PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), REPRESENTED BY ORLANDO L. SALVADOR, PETITIONER, VS. HON. ANIANO A. DESIERTO, OFFICE OF THE OMBUDSMAN-MANILA, CONCERNED MEMBERS...

G.R. NO. 140231. July 09, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

The Presidential Commission on Good Government[1] (petitioner) filed the herein Petition for Certiorari under Rule 65 of the Rules of Court assailing the Resolution[2] dated May 21, 1999 of Ombudsman Aniano A. Desierto in OMB No. 0-95-0890 which dismissed petitioner's criminal complaint for violation of Section 3(e) and (g) of Republic Act (R.A.) No. 3019[3] against concerned members of Philippine National Bank (PNB) Board of Directors and Northern Cotabato Sugar Industries, Inc. (NOCOSII) officers, namely: Reynaldo Tuason, Carlos Cajelo, Jose Barquillo, Jr., Loreto Solsona, Primicias Banaga and John Does (respondents); and the Order[4] dated July 23, 1999 which denied petitioner's Motion for Reconsideration.

The facts:

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 (Committee) which was tasked to inventory all behest loans, determine the parties involved and recommend whatever appropriate actions to be pursued thereby.

On November 9, 1992, President Ramos issued Memorandum Order No. 61 expanding the functions of the Committee to include the inventory and review of all non-performing loans, whether behest or non-behest.

The Memorandum set the following criteria to show the earmarks of a "behest loan," to wit: "a) it is undercollaterized; b) the borrower corporation is undercapitalized; c) a direct or indirect endorsement by high government officials like presence of marginal notes; d) the stockholders, officers or agents of the borrower corporation are identified as cronies; e) a deviation of use of loan proceeds from the purpose intended; f) the use of corporate layering; g) the non-feasibility of the project for which financing is being sought; and, h) the extraordinary speed in which the loan release was made."

Among the accounts referred to the Committee's Technical Working Group (TWG) were the loan transactions between NOCOSII and PNB.

After it had examined and studied all the documents relative to the said loan transactions, the Committee classified the loans obtained by NOCOSII from PNB as behest because of NOCOSII's insufficient capital and inadequate collaterals. Specifically, the Committee's investigation revealed that in 1975, NOCOSII obtained loans by way of Stand-By Letters of Credit from the PNB; that NOCOSII was able to get 155% loan value from the offered collateral or an excess of 85% from the required percentage limit; that the plant site offered as one of the collaterals was a public land contrary to the General Banking Act; that by virtue of the marginal note of then

President Marcos in the letter of Cajelo, NOCOSII was allowed to use the public land as plant site and to dispense with the mortgage requirement of PNB; that NOCOSII's paid-up capital at the time of the approval of the guaranty was only P2,500,000.00 or only about 6% of its obligation.

Based on the Sworn Statement of PCGG consultant Orlando Salvador, petitioner filed with the Office of the Ombudsman the criminal complaint against respondents. Petitioner alleges that respondents violated the following provisions of Section 3 (e) and (g) of R.A. No. 3019:

> 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 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
> 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.

The respondents failed to submit any responsive pleading before the the Ombudsman, prompting Graft Investigator Officer (GIO) I Melinda S. Diaz-Salcedo to resolve the case based on the available evidence.

In a Resolution dated January 12, 1998 in OMB-0-95-0890, GIO Diaz-Salcedo recommended the dismissal of the case on the ground of insufficiency of evidence or lack of probable cause against the respondents and for prescription of the offense. Ombudsman Desierto approved the recommendation on May 21, 1999.[5]

Petitioner filed a Motion for Reconsideration[6] but it was denied by GIO Diaz-Salcedo in the Order dated July 9, 1999, which was approved by Ombudsman Desierto on July 23, 1999.[7]

