

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, PETITIONER,
VS. OFFICE OF THE OMBUDSMAN, JOSE G. CUAYCONG, SIMPLICIO
CIOCON, LUIS HOFILEÑA, JR., EVA YAPTINCHAY-LICHAUCO, LERRY
PADLA...**

G.R. No. 187794. November 28, 2018

Ponente: LEONEN, J.

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LEONEN, J.:

The Office of the Ombudsman's power to determine probable cause is executive in nature, and with its power to investigate, it is in a better position than this Court to assess the evidence on hand to substantiate its finding of probable cause or lack of it.

This resolves the Petition for Certiorari[2] filed by the Presidential Commission on Good Government assailing the Office of the Ombudsman's August 15, 2006 Resolution[3] and May 16, 2008 Order[4] in OMB-C-C-03-0508-I. The assailed judgments dismissed the Presidential Commission on Good Government's complaint against Luis S. Hofileña, Sr. (Luis), Alberto A. Yaptinchay (Alberto),[5] Jose G. Cuaycong, Simplicio Ciocon, Carolina Yaptinchay-Hofileña (Carolina), Luis Hofileña, Jr., Eva Yaptinchay-Lichauco, Lerry Padlan, Thelmo Solivan, Alfonso Casas (Casas), Quirino Apacible (Apacible), Horacio Yaptinchay (Horacio), Col. Cesar Pio De Roda, G.S. Licaros, Alicia Ll. Reyes (Reyes), Julio V. Macuja, Leonides S. Virata, Rafael A. Sison (Sison), Placido Mapa, Jr. (Mapa), Jose Tengco, Jr. (Tengco), Alejandro A. Melchor (Melchor), Leon O. Ty, Vicente Paterno (Paterno), and Ruben Ancheta for insufficiency of evidence.

Pioneer Glass Manufacturing Corporation (Pioneer Glass) is a domestic corporation engaged in the business of mining silica and producing glass products from silica.[6]

It was incorporated on July 15, 1958 by Luis, Alberto, Casas, Apacible, Horacio, Fe Y. Quisumbing, and Ramon Lichauco. It had an initial authorized capital stock of P2,000,000.00, P20,000.00 of which was subscribed and P5,000.00 of which was paid up by its incorporators.[7]

On January 15, 1962, Pioneer Glass applied[8] for an industrial loan of P999,368.99 with Development Bank of the Philippines (Development Bank). This loan was for the purchase of machinery and construction of a building and warehouse for its silica processing business.[9]

From 1963 to 1977, Development Bank and Pioneer Glass entered into a total of 12 industrial loan and guarantee agreements, summarized as follows:[10]

Amount

Purpose

Board Resolution under which the loan was approved

P597,000

Industrial Loan

- a. Payment of obligation
- b. Building construction
- c. Purchase of machinery and equipment

B.R. # 2328 dated March 26, 1963

P3,900,000 (DM3.9M [or] \$1M)

Guarantee – to finance 80% of the glass manufacturing plant

B.R. # 9141 dated December 04, 1967

P9,750,000 (\$2,500,000.00)

Guarantee – to construct glass plant and office buildings; full liquidation of DBP Industrial Loan; acquisition of quarry glass plant & transportation machinery & equipment; for working capital

B.R. # 7873 dated October 04, 1968

P500,000

Interim Guarantee – Bancom – for construction works

B.R. # 5786 dated December 03, 1970

P7,700,000

Industrial Loan – for the completion of the plant

B.R. # 246 dated January 15, 1975

P4,660,000 (\$720,000)

Long-Term Guarantee – for the completion of the plant

B.R. # 3379 dated June 27, 1973

P3,000,000

Industrial Loans – for capital expenditures and for payment of interests and charges due DBP

B.R. # 4847 dated December 17, 1975

P2,300,000

Industrial Loan – to fund the fixed asset requirements of the project

B.R. # 2012 dated June 19, 1976

a) P4,500,000

b) P2,000,000

DBP Guarantee

Discounting Line –

a)

to liquidate current liabilities; operating capital; to meet debt servicing requirements

b)

to cover purchase of raw materials and supplies

B.R. # 1036 dated March 30, 1977

P366,615 (US\$48,882)

Direct Foreign Currency Loan – to finance the importation of molds

B.R. # 2942 dated September 28, 1977

P2,000,000

Guarantee for a short-term discounting line – to cover working capital requirements

B.R. # 3103 dated October 12, 1977[11]

By January 31, 1978, Pioneer Glass' obligations to Development Bank reached P55,602,884.44, with P7,600,000.00 already past due. Furthermore, Development Bank expected Pioneer Glass' arrears to only increase since its sales proceeds could not cover its operational expenses.[12]

On February 22, 1978, Development Bank's Board of Governors issued Board Resolution No. 342[13] agreeing to a dacion en pago arrangement with Pioneer Glass for the full settlement of its account. Board Resolution No. 342 also authorized the sale[14] of Pioneer Glass to Union Glass and Container Corporation (Union Glass) for P100,920,000.00.

