

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT
(PCGG), REPRESENTED BY ORLANDO L. SALVADOR,
COMPLAINANT, VS. HON. ANIANO DESIERTO, OFFICE OF THE
OMBUDSMAN, CONCERNED DIRECTOR/OFFIC...**

G.R. No. 140232. January 19, 2001

Ponente: VITUG, J.

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VITUG, J.:

Assailed in this petition for certiorari are the resolution of 13 November 1998 and order of 09 July 1999 by Graft Investigation Officer I Melinda S. Diaz-Salcedo,[1] approved by Ombudsman Aniano A. Desierto on, respectively, 12 March 1999 and 23 July 1999.

On 08 October 1992, then President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential Ad-Hoc Fact Finding Committee on Loans[2] which was tasked to inventory all behest loans, determine the parties involved and recommend whatever appropriate actions to be pursued thereby. President Ramos later issued Memorandum Order No. 61, dated 09 November 1992, expanding the functions of the Committee to include the inventory and review of all non-performing loans, whether behest or non-behest. Among the accounts referred to the Technical Working Group (TWG) of the Committee, with Atty. Orlando Salvador as its coordinator, was the loan of the Basay Mining Corporation (BMC) from the Philippine National Bank (PNB) and the Development National Bank (DBP). The TWG classified these loans as behest loans, prompting the Presidential Commission on Good Government (PCGG) to file a complaint with the Office of the Ombudsman against the Board of Directors of the two banks, as well as against Rodolfo Cuenca of BMC, for violation of Section 3 (e and g) of Republic Act No. 3019. It was alleged that in 1977, BMC, then still known as CDCP Mining Corporation (CDCP),[3] obtained a loan from PNB by way of Stand-By Letters of Credit in the amount of US\$60 million at P8.00 per US\$1 or P480 million, through PNB Board Resolution No. 446, dated 15 March 1977, with a collateral of P350 million and a capital of P83,803,629.00. As of 31 December 1982, the loan amounted to P993,840,000.00 with a low collateral value of P424,240,000.00. CDCP was able to further obtain an additional loan amounting to P20 million per a marginal note of then President Ferdinand E. Marcos on the letter of respondent Cuenca asking for financial assistance for CDCP. Additional loans were also released by DBP to CDCP, secured by the "joint and several" signature of Cuenca and assignment to DBP of part of the sales proceeds of copper shipments.

The respondents failed to submit any responsive pleading before the Ombudsman, prompting Graft Investigation Officer Diaz-Salcedo to resolve the case based on the evidence on record.

In her assailed resolution, dated 13 November 1998, Diaz-Salcedo recommended the dismissal of the case. The recommendation was approved by Ombudsman Desierto on 12 March 1999. In her order, dated 09 July 1999, Diaz-Salcedo recommended the denial of the motion for reconsideration filed by the PCGG. The recommendation was approved by Ombudsman Desierto on 23 July 1999, prompting the PCGG to come to this Court for relief, alleging that:

"IN HOLDING THAT THE GUARANTEE LOAN WAS NOT UNDERCOLLATERALIZED, THAT THE BORROWER CORPORATION WAS NOT UNDERCAPITALIZED, THAT THERE WERE NO DIRECT ENDORSEMENT NOR MARGINAL NOTES FROM HIGH GOVERNMENT OFFICIALS, AND THAT THERE WERE NO CRONIES OF THEN PRESIDENT MARCOS AMONG THE STOCKHOLDERS AND/OR OFFICERS OF THE BORROWER CORPORATION, THE HON. OMBUDSMAN HAS COMMITTED A GRAVE ABUSE OF DISCRETION EQUIVALENT TO LACK OR IN EXCESS OF JURISDICTION AS HE COMPLETELY DISREGARDED THE EVIDENCE ON SAID ISSUES." [4]

"IN HOLDING THAT THE OFFENSES CHARGED AGAINST THE RESPONDENTS HAVE ALREADY PRESCRIBED, THE HON. OMBUDSMAN HAS COMMITTED A GRAVE ABUSE OF DISCRETION EQUIVALENT TO LACK OR IN EXCESS OF JURISDICTION AS HE COMPLETELY DISREGARDED THE LAWS AND JURISPRUDENCE ON THE ISSUE." [5]

In the Court's resolution of 15 November 1999, the case was referred by the Third Division to the Court En Banc. In its resolution of 22 November 1999, respondents were required to comment on the petition. Only respondents Placido Mapa, Jr., Gerardo Agulto, Jr., and Roño complied. The Court was informed of the demise of respondents Fernando Maramag, Jr., Renato D. Tayag and Ismael Reynoso.