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

> A)The Respondent Ombudsman gravely abused his discretion or acted without or in excess of jurisdiction in dismissing the complaint filed by the Petitioner on the ground of Prescription considering that:
>
> - THE RIGHT OF THE STATE TO RECOVER BEHEST LOANS AS ILL-GOTTEN WEALTH IS IMPRESCRIPTIBLE UNDER ARTICLE XI, SECTION 15, OF THE 1987 CONSTITUTION;
>
> - PRESCRIPTION DOES NOT RUN IN FAVOR OF A TRUSTEE TO THE PREJUDICE OF THE BENEFICIARY;
>
> - THE OFFENSES CHARGED ARE IN THE NATURE OF CONTINUING CRIMES AS THE STATE CONTINUES TO SUFFER INJURY ON EACH DAY OF DEFAULT IN PAYMENT. HENCE, PRESCRIPTION DOES NOT APPLY;
>
> - PRESCRIPTION AS A MATTER OF DEFENSE MUST BE PLEADED, OTHERWISE, IT IS DEEMED WAIVED;
>
> - PRESCRIPTION HAS NOT BEEN INVOKED IN THIS CASE. SINCE IT MAY BE WAIVED OR MAY NOT BE SET IN DEFENSE, THE OMBUDSMAN CANNOT MOTU PROPRIO DISMISS THE COMPLAINT ON GROUND OF PRESCRIPTION;
>
> - ARTICLE 91 OF THE REVISED PENAL CODE WHICH ADOPTS THE "DISCOVERY RULE" SHALL

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APPLY IN THIS CASE;

- THE LOAN CONTRACT AS OTHER LOAN TRANSACTIONS IN THE NATURE OF BEHEST LOANS ARE KEPT SECRET.[8]

B) The respondent Ombudsman gravely abused his discretion or acted without or in excess of jurisdiction in not finding that a probable cause exists for violation by the private respondents of section 3 (e) and (g) of RA 3019 despite the presence of clear, overwhelming and unrebutted evidence.[9]

In its Comment, the Ombudsman, without delving on the issue of prescription, in view of Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto (1999),[10] contends that its finding of insufficiency of evidence or lack of probable cause against respondents deserves great weight and respect, and must be accorded full weight and credit.

No comment was filed by the rest of the respondents.

The issue before the Court is whether the Ombudsman committed grave abuse of discretion in ruling that: (a) the offense leveled against respondents has prescribed; and (b) no probable cause exists against respondents.

The petition is partly meritorious.

Respondent Ombudsman committed grave abuse of discretion in dismissing the subject complaint on the ground of prescription.

Respondents members of the PNB Board of Directors and Officers of NOCOSII are charged with violation of R.A. No. 3019, a special law. Amending said law, Section 4, Batas Pambansa Blg. 195,[11] increased the prescriptive period from ten to fifteen years.

The applicable law in the computation of the prescriptive period is Section 2 of Act No. 3326,[12] 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 not be 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.

The issue of prescription has long been laid to rest in the aforementioned Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,[13] where the Court held:

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 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 not be 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.[14]

The Court reiterated the above ruling in Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto (2001),[15] thus:

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> 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 (PCGG vs. Desierto, G.R. No. 140232, January 19, 2001, 349 SCRA 767; Domingo v. Sandiganbayan, supra, Note 14; Presidential Ad Hoc Fact Finding Committee on Behest Loans v. Desierto, supra, Note 16). 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.
>
> As to when the period of prescription was interrupted, the second paragraph of Section 2, Act No. 3326, as amended, provides that prescription is interrupted 'when proceedings are instituted against the guilty person.[16]

Records show that the act complained of was discovered in 1992. The complaint was filed with the Office of the Ombudsman on April 5, 1995,[17] or within three (3) years from the time of discovery. Thus, the filing of the complaint was well within the prescriptive period of 15 years.

On the issue of whether the Ombudsman committed grave abuse of discretion in finding that no probable cause exists against respondents, it must be stressed that the Ombudsman is empowered to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.[18] Settled is the rule that the Supreme Court will not ordinarily interfere with the Ombudsman's exercise of his investigatory and prosecutory powers without good and compelling reasons to indicate otherwise.[19] Said exercise of powers is based upon his constitutional mandate[20] and the courts will not interfere in its exercise. 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, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the office and the courts, in much the same way that courts will be swamped if they had to review the exercise of discretion on the part of public prosecutors each time they decided to file an information or dismiss a complaint by a private complainant.[21]

While there are certain instances when this Court may intervene in the prosecution of cases, such as, (1) when necessary to afford adequate protection to the constitutional rights of the accused; (2) when necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; (3) when there is a prejudicial question which is sub-judice; (4) when the acts of the officer are without or in excess of authority; (5) where the prosecution is under an invalid law, ordinance or regulation; (6) when double jeopardy is clearly apparent; (7) where the court has no jurisdiction over the offense; (8) where it is a case of persecution rather than prosecution; (9) where the charges are manifestly false and motivated by the lust for vengeance; and (10) when there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied,[22] none apply here.

After examination of the records and the evidence presented by petitioner, the Court finds no cogent reason to disturb the findings of the Ombudsman.