On March 31, 1978, Pioneer Glass and Hofileña Agricultural Corporation executed Deed of Cession of Property in Payment of Obligation (Dacion en Pago)[15] with Development Bank.

On May 3, 1978, some minority stockholders of Pioneer Glass wrote to then First Lady Imelda Marcos (Marcos) asking for assistance and reconsideration of Development Bank's sale of Pioneer Glass to Union Glass since their deal was supposedly inferior to the one being offered by San Miguel Corporation.[16]

Marcos sent the letter from Pioneer Glass' minority stockholders to Mapa, then Development Bank's Chairman, with the marginal note:

Dear Chairman P. Mapa,

This group of people is asking for justice in the name of the New Society. Please give to them their due. Thank you.

(signed)

Imelda Marcos

May 15, 1978[17]

Sometime in April 1982, Union Glass shut down the Cavite glass plant due to low sales and financial difficulties. On June 28, 1984, Union Glass returned ownership of this glass plant to Development Bank, which it accepted on

September 15, 1984.[18]

On February 27, 1987, as part of the government's program to rehabilitate select government financial institutions, Development Bank transferred some of its assets and liabilities to the National Government through a Deed of Transfer.[19] Pioneer Glass was one (1) of the 283 non-performing accounts included in the transfer. It was listed as an acquired asset with a booked exposure of P64,602,000.00.[20]

On October 8, 1992, then President Fidel V. Ramos (President Ramos) issued Administrative Order No. 13[21] creating the Presidential Ad-Hoc Fact-Finding Committee on Behest Loans (Committee), which was tasked to:

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;

Identify the borrowers who were granted "friendly waivers", as well as the government officials who granted these waivers; determine the validity of these waivers;

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 the date hereof.[22]

The Committee was headed by the Chair of the Presidential Commission on Good Government as chairperson and the Solicitor General as vice-chair. The Committee members were representatives from the Office of the Executive Secretary, Department of Finance, Department of Justice, Development Bank, Philippine National Bank, Asset Privatization Trust, the Government Corporate Counsel, and Philippine Export and Foreign Loan Guarantee Corporation.[23]

On November 9, 1992, President Ramos issued Memorandum Order No. 61,[24] which broadened the Committee's scope by also including non-behest loans within its investigative power. Memorandum Order No. 61 gave the following criteria to determine if a loan is behest:

- It is undercollateralized.
- The borrower corporation is undercapitalized.
- Direct or indirect endorsement by high government officials like presence of marginal notes.
- Stockholders, officers or agents of the borrower corporation are 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 is being sought.
- Extra-ordinary speed in which the loan release was made.[25]

On April 4, 1994, the Committee sent President Ramos its Terminal Report,[26] which was a summary of its inventory and review of the loan accounts transferred by government financial institutions[27] to Asset Privatization Trust. It included Pioneer Glass[28] among the 130 companies or accounts with behest loans.[29] It explained that a loan account was classified as positive or behest "if at least two (2) or more attributes of a 'behest' loan are present in the loan account." [30]

On August 13, 2003, Presidential Commission on Good Government Legal Consultant Rene B. Gorospe filed an Affidavit-Complaint[31] against several officials of Pioneer Glass and Development Bank for violating Section 3, paragraphs (e) and (g) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act.[32]

The Affidavit-Complaint alleged that "[t]he undue and undeserved accommodation of [Pioneer Glass] as shown by [Development Bank's] grant and approval of loan [was] grossly disadvantageous to the government and the Filipino people warrant the prosecution of those responsible therefor." [33]

On August 15, 2006, the Office of the Ombudsman dismissed [34] the complaint for insufficiency of evidence.

The Office of the Ombudsman found nothing questionable or irregular with Development Bank's approval of Pioneer Glass' loan applications or its guarantees in favor of Pioneer Glass because the loans and guarantees were backed by numerous properties as collateral. [35] It also noted that the guarantees and transactions between Pioneer Glass and Development Bank were audited by the Central Bank of the Philippines, now Bangko Sentral ng Pilipinas, which found them to be above-board. [36] The fallo of the Office of the Ombudsman August 15, 2006 Resolution read:

WHEREFORE, premises considered, it is most respectfully recommended that the instant complaint against herein respondents for violation of Section 3 (e) and (g) [of] Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act be DISMISSED for insufficiency of evidence. [37]

