

SECOND DIVISION

[G.R. No. 195962, April 18, 2018]

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,
PETITIONER, VS. OFFICE OF THE OMBUDSMAN, PLACIDO L.
MAPA, JR.,^o RECIO M. GARCIA, LEON O. TY, JOSE R. TENGCO, JR.,
ALEJANDRO MELCHOR, VICENTE PATERNO, RUBEN ANCHETA,
RAFAEL SISON, HILARION M. HENARES, JR., CARMELINO G.
ALVENDIA AND GENEROSO F. TENSECO,^{oo} RESPONDENTS.**

RESOLUTION

CAGUIOA, J:

Before the Court is a petition for *certiorari*^[1] under Rule 65 of the Rules of Court assailing the Resolution^[2] dated April 29, 2008 (Resolution) of the Office of the Ombudsman (OMB) in OMB-C-C-05-0018-A, dismissing the complaint for violation of Section 3(e) and (g) of Republic Act No. (RA) 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, against private respondents, and the undated Order^[3] denying petitioner's motion for reconsideration.

The Facts and Antecedent Proceedings

The petition alleges that:

x x x On 8 October 1992, then President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans. The Committee was tasked to perform the following functions:

1. 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;
2. Identify the borrowers who were granted "friendly waivers" as well as the government officials who granted these waivers, determine the validity of these waivers; and
3. Determine the courses of action that the government should take to recover these loans, and to recommend appropriate actions of the Office of the President within sixty (60) days from date of its creation.

x x x On 9 November 1992, President Ramos further issued Memorandum Order No. 61 expanding the functions of the Committee to include in its investigation, inventory and study, all non-performing loans,

whether behest or non-behest. Moreover, the said Memorandum Order provided the following criteria as reference in determining whether a loan was behest or not, to wit:

- a. It is under collateralized.
- b. The borrower corporation is undercapitalized.
- c. Direct or indirect endorsement by high government officials like presence of marginal notes.
- d. Stockholders, officers or agents of the borrower corporation are identified as cronies.
- e. Deviation of use of loan proceeds from the purpose intended.
- f. Use of corporate layering.
- g. Non-feasibility of the project for which financing is being sought.
- h. Extra-ordinary speed in which the loan release was made.

x x x Among the loan accounts investigated by the Committee was that of the Philippine Pigment and Resin Corporation (PPRC). In its *Seventeenth (17th) Fortnightly Report* to President Ramos dated 29 November 1993, the Committee reported that the loans/accommodations obtained by PPRC from the Development Bank of the Philippines (DBP) possessed positive characteristics of behest loans. The Committee's findings were reiterated in its *Terminal Report* dated 1 February 1994.

x x x On the strength of the Committee's findings, the complaint *a quo* was filed before [the] Office of the Ombudsman (OMB), accusing herein private respondents of *violation of Sections 3(e) and (g) of Republic Act 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act*, to wit:

Public

Officials:

PLACIDO L. MAPA	- Chairman
RECIO M. GARCIA	- Governor
LEON O. TY	- Governor
JOSE R. TENGCO, JR.	- Governor
ALEJANDRO MELCHOR	- Governor
VICENTE PATERNO	- Governor
RUBEN	- Governor

ANCHETA
RAFAEL - Governor
SISON

All of:
Development
Bank of the
Philippines
(DBP)

Private
Individuals:
HILARION M.
HENARES,
JR.
CARMELINO
G. ALVENDIA
&
GENEROSO
F. TANSECO

All of:
Philippine Pigment & Resin Corporation (PPRC)

x x x The complaint *a quo* essentially alleges that PPRC was able to obtain two (2) foreign currency loans from DBP in the total amount of One Million Five Hundred Ninety Six Thousand Eight Hundred Twenty Two Dollars (US\$1,596,822.00), or the equivalent of Eleven Million Nine Hundred Seventy Six Thousand One Hundred Sixty Five Pesos (PhP11,976,165.00).

x x x The said loans were secured by the following:

- a. Joint first mortgage with the Private Development Corporation of the Philippines (PDCP) and National Investment and Development Corporation (NIDC) with DBP having an interest of 68.78% on existing assets (land, buildings and improvement, machinery and equipment) amounting to PhP9,297,000.00;
- b. Joint first mortgage with (PDCP] and NIDC with DBP having an interest of 68.78% on assets to be acquired valued at PhP16,314,900.00; and
- c. Joint and several signatures of Messrs. Carmelino G. Alvendia, Generoso G. Tanseco and Hilarion M. Henares, Jr.