No grave abuse of discretion can be attributed to the Ombudsman. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction.[23] The exercise of power must have been done in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[24]

The disquisition of GIO Diaz-Salcedo, in dismissing the criminal complaint, as approved by Ombudsman Desierto, is worth-quoting, thus:

> Taking into consideration the provisions of Administrative Order No. 13 and Memorandum Order No. 61, the subject transactions can not be classified as behest.
>
> Evaluation of the records of this case reveals that the loans acquired by NOCOSII are actually foreign loans from Midland Bank Ltd. of London. There were no direct loans released by PNB but merely credit accommodations to guaranty the loans from Midland Bank.
>
> Anent complainant's claim that the collaterals offered by NOCOSII are insufficient, it should be noted that under PNB Board Resolution No. 689 dated July 30, 1975, one of the conditions imposed to NOCOSII was the execution of contract assigning all NOCOSII's share of sugar and molasses to PNB. NOCOSII was also required to increase its paid up capital at P5,000,000.00 a year starting April 30, 1976 up to April 30, 1980 or a total of P25,000,000.00. In addition thereto, the stockholders of NOCOSII were required to pledge or assign all their present and future shares to PNB while the accommodation remains standing. The proposed plant site which was offered as collateral was estimated to cost P307,903,000.00. The foregoing collaterals offered by NOCOSII are more than sufficient to cover the loans of P333,465,260.00.
>
> Furthermore, since the loan was approved by PNB, it presupposes that all the required clearances were submitted by NOCOSII including the clearance from the Office of the President; and having complied with all the documentary requirements, NOCOSII became entitled to the release of the loan.
>
> Complainant further alleged that NOCOSII was undercapitalized because its paid up capital was only P50,000,000.00. Complainant, however, failed to consider the other assets of NOCOSII which also form part of its capital. x x x[25]

The finding of insufficiency of evidence or lack of probable cause by the Ombudsman is borne out by the evidence presented by petitioner: firstly, there were no direct loans released by PNB but merely credit accommodations to guaranty NOCOSII's foreign loans from Midland Bank Ltd. of London; secondly, NOCOSII effectively came under government control since 1975 when PNB acquired a majority of the voting rights in NOCOSII and was given the power to appoint a comptroller therein; thirdly, PNB's credit accommodations to NOCOSII between 1975 and 1981 in the aggregate sum of P333,465,260.00 were sufficiently secured by: (1) the Assignment of Subscription Rights and/or Pledge of Shares dated September 5, 1975 whereby NOCOSII officers pledged their shares of stock, representing 90% of NOCOSII's subscribed capital stock, and assigned their subscription rights to future stocks in favor of PNB;[26] (2) the Deed of Assignment dated September 5, 1975 whereby NOCOSII assigned its share of sugar and molasses from the operation of its sugar central located at Barrio Mateo, Matalam, North Cotabato in favor of PNB;[27] (3) the Joint and Solidary Agreement dated September 5, 1975 whereby the NOCOSII officers bound themselves jointly and severally liable with the corporation for the payment of NOCOSII's obligations to PNB;[28] (4) the Real Estate Mortgage dated October 2, 1981 whereby NOCOSII mortgaged various buildings, machineries and equipments, otherwise known as the NOCOSII Sugar Mill Plant, with an estimated value of P307,593,000.00 in favor of PNB;[29] and (5) the Chattel Mortgage with Power of Attorney dated October 2, 1981 whereby NOCOSII mortgaged various transportation, agricultural and heavy equipment in favor of the PNB;[30] fourthly, PNB imposed other conditions, such as, (1) the submission by NOCOSII of the Central Bank's approval of its foreign loans; (2) the submission by NOCOSII of the required clearances from the National Economic Development Authority (NEDA) and/or Presidential Committee on Sugar Industry (PHILSUGIN); (3) submission by NOCOSII of its milling contracts covering a total area of not less than 14,000 hectares; (4) submission by NOCOSII of the government permit that the planters can cultivate the required hectarage; (5) further increase in NOCOSII's total paid-in capital to P25,000,000.00 at P5,000,000.00 a year starting April 30, 1976 up to April 30, 1980; (6) deposit in NOCOSII's account with the

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PNB of all cash proceeds of NOCOSII's foreign loans the disposition of which shall be subject to the bank's control; and, (7) designation by the PNB of its own representatives in NOCOSII's Board of Directors and its own comptroller who shall have the authority to control all disbursements and receipts of funds of NOCOSII.<sup style="co

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