The Presidential Commission on Good Government moved for the reconsideration [38] of the Office of the Ombudsman's Resolution, asserting that the bulk of Pioneer Glass' security for the approved loans and guarantees were depreciating assets like buildings and improvements, transportation equipment, and office equipment. Thus, by the time the loans would have matured, the value of the depreciable assets would have greatly diminished, leaving virtually no security for Pioneer Glass' loan obligations and Development Bank's guarantees. [39]

The Presidential Commission on Good Government reiterated that Pioneer Glass was undercapitalized and that its loan and guarantee agreements were undercollateralized, leading to the damage and prejudice of the government. [40]

On May 16, 2008, the Office of the Ombudsman denied [41] the motion. It stated that the proffered evidence proves the claim of Development Bank officials that they exercised sound business judgment and that they followed the established banking practices in dealing with Pioneer Glass. Furthermore, the Office of the Ombudsman emphasized that there was no evidence presented to support the allegation that Pioneer Glass and Development Bank conspired to cause injury to the government. [42]

On June 4, 2009, petitioner Presidential Commission on Good Government filed its Petition for Certiorari [43] before this Court. It asserts that Pioneer Glass was undercapitalized and that the loans granted to it were undercollateralized. Thus, Development Bank's repeated accommodation of Pioneer Glass, by approving its loan applications and guaranteeing its other debt obligations, showed manifest partiality or gross inexcusable negligence. [44]

Petitioner points out that the bulk of Pioneer Glass' securities and guarantees were depreciating assets and future assets. Considering that the loan agreements spanned a long period of time, it maintains that when the loans matured, the value of the securities would have greatly diminished, making the loans effectively unsecured. Furthermore, it asserts that the law prohibits future properties from becoming the object of contracts of mortgage, inasmuch as there was no way to validly appraise them when Pioneer Glass' loan application was processed. [45]

Petitioner claims that the question of whether or not Development Bank exercised sound business judgment in line with acceptable banking practices is ultimately factual in nature and should have been threshed out before a trial court. It asserts that public respondent Office of the Ombudsman should not have prematurely ruled on such matter and used it as one of its bases for denying the complaint. [46]

Petitioner underscores that the Committee, which had banking experts for its members, found that numerous

transactions between Development Bank and Pioneer Glass had all the traits of behest loans. It insists that public respondent should have respected the Commission's findings of fact since its members "are in a better position to determine whether standard banking practices are followed in the approval of a loan or what would generally constitute as adequate security for a given loan." [47]

Finally, petitioner maintains that public respondent committed grave abuse of discretion when it ruled upon the conflicting evidence instead of letting the parties thresh out their respective claims in a full-blown trial. [48]

On July 15, 2009, this Court [49] required respondents to comment on the petition.

On August 25, 2009, Atty. Estelito Mendoza (Atty. Mendoza) manifested [50] that respondent Melchor died [51] on July 12, 2002.

On September 1, 2009, respondents Mapa and Reyes filed their Joint Motion for Extension to File Comment. [52]

On September 16, 2009, Atty. Martin Vergel C. Dela Rosa (Atty. Dela Rosa), counsel for respondent Sison, filed a motion for extension of time [53] to file comment.

On September 23, 2009, [54] this Court granted the motions for extension filed by respondents Mapa, and Reyes and Sison, and noted Atty. Mendoza's manifestation.

On October 15, 2009, Atty. Lawrence L. Tanlu filed a second motion for extension and manifested that respondent Sison left his last known address without leaving any forwarding address. He also manifested that despite earnest efforts, he could not locate respondent Sison; if he would still fail to find him, he would file the necessary manifestation and motion to withdraw as counsel. [55]

On November 4, 2009, Atty. Dela Rosa filed his Manifestation and Motion to Withdraw as Counsel for respondent Sison. [56]

On November 18, 2009, [57] this Court granted Atty. Dela Rosa's second motion for extension and noted his withdrawal as counsel for respondent Sison.

On April 28, 2010, [58] this Court required respondent Paterno to show cause why he should not be held in contempt for failing to file his comment.

On August 9, 2010, [59] this Court noted Atty. Dela Rosa's entry of appearance as counsel for respondent Paterno, granted his motion for extension to file comment, and directed him to file a comment for respondent Sison as it merely noted his withdrawal as counsel but he still had the records as counsel of record. It also dropped the name of respondent Melchor as party respondent.

On September 20, 2010, noting that only respondents Mapa, Reyes, Sison, and Tengco filed counter-affidavits before public respondent Office of the Ombudsman and that the July 15, 2009 Resolution requiring respondents to comment on the petition was returned unserved, this Court deemed the 18 other respondents to have waived submission of their respective comments on the petition. [60]

On September 29, 2010, Atty. Dela Rosa manifested [61] that even if he had the case records, they only contained copies of the petition, resolutions from this Court, and the motions for extension that he had filed as counsel for respondent Sison. He stated that aside from those documents, he did not have any other relevant documents which he could use to comment on the petition. [62] Furthermore, he emphasized that he still had not located respondent Sison; thus, considering the scenario, it would be impossible for him to file an intelligible comment for respondent Sison. [63]

Respondents Office of the Ombudsman, [64] Tengco, [65] Reyes, [66] Mapa, [67] and Paterno [68] filed their

respective Comments to the Petition.

