

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT [PCGG],
REPRESENTED BY ORLANDO L. SALVADOR, PETITIONERS, VS. HON.
ANIANO DESIERTO, OFFICE OF THE OMBUDSMAN, ARROCEROS,
MANILA, ALICIA ...**

G.R. No. 140358. December 08, 2000

Ponente: VITUG, J.

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VITUG, J.:

Petitioner seeks a reconsideration of the resolution, dated 25 November 1999, dismissing the petition for having been filed out of time.

Assailed in the Petition for Certiorari were the resolutions, dated 21 April and 30 July 1999, the subject matter of the review-report of the 09th June 1999 Memorandum of Special Prosecutor Wendell E. Barreras-Sulit, approved by Ombudsman Aniano Desierto, dismissing the complaint on behest loans in OMB 0-97-0860 and denying the subsequent motion for reconsideration.

It would appear that on 18 October 1992, then President Fidel V. Ramos issued Administrative Order No. 13, creating the Presidential Ad-Hoc Fact-Finding Committee on Behest Loans which was tasked to inventory all behest loans, determine the parties involved and recommend appropriate actions to be pursued. Memorandum Order No. 61, dated 09 November 1992, expanded the functions of the Committee to include in its investigation the review of all non-performing loans, whether behest or non-behest in character. The memorandum set the following criteria to show the earmarks of a "behest loan," to wit: "(1) the loan was undercollateralized; (2) the borrower corporation was undercapitalized; (3) a direct or indirect endorsement by a high government official, like the presence of marginal notes; (4) the stockholders, officers or agents of the borrower corporation were identified to be cronies; (5) a deviation of the loan from the purpose intended; (6) the use of corporate layering; (7) the non-feasibility of the project; and (8) an unusual speed in releasing the loan." Pursuant to its mandate, the Committee investigated, among other loans, the loan obtained by the Philippine Cellophane Film Corporation (PCFC) from the Development Bank of the Philippines (DBP) which it later found to have the characteristics of a behest loan, i.e., that (1) the loan was undercollateralized; (2) the borrower corporation was undercapitalized; (3) the loan bore endorsements or marginal notes from a high government official; (4) the principal stockholder of the corporation was a crony of then President Marcos; and (5) the processing of the original loan was attended with haste. The investigation was said to have disclosed further irregularities in the processing and grant of the loan, to wit: DBP officers recommended the approval of the loan even before PCFC was registered with the SEC; the amount of the guarantee loan was increased at the instance of Herminio Disini; and various requests for extension of time within which to comply with the guarantee loan requirements were granted.

The Committee accordingly filed a complaint with the Office of the Ombudsman for violation of Section 3, paragraphs (e) and (g), of Republic Act ("R.A.") No. 3019. The complaint was dismissed, inter alia, on the ground of lack of prima facie case against respondents and for the prescription of the offense. The subsequent motion for

reconsideration proved to be unavailing; hence, the petition for certiorari.

Petitioner asseverates that the right of the Republic to recover behest loans or ill-gotten wealth may not be barred by prescription on the following grounds: (1) It is imprescriptible under Article XI, Section 15, of the 1987 Constitution; (2) prescription does not run in favor of a trustee to the prejudice of the beneficiary; and (3) the crime for which respondents have been indicted is a continuing crime. Petitioner argues that even if the offense were barred by prescription, it could not have been availed of, the same not having been priorly raised by way of a defense.

The petition to this Court was dismissed on 25 November 1999 for having been filed out of time. Petitioner received on 07 July 1999 copies of the memorandum and the resolution dismissing the complaint. Its motion for reconsideration was filed on 12 July 1999. It received a copy of the resolution denying the motion for reconsideration on 31 August 1999. The instant petition was filed only on 29 October 1999 or three (3) days beyond the 60-day reglementary period.[1] Meanwhile and pending petitioner's motion for reconsideration, 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, was promulgated.

The amendatory Circular provides:

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.

Statutes regulating procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. In that context and to that extent procedural laws are retroactive.[2] The instant petition should now, therefore, be considered timely filed.

On the substance of the case, petitioner assails the dismissal by the Ombudsman of the criminal charges filed against private respondents, under Section 3, paragraphs (e) and (g), of the Anti-Graft and Corrupt Practices Act (R.A. 3019), for two reasons: (1) lack of palpable merit or basis in the charges against respondents to proceed with the preliminary investigation; and (2) prescription of the charges.[3]

The applicable provisions of law on prescription of offenses are found in Article 90 and Article 91 of the Revised Penal Code for offenses punishable thereunder and Act No. 3326 for those penalized by special laws. R. A. 3019 being a special law, the commencement of the period for the prescription for any act violating it is governed by Section 2 of Act No. 3326, viz:

"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 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 crux of the controversy consists in the import of the phrase "if the same be not known at the time." The Court, in the case of 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,[4] has elucidated and ruled:

"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." [5]

On the other point, however, the Court finds no grave abuse of discretion in its determination of whether or not there exists a prima facie case against private respondents. 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. [6]

Just recently, in *Espinosa vs. Office of the Ombudsman*, [7] the Court has said:

"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.'"

Without good and compelling reasons to indicate otherwise, the Court cannot freely interfere in the Ombudsman's exercise of his investigatory and prosecutory powers. [8]

In his Manifestation and Motion, dated 16 June 2000, the Ombudsman states that the instant case could be referred back to his office for the conduct of further preliminary investigation since the dismissal of the complaint against private respondents was premised on its interpretation of the pertinent legal provisions on prescription prior to this Court's pronouncement in *Presidential Ad Hoc Fact Finding Committee on Behest Loans vs. Hon. Desierto, et al.* A perusal, however, of the findings of the investigating officers embodied in the Resolution of Graft Investigation Officer Lacsaman M. Busran (Graft Investigation Officer Busran), dated 21 April 1999, and the Memorandum of Special Prosecutor Sulit, dated 09 June 1999, approved to by the Ombudsman himself, does not sustain this perception.