Respondent Desierto filed a manifestation and motion, in lieu of comment, manifesting his willingness to have the case remanded to the Office of the Ombudsman. In its resolution of 07 March 2000, the Court required respondents to comment on the manifestation and motion of respondent Ombudsman. Respondents Mapa, Jr., and Roño submitted their compliance.

The Court, in the interest of the early resolution of this case, is now dispensing with the comment of the other respondents on both the petition and the manifestation and motion aforesaid of Ombudsman Desierto.

Prefatorily, the petition should have been dismissed for late filing. Petitioner received a copy of the assailed resolution on 08 April 1999. A motion for reconsideration was filed by the PCGG on 12 April 1999. On 06 August 1999, it received a copy of the order denying its motion for reconsideration. Pursuant to Section 65 of the 1997 Rules of Civil Procedure,[6] the petition should have been filed on 02 October 1999; instead, the petition was only posted on 05 October 1999. During the pendency of this case, however, the Court promulgated A.M. No. 00-2-03-SC (Further Amending Section 4, Rule 65 of the 1997 Rules on Civil Procedure), made effective on 01 September 2000, that provided:

"SEC. 4. When and where petition filed. -- The petition shall be filed not later than sixty (60) days from notice of judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion."

In view of the retroactive application of procedural laws,[7] the instant petition should now be considered timely filed.

On the substance of the petition, the issue of prescription has been settled by the Court in 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,[8] where the Court has declared:

"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." [9]

With respect to the charge that respondent Ombudsman has committed a grave abuse of discretion in holding that the financial assistance in question did not qualify as a "behest loan," the disquisition of Graft Investigation Officer Melinda S. Diaz-Salcedo, recommending the dismissal of the case, approved by Ombudsman Aniano A. Desierto, is quite exhaustive. Thus:

"A scrutiny of the records reveals that the loans subject of this case were actually foreign loans obtained from Marubeni Corporation (Tokyo and America). In effect what PNB had extended to CDCP Mining was an accommodation or guarantee in the form of Stand-By Letters of Credit.

"Even assuming that accommodations/guarantees fall within the context of loans under Administrative Order No. 13, the loans/accommodations extended to CDCP Mining were not undercollateralized as claimed by the complainant. Apart from the collateral of Php. 350 million and capital of Php 83,808,629.00, part of the condition of the loan was that CDCP Mining shall mortgage with PNB all its assets and properties, including assignment of leasehold mining rights, as well as the machinery and equipment to be purchased out of the proceeds of the loan.

"Complainant claimed that as of March 1983, CDCP's loan with PNB amounted to Php. 993,840,000.00 with collateral only of Php. 424,240,000.00. However, the Php 618.30 million unused Letters of Credit (Stand-by and deferred) was included in computing the outstanding balance of CDCP whereas the real balance then was only Php342.89 million. As borne out by the records, the total value of CDCP's properties then was Php 424,240,000.00 which far exceeded the real loan of Php 342.89 million. Aside from this, the loans obtained by CDCP were used in the purchase of equipment and plant construction. These properties which formed part of the collateral were more than enough to secure the Php342.89 million real loan.

"x x x x x x x x

"On the other hand, the additional loan of Php 20.0 million was released by PNB in March 1983, and the case having been filed in 1995, the same was filed within the prescriptive period provided for under Republic Act 3019. However, to qualify as a behest loan, two or more of the criteria mentioned under Memorandum Order No. 61 must be present.

"In the said loan, the Committee endorsed the account of CDCP Mining to be behest loan based on the following criteria:

"1. It is under collateralized;

"2. Stockholders, officers or agents of the borrower corporation are identified as cronies of then Pres. Marcos; and

"3. Direct or indirect endorsement by high government officials like presence of marginal note

"It should be noted that at that time the Php. 20 million loan was obtained, the outstanding balance of CDCP with PNB was Php. 342.89 million and the properties of CDCP offered as collateral was appraised at Php. 424.24 million, hence, there is sufficient collateral to cover the loan.