In its Comment,[69] public respondent Office of the Ombudsman denies that it committed grave abuse of discretion when it dismissed petitioner's complaint against respondents.[70] It insists that its findings of fact were supported by substantial evidence.[71]

Public respondent states that petitioner failed to prove the existence of bad faith on the part of respondent bank officials when they approved the loans and guarantees in favor of Pioneer Glass. Furthermore, it was not shown that the government suffered undue injury due to the transactions between Development Bank and Pioneer Glass.[72]

Respondent Reyes was the department manager of Development Bank's Industrial Projects Department. As department manager, she studied and evaluated loan and guarantee proposals, and other bank transactions before recommending a course of action which would best protect Development Bank's interests.[73]

In her Comment,[74] respondent Reyes contends that public respondent's dismissal of petitioner's complaint for lack of probable cause was not tainted with grave abuse of discretion as its decision was only arrived at after it had diligently studied and scrutinized the records of the case and the submitted evidence.[75]

Respondent Tengco served as part-time Governor of Development Bank's Board of Governors from February 7, 1967 until he retired in February 1987.[76]

In his Comment,[77] respondent Tengco likewise states that public respondent did not commit grave abuse of discretion when it dismissed petitioner's complaint for insufficiency of evidence.[78]

He cited this Court's rulings in Presidential Ad Hoc Fact-Finding Committee on Behest Loans, represented by PCGG v. Desierto[79] and in Presidential Commission on Good Government v. Desierto,[80] which involved similar loan accommodations like those extended to Pioneer Glass. He pointed out that this Court in those two (2) cases upheld the Office of the Ombudsman's dismissal of the complaints filed by petitioner because, among others, Development Bank's officials evaluated the loan applications before approving them and exercised sound business judgment aligned with the existing acceptable banking practices when they approved the loan applications.[81]

Respondent Tengco also emphasized that "[a]ssets to be acquired and/or future assets are accepted loan securities in the banking system,"[82] contrary to petitioner's claim that future assets cannot be used as loan collateral.[83] Furthermore, he stresses that this Court in several cases has already ruled that after-acquired properties or assets to be acquired are acceptable as loan securities.[84]

Finally, respondent Tengco states that petitioner failed to indicate the roles played by each respondent in the alleged violations, to show conspiracy, and to demonstrate how respondents showed manifest partiality or unduly favored Pioneer Glass to the damage of the government.[85]

Respondent Mapa was a former member of Development Bank's Board of Directors and was a signatory in five (5) out of the twelve (12) Board Resolutions issued in Pioneer Glass' favor.[86]

In his Comment,[87] respondent Mapa underscores that this Court in Mapa v. Sandiganbayan[88] upheld his immunity from all civil cases and criminal proceedings initiated by petitioner. His immunity from suits initiated by petitioner was then reaffirmed in several other cases before this Court and the Sandiganbayan. Thus, he insists that the petition against him should be dismissed outright.[89]

Nonetheless, respondent Mapa concurs with his co-respondents that public respondent did not commit grave abuse of discretion when it dismissed petitioner's complaint for insufficiency of evidence.[90]

Respondent Paterno was a former member of Development Bank's Board of Governors.[91] In his Comment,[92] he likewise denies that public respondent committed grave abuse of discretion in dismissing petitioner's complaint for insufficiency of evidence.[93]

On November 15, 2010,[94] this Court noted Atty. Dela Rosa's manifestation and deemed as waived respondent Sison's comment to the petition. It also directed petitioner to file a consolidated reply to the comments filed.

On December 10, 2010, Atty. Christian Dawn G. Molina entered his special appearance[95] as counsel for Felix Y. Hofileña, the son of respondents Luis and Carolina. He manifested that respondents Luis, Carolina, Alberto, and Apacible were already dead, as evidenced by their certificates of death.[96]

On March 2, 2011, petitioner filed its Consolidated Reply[97] where it continued to insist that it was able to prove the existence of probable cause against respondents for violation of Section 3, paragraphs (e) and (g) of Republic Act No. 3019 since Pioneer Glass was undercapitalized and its loans were undercollateralized by mostly depreciating and future assets.[98]

Petitioner reiterates the points it raised in its Petition; nonetheless, it concedes that respondent Mapa should be excluded as party defendant due to his immunity in exchange for the information he had provided against Ferdinand and Imelda Marcos in New York.[99]

On April 4, 2011,[100] this Court directed that the names of respondents Luis, Carolina, Alberto, and Apacible be dropped as party respondents in view of their deaths.