Graft Investigation Officer Busran and Special Prosecutor Sulit both pointed out that private respondents were charged with violation of R. A. No. 3019 solely on account of their being incorporators of PCFC, a matter the Ombudsman obviously felt to be insufficient to indict them. Thus:

"As regards the alleged violation of Section 3 (e) of RA 3019, the complainant did not give specific details that would show the element of, evident bad faith, manifest partiality or gross inexcusable negligence. That if these were present, the complainant again failed to ascertain who among the officials of the government (DBP) and the Philippine Cellophane Film Corporation (PCFC) would these acts be attributed. Granting that the guarantee loan was under collateralized and the company under capitalized, this does not ipso facto make the named respondents liable for violation under Section 3(e) of R. A. 3019, or make their acts criminal. As earlier pointed out, the Alice Reyes memorandum of April 2, 1973, had set terms and conditions to insure repayment of the guarantee loan, including the submission by PCFC of additional assets necessary to cover the collateral

deficiency of P 17,725,000.00. The terms and conditions also included certain fees and charges to be shouldered by PCFC in favor of DBP. It was not a one-sided contract in favor of PCFC, DBP will also earn income for the accommodation it gives in terms of interest rates with the corresponding penalties it has imposed in case of late payments of amortizations and arrears. That although the PCFC failed to pay despite the chance given thereto like the subsequent restructuring of its accounts, this is one risk that the DBP has to face in this kind of financing business x x x. The complainant did not mention anything about misuse of PCFC's loan proceeds by a particular person or group of persons for their personal benefit and not for the purpose it was intended x x x.

"More importantly as a basis for the dismissal of the complaint, is the fact that the complainant failed to point out circumstances that would indicate the criminal design by either the officers of the DBP or the PCFC or a collusion of both parties to cause undue injury to the Government by giving unwarranted benefits to PCFC. There is not enough evidence to accuse them of entering into a transaction grossly disadvantageous to the Government. The proposal of PCFC to DBP for a guarantee loan was the subject of an intensive study as laid out in the Memorandum of Alice Reyes to the Chairman of DBP. In fact, the terms and conditions set therein were not readily accepted by PCFC, that the latter proposed a revision thereof (please refer to Annex 7, Folder II). In response to PCFC's proposed revision, Alice Reyes submitted another Memorandum dated April 12, 1973 addressed to the DBP Chairman, stating her comments and reasons why some proposed revisions can be allowed while insisting on the retention of the other original terms and conditions. In both instances, DBP's interest were given ample protection (Annex 10, Folder II)."[9]

Withal, the merits of the complaint were already and thoroughly examined at that level, and it would not be right to yet subject private respondents to an unnecessary and prolonged anguish.

WHEREFORE, the motion for reconsideration is denied for lack of merit. This denial is final.

The Manifestation and Motion filed by the Ombudsman is noted and denied. The comment to the petitioner's motion for reconsideration of the resolution of November 25, 1999 filed by private respondent Alicia L. Reyes is noted. The comments which ought to be filed by the other private respondents are dispensed with. No costs.

SO ORDERED.

Melo, (Chairman), Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] "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."

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

[3] The resolution, subject of this review, dismissed the complaint outright on the following grounds:

- There is no palpable merit in the charges against respondents for violation of Section 3 pars. (e) and (g) of RA 3019 and no basis to proceed with the preliminary investigation. That even if the factual allegations in the complaint and supporting documents are not controverted by the respondents, these are not enough to establish a prima facie case against them for the crime allegedly committed.
- The complaint did not specify the role or participation of the named respondents in the processing and approval

of the subject guarantee loan. The documents submitted did not even show the names of the members of the DBP Board who approved the guarantee loan.

- Only the participation of respondent Alicia L. Reyes is clear as she was the one who signed the Memorandum to the Chairman of the DBP Board dated April 2, 1973 recommending the approval of PCFC's request for DBP guarantees for the loan it has secured in connection with its proposed cellophane project. However, this Memorandum was signed by Ms. Reyes in the regular performance of her official functions as manager of the Investment Banking and Industrial departments of the DBP and after the matter was thoroughly evaluated by her subordinates and technical staff as shown by the initials under her name and signature. Included in that Memorandum were terms and conditions aimed to protect the interests of DBP and to ensure compliance with existing policies, laws and regulations.

- The charges have already prescribed considering that the violative acts were allegedly committed during the period from April 2, 1973 to June 15, 1977. Violations of RA 3019 committed prior to the amendatory provisions laid down in Batas 195 dated March 16, 1982 shall prescribe in ten (10) years. (Rollo, pp. 47-48)

[4] 317 SCRA 272.

[5] At pp. 296-297.

[6] Director Guillermo T. Domondon vs. The Honorable Sandiganbayan, Second Division; Hon. Aniano A. Desierto, in his official capacity as Ombudsman; Hon. Francisco A. Villa, in his capacity as overall Deputy Ombudsman; and Leonardo P. Tamayo, in his official capacity as Deputy Special Prosecutor and concurrent Officer-In-Charge, Office of the Special Prosecutor.

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

[8] Knecht vs. Desierto, 291 SCRA 292.

[9] Memorandum, Rollo, pp.48-50.

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