75-76, citations omitted. [19] Sections 12 and 13, Article XI of the 1987 Constitution provide:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and results thereof. Sec. 13. The Office of the Ombudsman shall have the following powers, functions, and duties: (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient. xxx Section 15 of RA 6770 states: 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

[20] *Pres. Ad Hoc Fact Finding Com. On Behest Loans v. Ombudsman Desierto*, 415 Phil. 135, 142 (2001), citations omitted. [21] *Espinosa v. Ombudsman*, G.R. No. 135775, 19 October 2000, 343 SCRA 744, 746. [22] It is noteworthy that in *Republic v. Sandiganbayan* (G.R. No. 84895, 4 May 1989, 173 SCRA 72), the Court declared: ... [T]he PCGG issued a resolution dated May 28, 1986, granting immunity from both civil and criminal prosecutions to Jose Y. Campos and his family. The pertinent provisions of the resolution read as follows:

3.0. In consideration of the full cooperation of Mr. Jose Y. Campos to this Commission, his voluntary surrender of the properties and assets disclosed and declared by him to belong to deposed President Ferdinand E. Marcos to the Government of the Republic of the Philippines, his full, complete and truthful disclosures, and his commitment to pay a sum of money as determined by the Philippine Government, this Commission has decided and agreed: 3.1. To grant to Mr. Jose Y. Campos, his family, Mariano K. Tan and Francisco de Guzman immunity from criminal prosecutions, as provided in Section 5 of Executive Order No. 14. xxx

Undoubtedly, this resolution embodies a compromise agreement between the PCGG on one hand and Jose Y.

Campos on the other. Hence, in exchange for the voluntary surrender of the ill-gotten properties acquired by the then President Ferdinand E. Marcos and his family which were in Jose Campos' control, the latter and his family were given full immunity in both civil and criminal prosecutions. (Id., p. 83.) (Emphasis supplied) [23] Pres. Ad Hoc Fact-Finding Com. on Behest Loans v. Ombudsman Desierto, supra note 13. [24] PCGG v. Desierto, supra note 13. [25] Pres. Ad Hoc Fact-Finding Com. On Behest Loans v. Ombudsman Desierto, supra note 13. Sec. 2 of Administrative Order No. 07 of the Office of the Ombudsman, otherwise known as the "Rules of Procedure of the Office of the Ombudsman" states:

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 agency which has jurisdiction over the case;
- d) forwarded to the appropriate officer or official for fact-finding investigation;
- e) referred for administrative adjudication;
- f) subjected to preliminary investigation."

In his Manifestation and Motion dated December 23, 2002, the Ombudsman stated that the case could be referred back to his office for the conduct of preliminary investigation in accordance with the decision in the aforementioned Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto (Rollo, pp. 296-297). However, we decline to do this since we have already declared in PCGG v. Desierto (supra note 13; PCGG v. Desierto, supra note 13) that when it is evident that the merits of the complaint had already been thoroughly examined by the Ombudsman, it would not be right to subject the private respondents to an unnecessary and prolonged anguish.

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