On January 13, 2015, counsel for respondent Paterno manifested[101] his passing on November 21, 2014[102] and moved that his name be dropped as party respondent.[103]

On February 23, 2015,[104] this Court granted the motion and dropped respondent Paterno's name as party respondent.

The only issue for this Court's resolution is whether or not public respondent Office of the Ombudsman committed grave abuse of discretion in dismissing the complaint against Pioneer Glass Manufacturing Corporation and the officials of Development Bank of the Philippines for insufficiency of evidence.

I

This Court generally does not interfere with public respondent Office of the Ombudsman's finding or lack of finding of probable cause out of respect for its constitutionally granted investigatory and prosecutory powers.[105] *Dichaves v. Office of the Ombudsman*[106] pointed out that the Office of the Ombudsman's power to determine probable cause is executive in nature and with its power to investigate, it is in a better position than this Court to assess the evidence on hand to substantiate its finding of probable cause or lack of it.[107]

Probable cause is:

[T]he existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.[108] (Citations omitted)

Nonetheless, despite this well-established principle, petitioner asks this Court to interfere with public respondent's assessment purportedly on the ground of grave abuse of discretion. However, disagreeing with public respondent's

findings does not rise to the level of grave abuse of discretion.[109]

A court or tribunal is said to have committed grave abuse of discretion if it performs an act in "a capricious or whimsical exercise of judgment amounting to lack of jurisdiction." [110] Ultimately, for the petition to prosper, it would have to prove that public respondent "conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty under the law." [111]

Petitioner failed to do this.

II

Petitioner posits that the loan accommodations between Development Bank and Pioneer Glass bore the characteristics of a behest loan as the loans were undercollateralized, and Pioneer Glass was undercapitalized when they were granted.[112]

Despite petitioner's assertions, public respondent dismissed its complaint for insufficiency of evidence and failed to find probable cause against respondents for violating Section 3, paragraphs (e) and (g) of Republic Act No. 3019, which provide:

Section 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:

....

(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 or government corporations charged with the grant of licenses or permits or other concessions.

....

(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.

Presidential Commission on Good Government[113] stated that for a charge to be valid under Section 3(e) of Republic Act No. 3019, it must be shown that the accused "acted with manifest partiality, evident bad faith, or inexcusable negligence." [114] On the other hand, for liability to attach under Section 3(g), it must be shown that the accused "entered into a grossly disadvantageous contract on behalf of the government." [115]

On October 1, 1977, respondent Reyes sent Development Bank's Acting Chairman a report and recommendation[116] on Pioneer Glass' request for an additional P2,000,000.00 discounting line. She recommended the approval of the loan request subject to the following conditions:

- In order to ensure the repayment of the discounting line covered by DBP guarantee, Pioneer Glass shall, prior to the issuance of the guarantee, make the necessary arrangements with Tanduay Distillery, Inc. for the latter to remit directly to DBP the amount of P2,000,000 representing [Pioneer Glass'] receivables from Tanduay.
- This DBP guarantee shall be secured as follows:
 - a) By a first mortgage on the assets mentioned under Item III.A above.
 - b) By the joint and several signatures of the parties presently liable for the existing DBP loans of Pioneer Glass Manufacturing Corporation and Peftok Investment and Development Corporation.
 - c) By an assignment in favor of DBP of Pioneer's or Mr. Luis S. Hofileña's mining (silica) claims, this to be

confirmed by the Bureau of Mines.

d) By an assignment of sales contracts aggregating P13.413 million

- Prior to the issuance of the letter/s of guarantee, Pioneer Glass Manufacturing Corporation shall also: (a) remit to DBP the processing fee of P5,000; and (b) submit evidence of payment of all taxes due the government including personal income and realty taxes. For this purpose, proofs of payment thereof shall be submitted or in lieu thereof a tax clearance shall be secured from the city, municipal treasurer that all local taxes due the government are paid (per Circular No. 873 dated April 29, 1977).

- DBP shall continue to be represented by three (3) regular directors in borrower-firm's board. Moreover, if and when necessary, DBP shall designate a comptroller in the firm whose compensation shall be borne by borrower-firm.

- The borrower's obligation shall be subjected to a 2% annual service fee computed on the outstanding principal balance of the loan (per Board Resolution No. 3672 dated September 15, 1976).