"x x x x x x x x

"Complainant further claimed that the presence of marginal note in the letter of Rodolfo Cuenca requesting for financial assistance in order to save their company and the subsequent approval of the Php 20.0 million loan qualify the loan as behest.

"In deciding whether or not the Php 20.0 million loan was behest, the purpose for which the loan was approved should also be taken into consideration. As a background, in January 1992, President Marcos issued Executive Order 759 establishing rules and regulations for a Copper Stabilization Fund (CSF). The CSF was created for the purpose of financing operating cash flow deficits of primary copper producers in the form of loan. Initial fund of Php 200 million was contributed by the National Government with the Central Bank as the administrator.

"On January 28, 1983, Mr. Cuenca informed the President that unless financial support will be given to CDCP, the latter faces outright bankruptcy with loss of assets worth Php 1.4 billion of which PNB has an exposure of more than Php. 900 million. He further stated that they have a pending request for availment with CSF in the amount of Php 29.8 million. However, the balance of the CSF was already transferred to NDC and that if Central Bank has to pay CDCP, the latter will have to seek appropriation from the national budget. There is no formal application for loan but only a request for NDC to return the Php 29.8 million to the Central Bank so that it could be given to DBP to fund the CSF.

"It would appear therefore, that the purpose of the loan was to save CDCP and prevent further loss on its part without necessarily favoring Mr. Cuenca. The additional loan from PNB was prompted by the transfer of CSF to the NDC because if the funds remain with CSF then the additional loan will no longer be necessary because of CDCP's pending availment as early as December 1982. If said loan was not released, it is not only CDCP Mining who will suffer from its bankruptcy but also PNB.

"Lastly, the presence of the endorsement of President Marcos would not qualify the loan as behest absence of any of the other criteria set by Administrative Order No. 13 and Memorandum Order No. 61." [10]

The Court has more than once declared its reluctance to interfere in the investigatory and prosecutory powers of the Ombudsman absent any compelling reason.[11] In the recent case of *Espinosa vs. Office of the Ombudsman*, [12] the Court has reiterated:

"The prosecution of offenses committed by public officers is vested in the Office of the Ombudsman. To insulate the Office from outside pressure and improper influence, the Constitution as well as RA 6770 has endowed it with a wide latitude of investigatory and prosecutory powers virtually free from legislative, executive or judicial intervention. This Court consistently refrains from interfering with the exercise of its powers, and respects 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.'"

As regards the manifestation of the Office of the Ombudsman of its willingness to have the case remanded for preliminary investigation, in *PCGG vs. Desierto*, [13] the Court has also enunciated the rule that when the merits of the complaint have evidently and thoroughly been examined by the Ombudsman, it would not be right to yet subject respondents to an unnecessary and prolonged anguish. The Court finds no cogent reason to divert in the instant case from making that same pronouncement.

WHEREFORE, the herein petition for certiorari is DISMISSED. No costs.

SO ORDERED.

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

[1] With Director Angel C. Mayoralgo, Jr., recommending approval, and reviewed by Assistant Ombudsman Abelardo L. Aportadera, Jr.

[2] The Committee is chaired by PCGG Chairman, with the Solicitor General as vice-chairman, and a representative each from the Office of the Executive Secretary, Department of Finance, Department of Justice, DBP, PNB, Asset Privatization Trust, the Philippine Export and Foreign Loan Guarantee Corporation and the Government Corporate Counsel, as members.

[3] The corporate name was changed to BMC on 31 December 1981.

[4] Rollo, p. 7.

[5] Rollo, p. 10.

[6] "If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days."

[7] *Martinez vs. People*, G.R. No. 132852, 31 May 2000, citing *Diu vs. Court of Appeals*, 251 SCRA 472 and *People vs. Sumilang*, 77 Phil. 764.

[8] 317 SCRA 272.

[9] At pp. 296-297.

[10] Rollo, pp. 31-34.

[11] *Knecht vs. Desierto*, 291 SCRA 292; *Alba vs. Nitorreda*, 254 SCRA 753.

[12] G.R. No. 135775, 19 October 2000.

[13] G.R. No. 140358, 08 December 2000.

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