x x x In other words, DBP's share on the aforesaid collaterals was valued at PhP17,615,685.00 and 64% thereof consisted of yet to be acquired assets. Moreover, it would be significant to note that at the time the loans were granted, PPRC's paid-up capital was only PhP12,816,704.00.

x x x The complaint further alleged that: (1) in a statement of Total Claim as of 30 June 1987 prepared by the Transaction Processing Department-APT of DBP, the total net claim of DBP against PPRC amounted to a

staggering PhP116,625,402.58; (2) based on the examination of the loan amounts of PPRC, the Committee determined that such accounts are indeed behest loans and the same would have not been extended or granted to PPRC had it not been for the manifest partiality bestowed upon it by the Board of Governors of DBP; (3) that in the normal course of events, any financial institution would have not granted the loans received by PPRC, which were severely under-collateralized and the borrower under-capitalized; (4) that the debt of PPRC ballooned to PhP116,625,402.58 in 1987 clearly indicating that PPRC failed to pay DBP the installments and interest due on the said obligation; and that finally, (5) the said acts of the Board of Governors of DBP, in connivance with the officers of PPRC, led to the grant of benefits grossly disadvantageous to the government.

x x x Finding enough bases to conduct a preliminary investigation, x x x OMB issued an Order dated 4 January 2005 directing the private respondents to file their respective counter-affidavits. However, only respondents Jose R. Tengco, Jr. and Placido L. Mapa submitted their respective Counter-Affidavits.

x x x x

x x x Petitioner filed its Consolidated Reply dated 20 April 2005 x x x.

x x x On 29 April 2008, [OMB] issued its now assailed Resolution dismissing petitioner's complaint for lack of probable cause to warrant [private] respondents indictment. [OMB] also held in its Resolution that private respondent[s] could not be held liable for their acts committed prior to the issuance of Memorandum Order No. 61 dated 9 November 1992. The dispositive portion of said Resolution reads as follows:

WHEREFORE, there being no probable cause established to warrant the indictment of herein respondents *Placido Mapa, Recio M Garcia, Leon O. Ty, Jose Tengco, Jr., Alejandro A. Melchor, Vicente Paterno[,] Ruben Ancheta, Rafael Sison, Hilarion M Henares, Jr., Carmelino G. [Alvendia] and Generoso F. Tanseco*, for violation of Section 3 (e) and (g) of Republic Act 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, the instant case, docketed as **OMB-C-C-05-0018-A**, entitled **Presidential Commission on Good Government**, represented by *Rene B. Gorospe* versus **Placido L. Mapa, et al.**, be, as it is hereby **dismissed**.

SO RESOLVED.

x x x On 11 March 2009, petitioner moved for reconsideration of the aforesaid Resolution. The motion[,] however, was denied in its equally challenged undated Order, the *fallo* of which reads:

PREMISES CONSIDERED, the Motion for Reconsideration of complainant-movant *PCGG* seeking that the Resolution dated 29 April 2008 dismissing **OMBC-C-05-0018-A**, entitled: **Presidential Commission on Good Government**,

represented by *Rene B. Gorospe* versus **Placido L. Mapa, et al.**, be, as it is hereby ***denied***.

SO ORDERED.^[4]

Hence this petition.

Private respondent Placido L. Mapa, Jr. filed a Comment^[5] dated November 21, 2011. Private respondent Carmelino G. Alvendia filed a Comment^[6] dated November 9, 2011. Private respondent Jose R. Tengco, Jr. filed a Comment^[7] dated November 28, 2011. The Court noted the said Comments in its Resolution^[8] dated February 6, 2012. In its Resolution^[9] dated December 5, 2012, the Court resolved to dispense with the comments of the other private respondents, it appearing that only private respondents Jose R. Tengco, Jr. and Placido L. Mapa, Jr. submitted their respective counteraffidavits before the OMB. Petitioner filed a Consolidated Reply^[10] dated March 26, 2013.

Issue

The petition raises the following issue:

Whether the OMB committed grave abuse of discretion and/or acted without or in excess of jurisdiction in dismissing petitioner's complaint for alleged lack of probable cause.

The Court's Ruling

The petition is without merit. The OMB did not commit grave abuse of discretion or act without or in excess of jurisdiction in dismissing petitioner's complaint for lack of probable cause.

Private respondents are charged with violation of Section 3(e) and (g) of RA 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, to wit:

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 x

(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.

x x x x