- All such positive and negative covenants which may legally be imposed on Pioneer Glass Manufacturing Corporation for the protection of the DBP shall be included by the Legal Department in the financing agreement.[117]

On October 12, 1977, Development Bank's Board of Governors adapted and approved respondent Reyes' recommendation in Board Resolution No. 3103.[118]

On February 13, 1978, in recognition of Pioneer Glass' continuing financial troubles, respondent Reyes submitted another report and recommendation[119] to Development Bank's Chairman and Vice-Chairman detailing the available remedies to it as Pioneer Glass' debtor:

Over the years since DBP's first financial accommodation to Pioneer Glass was granted in 1962, Pioneer Glass' operations have been sharply marked with problems, most of them financial in nature. Concerned with the dim prospects of ever recovering its huge investments in the firm, the Bank presented to [Pioneer Glass] three alternative options for the disposition and settlement of [Pioneer Glass'] accounts, each of them designed to bring immediate relief to all parties directly involved in the project as follows:

- Conveyance by [Pioneer Glass] to DBP through Dacion en Pago of all the assets now mortgaged to DBP (the silica mines, the glass plant in Rosario, Cavite and the personal properties of the Hofileñas); or

- DBP to foreclose the existing mortgages executed by [Pioneer Glass] in favor of DBP; or

- Liquidation of the assets of the corporation after a voluntary dissolution of the corporation has been effected in accordance with the provisions of the Rules of Court and the Corporation Law.

On January 24, 1978, Pioneer Glass Manufacturing Corporation, thru Col. Cesar L. Pio Roda, its Managing Director, informed DBP that [Pioneer Glass'] stockholders decided to accept a dacion en pago arrangement whereby all mortgaged assets of the corporation will be ceded to DBP in settlement of [the] firm's obligations.[120]

....

Foregoing considered, we respectfully recommend approval of the following proposals for Pioneer Glass Manufacturing Corporation's accounts:

- A Dacion en Pago arrangement wherein Pioneer Glass, in full settlement of its DBP obligations as of date the Dacion en Pago Agreement is signed, shall alienate/convey in favor of the Bank the glass factory in Rosario, Cavite, the silica mine properties in Sagay, Negros Occidental and the personal assets of the Hofileñas

mortgaged to DBP, itemized under III.A.1, III.A.2, and III.A.3 above. Thereafter, DBP shall consider itself fully paid and shall release the Hofileña family, PEFTOK, and all other co-obligors from their joint and several signatures for [Pioneer Glass'] obligations.

- After the transfer of said assets, DBP shall enter into two (2) separate agreements as follows:

B.1. Outright sale to Union Glass and Container Corporation of the glass plant under the following terms and conditions:

- Total consideration for the sale of the glass factory shall be P100,920,000 which shall be paid to DBP as follows:[121]

....

B.2. Lease/sale agreement with Pioneer Glass over the silica mine properties in Sagay, Negros Occidental under the following terms and conditions:

- Total consideration for the lease shall be P2,709,970[.][122]

On February 22, 1978, Development Bank's Board of Governors in Board Resolution No. 542[123] adapted and approved respondent Reyes' recommendations.

The records corroborate the assertions of respondent bank officials and support the findings of public respondent that the release of loans to Pioneer Glass was preceded by a careful study and evaluation of the loan application.

Respondent Reyes did not act with manifest partiality, evident bad faith, or inexcusable gross negligence when she made her recommendations because they were arrived at only after considering Pioneer Glass' capability to pay the loan obligations. Moreover, she also carefully considered how to best protect Development Bank's interests with the appropriate securities from Pioneer Glass to guarantee the loans. In the same manner, Development Bank's board members who relied on her report and recommendation in approving the loan applications also did not act with manifest partiality, evident bad faith, or inexcusable negligence.

As public respondent found:

In this case, it cannot be inferred that the submitted recommendations, after undergoing rigid and thorough studies by the technical staff of Industrial Project Department (IPD I) and the Economic Research Unit of DBP and the subsequent Board Resolutions issued by the Board of Governors of DBP, having passed further studies and deliberations before their consideration, were impelled by manifest partiality, gross negligence or evident bad faith.

Records show that there are about three (3) recommendations on record.

First, is the APPLICATION FOR INDUSTRIAL LOAN A PORTION UNDER DEFERRED PAYMENT PLAN (Industrial Guarantee & Loan Fund) addressed to the Supervising Governor. [Pioneer Glass] had applied for an amount of P999,368.99 with [Development Bank]. The Manager of Industrial Department of [Development Bank], A.P. Sevilla, recommended for the grant of the loan in a reduced amount of P880,000.00;

Second, is the letter/memorandum of respondent public officer Alicia Ll. Reyes, then Manager of the Industrial Project Department I of [Development Bank], dated October 1, 1977, addressed to [Development Bank] Acting Chairman for the approval of the short term discounting line of P2 million; and

Third, is another letter/memorandum of Ms. Reyes, dated February 13, 1978 addressed to the [Development Bank] Chairman, recommending approval of a dacion en pago arrangement to relieve [Pioneer Glass] of its mounting obligations, and the creditor (DBP), of the serious deterioration of the borrower's accounts.

