

SECOND DIVISION

[G.R. No. 189800, July 09, 2018]

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,
PETITIONER, V. HON. MA. MERCEDITAS GUTIERREZ, IN HER
CAPACITY AS OMBUDSMAN, RENATO D. TAYAG, ISMAEL
REINOSO, JUAN TRIVINO, JUAN PONCE ENRILE, MARIO ORTIZ,
GENEROSO TANSECO, FAUSTINO SY CHANGCO, VICENTE ABAD
SANTOS, EUSEBIO VILLATUYA, MANUEL MORALES, JOSE ROÑO,
TROADIO T. QUIAZON, RUBEN ANCHETA, FERNANDO MARAMAG,
JR., GERONIMO VELASCO, EDGARDO L. TORDESILLAS, JAIME C.
LAYA, GERARDO P. SICAT, ARTURO R. TANCO, JR., PLACIDO L.
MAPA, JR., PANFILO DOMINGO, VICTORINO L. OJEDA, TEODORO
DE VERA, ALEJANDRO LUKBAN, JR., ROMEO TAN, LUIS RECATO,
BENITO S. DYCHIAO, ELPIDIO M. BORJA, RESPONDENTS.**

DECISION

REYES, JR., J:

Before this Court is a petition for *certiorari*^[1] under Rule 65 of the Rules of Court, as amended. The petition seeks to nullify and set aside the Resolution^[2] dated June 23, 2006 of the Office of the Ombudsman in OMB-C-C-05-0153-D, dismissing the complaint filed against Renato D. Tayag, Ismael Reinoso, Juan Trivino, Juan Ponce Enrile (Enrile), Mario Ortiz, Generoso Tanseco, Faustino Sy Changco, Vicente Abad Santos, Eusebio Villatuya, Manuel Morales, Jose Roño, Troadio T. Quiazon, Ruben Ancheta, Fernando Maramag, Jr., Geronimo Velasco, Edgardo L. Tordesillas, Jaime C. Laya, Gerardo P. Sicat, Arturo R. Tanco, Jr., Placido L. Mapa, Jr. (Mapa), Gilberto Teodoro, Panfilo Domingo, Victorino L. Ojeda (Ojeda), Teodoro De Vera (De Vera), Alejandro Lukban, Jr. (Lukban), Romeo Tan (Tan), Luis Recato (Recato), Benito S. Dychiao (Dychiao), Elpidio M. Borja (Borja) (collectively referred to as the private respondents), and the Order^[3] dated January 7, 2009 which denied petitioner Presidential Commission on Good Government's (PCGG) Motion for Reconsideration.

The Facts

Bicolandia Sugar Development Corporation (BISUDECO) is a domestic corporation engaged in the business of sugarcane milling. It was incorporated on September 30, 1970, with an initial authorized capital stock worth P10,000,000.00 of which P2,010,000.00 worth of shares were subscribed and P510,000.00 worth were paid up. Its incorporators were private respondents Ojeda, de Vera, Lukban, Tan, Recato, Dychiao, Borja, and Edmund Cea (Cea) (Deceased).^[4]

On August 12, 1972, BISUDECO's authorized capital stock was increased to P36,300,000.00, of which P5,260,000.00 worth of shares were subscribed and P1,315,000.00 worth were paid up.^[5]

In 1971, BISUDECO filed a loan request with Philippine National Bank (PNB) for the issuance of a stand-by letter of credit. The loan request in the total amount of P172,583,125.00 was recommended to the PNB Board of Directors and was approved under PNB Resolution No. 157-D dated October 27, 1971. Allegedly, at this time, BISUDECO had no sufficient capital and collateral, and had assets amounting to only P510,000.00 as reflected in its Balance Sheet dated December 31, 1971.^[6]

When BISUDECO failed to comply with the conditions imposed on the grant of loan, that it must have sufficient capital and collateral, it requested for modifications in the guarantee conditions, *viz.*:

WHEREAS, the above corporation (BISUDECO) has requested for the following:

- I. That the aforementioned condition be amended so as to allow them to deposit only P500,000 before L/C opening, the balance of P15.1 million to be put up during the construction period as the need arises; and
- II. That the bank accept as collateral for the accommodations their plant site, sugar mill machinery and equipment, farm equipment and implements and other assets to be acquired; and assignment of proceeds of their share in their sugar and molasses produced.^[7]

PNB approved the requested modifications under Resolution No. 141-C.^[8] Despite the amendments made, BISUDECO still failed to submit and comply with the guarantee conditions. Nonetheless, PNB further accommodated BISUDECO and passed PNB Resolution No. 137-C^[9] approving modifications in the terms and conditions and facilitating the implementation and opening of the letter of credit, *viz.*:

RESOLVED, that in order to avoid further delay and to take advantage of the beneficial terms and conditions of the contract which they have entered into with its supplier, further amendment of the aforesaid resolution be approved as requested by BISUDECO:

1. To grant BISUDECO a period of 30 days from opening of the letter of credit within which to increase its authorized capital of P36.3 Million;
2. To delete the requirement for the joint and several signatures of BISUDECO's principal officers and stockholders, provided that BISUDECO will guarantee that it will pay its obligations to the bank to the extent of its interest in BISUDECO;
3. To grant BISUDECO a period of 30 days from opening of the letter of credit within which to deposit with the [PNB] the sum of P500,000.00, provided that they will execute a Deed of Undertaking that they are holding the aforementioned sum in trust for the Bank with the written conformity of depository bank and will turn over the money within said period;
4. That BISUDECO shall execute a Deed of Undertaking to mortgage to the Bank the aforesaid 111.3165 Has. of land in Himaao, Pili, Camarines Sur, free from all liens and encumbrances;

5. That BISUDECO shall submit to the Bank a copy of the Deed of Sale with assumption of mortgage covering the aforementioned property; and

6. That BISUDECO shall make an immediate payment of the encumbrance annotated at the back of the title of the property in favor of the [PNB].

All the terms and conditions of Res. No. 141-C of December 15, 1971 referred to above, not in conflict herewith, to remain in full force and effect.^[10]

PCGG claims that despite continuously incurring losses in its milling operations resulting to capital deficiency, BISUDECO was extended by PNB undue and unwarranted accommodations from 1977 to 1985 by way of grant of the following loans:^[11]

Resolution under which loan was granted	Date	Amount of Loan
Resolution #337	November 9, 1997	P6,047,500.00
Resolution #449	March 19, 1979	P7,750,000.00
(not indicated)	1979	P26,100,000.00
Resolution #538	September 28, 1981	P5,610,000.00
(not indicated)	1982	P1,240,000.00
(not indicated)	1983	P4,824,000.00
Resolution #155	January 9, 1984	P18,470,000.00
Resolution #375	March 26, 1984	P4,590,000.00
Resolution #517	July 23, 1984	P15,040,000.00
Resolution #46	January 21, 1985	P21,840,000.00

On February 27, 1987, PNB's rights, titles and interests were transferred to the Philippine Government through a Deed of Transfer, including the account of BISUDECO. In 1994, after study and investigation, the Presidential Ad Hoc Fact Finding Committee (Committee), in reference to Memorandum No. 61,^[12] found that the loan accounts of BISUDECO were behest loans due to the following characteristics: a) the accounts were under collateralized; and b) the borrower corporation was undercapitalized.^[13]

Thus, on January 28, 2005, PCGG filed with the Ombudsman a complaint against private respondents (in their capacities as members of PNB's Board of Directors and

Officers of BISUDECO) for violation of Sections 3(e) and (g) of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act.

In its Resolution^[14] dated June 23, 2006, the Ombudsman dismissed the Complaint on the grounds of lack of probable cause and prescription. The pertinent portions of the assailed resolution read as follows:

Before the passage of Batas Pambansa Bilang 195 on 16 March 1982, the prescription of offenses punishable under the Anti-Graft and Corrupt Practices Act was ten (10) years. The Supreme Court in the case of "**People vs. The Hon. Sandiganbayan and Ceferino S. Paredes, Jr.**" in ruling that the new prescriptive period cannot be given retroactive effect succinctly stated that Batas Pambansa Bilang 195 which was approved on March 16, 1982 amending Section 11 of RA 3019 by increasing from ten (10) to fifteen (15) years the period for the prescription or extinguishment of a violation of the Anti-Graft and Corrupt Practices Act, may not be given retroactive application to the crime which was committed by Paredes in January 1976 yet, for it would be prejudicial to the accused. It would deprive him of the substantive benefit of the shorter (10 years) prescriptive period under Section 11 of RA 3019 which was an essential element of the crime at the time he committed it.

x x x x

Therefore, applying the two rulings of the Supreme Court mentioned earlier, the loans granted by the PNB to BISUDECO from 1971 to 1981 are already barred by prescription with respect to the criminal liability of the respondents.

As to the other loans/ accommodations extended by PNB to BISUDECO, the complaint and its supporting papers do not show the individual or collective participation of the respondents in the acts complained of.

x x x x

WHEREFORE, the foregoing considered, it is respectfully recommended that the Complaint for violation of Section 3 (e) and (g) of RA 3019 filed against all respondents be dismissed.

SO RESOLVED.^[15]

PCGG filed a Motion for Reconsideration but the same was denied by the Ombudsman in an Order^[16] dated January 7, 2009.

Hence, the instant Petition.

The Issue

For resolution is the issue on whether the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing PCGG's Complaint on the ground of (a) prescription and (b) lack of probable cause.

Ruling of the Court

At the outset, it should be stressed that R.A. No. 3019, Section 11^[17] provides that all offenses punishable under said law shall prescribe in ten (10) years. This period was later increased to fifteen (15) years with the passage of *Batas Pambansa* (BP) *Bilang* 195,^[18] which took effect on March 16, 1982.

When the subject transactions took place, the period of prescription for all offenses punishable under R.A. No. 3019 was ten (10) years. As to which of the two periods should apply, the Court in *People v. Pacificador*^[19] explained that in the prescription of crimes, the period which appears more favorable to the accused is to be adopted, *viz.:*

It can be gleaned from the Information that the respondent Pacificador allegedly committed the crime charged on or about during the period from December 6, 1975 to January 6, 1976. Section 11 of R.A. No. 3019, as amended by B.P. Blg. 195, provides that the offenses committed under the said statute shall prescribe in fifteen (15) years. It appears however, that prior to the amendment of Section 11 of R.A. No. 3019 by B.P. Blg. 195 which was approved on March 16, 1982, the prescriptive period for offenses punishable under the said statute was only ten (10) years. The longer prescriptive period of fifteen (15) years, as provided in Section 11 of R.A. No. 3019 as amended by B.P. Blg. 195, does not apply in this case for the reason that the amendment, not being favorable to the accused (herein private respondent), cannot be given retroactive effect. Hence, the crime prescribed on January 6, 1986 or ten (10) years from January 6, 1976.^[20]

The loan transactions subject of this case were granted by the PNB to BISUDECO from 1977-1985. Applying this Court's pronouncement in *Pacificador*, the period of prescription for offenses committed prior to the passage of B.P. Blg. 195 is ten (10) years. The new 15-year period cannot be applied to acts done prior to its effectivity in 1982 because to do so would violate the prohibition against *ex post facto* laws. Transactions entered into and consummated prior to the effectivity of B.P. Blg. 195 on March 16, 1982 are exempt from its amendments. The new 15-year period shall only be applied to acts done after its effectivity.

When does the 10-year period begin to run?

While R.A. No. 3019 is silent as to when the period of prescription begins to run, R.A. No. 3326,^[21] specifically Section 2 thereof fills the gap. Section 2 provides in part:

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 proceeding for its investigation and punishment. x x x (Emphasis Ours)

In the 1999^[22] and 2011^[23] cases of *Presidential Ad Hoc Fact-Finding Committee on Behest Loans, et al. v. Hon. Desierto, et al.*, the Court ruled that the prescriptive period began to run **from the date of discovery** of the subject transactions and not from the time the behest loans were transacted. In the 2011 *Desierto* case, the Court ruled that the "blameless ignorance" doctrine applies considering that the plaintiff at that time had no reasonable means of knowing the existence of a cause of action, *viz.:*