A close scrutiny of these documents reveal, however, that they passed through an exhaustive, detailed studies whereof sound terms and conditions were recommended to ensure protection of the bank's interests.[124] (Emphasis in the original)

This finds basis in Presidential Commission on Good Government,[125] which ruled that Development Bank's careful study and evaluation of the loan application negated the existence of manifest partiality, gross inexcusable negligence, or evident bad faith in the eventual approval of the loan application:

It is clear from the records that private respondents studied and evaluated the loan applications of Bagumbayan before approving them. There is no showing that the DBP Board of Governors did not exercise sound business judgment in approving the loans, or that the approval was contrary to acceptable banking practices at that time. No manifest partiality, evident bad faith, or gross inexcusable negligence can, therefore, be attributed to private respondents in approving the loans.[126]

Finally, it cannot be inferred that the loan was undercollateralized or that a grossly disadvantageous contract to the government in violation of Section 3(g) of Republic Act No. 3019 was entered into. Development Bank's total exposure of P63,202,884.44[127] was secured by the following: personal and real properties amounting to P46,822,362.00; assignment to Development Bank of sales contracts worth P13,413,000.00; personal undertakings by members of the Hofileña and Yaptinchay families and other Pioneer Glass stockholders; and the assignment to Development Bank of Luis' mining claims.[128] Clearly, the loans were suitably secured when they were taken out.

Section 3, paragraphs (e) and (g) of Republic Act No. 3019 should not be interpreted in such a way that they will prevent Development Bank, through its managers, to take reasonable risks in relation to its business. Profit, which will redound to the benefit of the public interests owning Development Bank, will not be realized if our laws are read constraining the exercise of sound business discretion.

Thus, Section 3(e) requires "manifest partiality, evident bad faith or gross inexcusable negligence" and the element of arbitrariness and malice in taking risks must be palpable. Likewise, there must be a showing of "undue injury" to the government. Section 3(g), on the other hand, requires a showing of a "contract or transaction manifestly and grossly disadvantageous to the [government]."

Definitely, this means that it must not only be proven that Development Bank suffered business losses but that these losses, in the ordinary course of business and with the exercise of sound judgment, were inevitably unavoidable. Public respondent's findings did not transgress these requirements. Thus, there is no reason to issue the discretionary writ of certiorari.

WHEREFORE, premises considered, the Petition for Certiorari is DISMISSED. The Office of the Ombudsman's August 15, 2006 Resolution and May 16, 2008 Order in OMB-C-C-03-0508-I are AFFIRMED.

SO ORDERED.

Del Castillo,[*] Jardeleza,**] J. Reyes, Jr., and Hernando, JJ., concur.

[*] Designated additional member per Raffle dated October 8, 2018.

[**] Designated additional member per Raffle dated November 28, 2018.

[1] Some respondents have been dropped as party respondents in this case, namely, Alejandro A. Melchor (see rollo, p. 1311-B), Luis S. Hofileña, Sr., Carolina Y. Hofileña, Alberto A. Yaptinchay, Quirino Apacible (see rollo, p. 1479), and Vicente Paterno (see rollo, p. 1485).

[2] Rollo, pp. 8-53.

[3] Id. at 54-133. Both Graft Investigation and Prosecution Officer I Araceli R. Soñas-Crisostomo and Assistant Ombudsman Pelagio S. Apostol recommended the dismissal of the complaint and their recommendation was approved by Ombudsman Ma. Merceditas N. Gutierrez.

[4] Id. at 134-141. Both Graft Investigation and Prosecution Officer I Araceli R. Soñas-Crisostomo and Assistant Ombudsman, PAMO Jose T. De Jesus, Jr. recommended the denial of the motion and their recommendation was approved by Overall Deputy Ombudsman Orlando C. Casimiro.

[5] His name is not included in the Resolution but appears in the Order.

[6] Rollo, p. 163.

[7] Id.

[8] Id. at 327-332.

[9] Id. at 327.

[10] Id. at 151-152.

[11] Id.

[12] Id. at 435.

[13] Id. at. 456-462.

[14] Id. at 456-457.

[15] Id. at 463-466.

[16] Id. at. 467-468.

[17] Id. at 188.

[18] Id. at 189.

[19] Id. at 199-226. Jaime V. Ongpin as Secretary of Finance and Chairman of the Committee on Privatization represented the National Government, while Jesus P. Estanislao, represented Development Bank of the Philippines.

[20] Id. at 212.

[21] Id. at 195-196.

[22] Id. at 196.

[23] Id. at 195-196.

[24] Id. at 197-198.

[25] Id.

[26] Id. at 267-279.

[27] Id. at 269. The government financial institutions which transferred some of their accounts to the Asset Privatization Trust were Development Bank of the Philippines, Philippine National Bank, Philguarantee and

National Development Corporation.

[28] Id. at 309.

[29] Id. at 305-310.

[30] Id. at 301.

[31] Id. at 161-193.

[32] Id. at 190-192.

[33] Id. at 189.

[34] Id. at 54-133. Both Graft Investigation and Prosecution Officer I Araceli R. Sonas-Crisostomo and Assistant Ombudsman Pelagio S. Apostol recommended the dismissal of the complaint and their recommendation was approved by Ombudsman Ma. Merceditas N. Gutierrez.

[35] Id. at 120.

[36] Id. at 121-122.

[37] Id. at 131.

[38] Id. at 150-160.

[39] Id. at 153.

[40] Id. at 154-155.

[41] Id. at 134-141.

[42] Id. at 137-138.

[43] Id. at 8-53.

[44] Id. at 40.

[45] Id. at 39-40.

[46] Id. at 42-43.

[47] Id. at 43.

[48] Id. at 44.

[49] Id. at 731-732-B.

[50] Id. at 799-803.

[51] Id. at 807.

[52] Id. at 833-835.

[53] Id. at 892-894.

[54] Id. at 896-898.

[55] Id. at 931-933.

- [56] Id. at 987-990.
- [57] Id. at 1172-1173.
- [58] Id. at 1238-1240.
- [59] Id. at 1311-A-1311-C.
- [60] Id. at 1413-1414.
- [61] Id. at 1402-1406.
- [62] Id. at 1402-1403.
- [63] Id. at 1405.
- [64] Id. at 1026-1067.
- [65] Id. at 849-878.
- [66] Id. at 899-913.
- [67] Id. at 914-930.
- [68] Id. at 1296-1311.
- [69] Id. at 1026-1067.
- [70] Id. at 1040.
- [71] Id.
- [72] Id. at 1052-1054.
- [73] Id. at 99.
- [74] Id. at 899-913.
- [75] Id. at 907-908.
- [76] Id. at 108.
- [77] Id. at 849-878.
- [78] Id. at 849-851.
- [79] 572 Phil. 71 (2008) [Per J. Nachura, En Banc].
- [80] 563 Phil. 517 (2007) [Per J. Nachura, Third Division].
- [81] Rollo, pp. 851-852.
- [82] Id. at 861.
- [83] Id. at 860.
- [84] Id. at 861-863.
- [85] Id. at 868.
- [86] Id. at 89-90.

[87] Id. at 914-930.

[88] 301 Phil. 794 (1994) [Per J. Puno, En Banc].

[89] Rollo, pp. 915-916.

[90] Id. at 924-927.

[91] Id. at 1297.

[92] Id. at 1296-1311.

[93] Id. at 1299-1300.

[94] Id. at 1412-A-1412-B.

[95] Id. at 1436-1439.

[96] Id. at 1440-1446.

[97] Id. at 1461-1472.

[98] Id. at 1463-1465.

[99] Id. at 1468-1469.

[100] Id. at 1479-1480.

[101] Id. at 1484-1487.

[102] Id. at 1488.

[103] Id. at 1485.

[104] Id. at 1490-1491.

[105] *Dichaves v. Office of the Ombudsman*, G.R. Nos. 206310-11, December 7, 2016, 813 SCRA 273, 297-299, [Per J. Leonen, Second Division].

[106] G.R. Nos. 206310-11, December 7, 2016, 813 SCRA 273 [Per J. Leonen, Second Division].

[107] Id. at 298-299.

[108] *Chan v. Formaran III, et al.*, 572 Phil. 118, 132 (2008) [Per J. Nachura, Third Division].

[109] *Reyes v. Office of the Ombudsman*, G.R. No. 208243, June 5, 2017

< <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/208243.pdf> > [Per J. Leonen, Second Division].

[110] *Angeles v. Secretary of Justice*, 503 Phil. 93, 100 (2005) [Per J. Carpio, First Division].

[111] *Reyes v. Office of the Ombudsman*, G.R. No. 208243, June 5, 2017

< <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/208243.pdf> > 7 [Per J. Leonen, Second Division].

[112] Rollo, p. 40.

[113] 563 Phil. 517 (2007) [Per J. Nachura, Third Division].

[114] Id. at 527.

[115] Id.

[116] Rollo, pp. 421-426.

[117] Id. at 425-246.

[118] Id. at 427-431.

[119] Id. at 432-455.

[120] Id. at 432-433.

[121] Id. at 447.

[122] Id. at 449.

[123] Id. at 456-462.

[124] Id. at 118-120.

[125] 563 Phil. 517, 527 (2007) [Per J. Nachura, Third Division].

[126] Id. at 527.

[127] Rollo, pp. 436-437.

[128] Id. at 437-438.

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