

FIRST DIVISION

[G.R. NO. 159876, June 26, 2007]

**DINO A. CRUCILLO, PETITIONER, VS. OFFICE OF THE
OMBUDSMAN AND THE PRESIDENTIAL COMMISSION ON GOOD
GOVERNMENT, RESPONDENTS.**

[G.R. NO. 159877]

**JOSE R. TENGCO, JR., PETITIONER, VS. HON. SIMEON V.
MARCELO IN HIS CAPACITY AS THE OMBUDSMAN AND THE
PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,
RESPONDENTS.**

D E C I S I O N

GARCIA, J.:

In these consolidated petitions for *certiorari* under Rule 65 of the Rules of Court, with prayer for injunctive relief, petitioners Dino A. Crucillo (Crucillo, for short) and Jose R. Tengco, Jr.^[1] (Tengco, for short) seek the annulment and setting aside of the *Order/Resolution*^[2] dated March 10, 2003 of the Office of the Ombudsman (OOMB)^[3] in *OMB Case No. 0-96-0794*, as reiterated in a Resolution^[4] of July 21, 2003, finding probable cause to proceed against both petitioners for violation of Section 3(e) and (g)^[5] of Republic Act (R.A.) No. 3019, as amended, otherwise known as the *Anti-Graft and Corrupt Practices Act*.

The instant case turns on the charge filed by the respondent Presidential Commission on Good Government (PCGG) against the then board members/officers of both Phil-Asia Food Industries Corporation (PAFICO) and the Development Bank of the Philippines (DBP) for corrupt practices arising from the alleged "*behest*" loan DBP extended to PAFICO to finance the latter's soybeans processing plant project. Memorandum Circular (MC) No. 61,^[6] series of 1992, lists several criteria to show the earmarks of a "*behest loan*." Among these are: (1) the loan was under collateralized; (2) the borrowing entity was undercapitalized; (3) endorsement by high government officials; and 4) unusual speed in releasing the loan proceeds.

At times material to this case, petitioner Crucillo was the Manager of the DBP's Agricultural Projects Department I (APD I). Petitioner Tengco, on the other hand, sat as member of DBP's Board of Governors. DBP's charter^[7] at that time empowered the bank "to grant loans to [and] to purchase preferred redeemable shares of stock of any agricultural and/or industrial enterprises . . . to finance their fixed and operating capital requirements. All . . . loans shall be granted only under such terms, conditions and restrictions as the bank shall determine."

Records yield the following facts:

On March 13, 1996, Atty. Orlando L. Salvador, then PCGG Consultant of the Presidential *Ad Hoc* Committee on Behest Loans (the Behest Loan Committee, for short), filed with the OOMB a *Sworn Statement*^[8] therein stating that, sometime in March 1979, PAFICO applied for – and later secured approval from the DBP under Board Resolution (B/R) 2826, s. of 1979 – foreign currency loans (the subject loan, hereinafter). At the then prevailing exchange rate of US\$1: Php 7.50, the total peso equivalent of the loan was Php 151,999,995.00. As alleged in the sworn statement, forming part of the accommodation package was the investment the DBP had to put up in PAFICO preferred shares in the amount of Php 40 Million to cover part of PAFICO's pre-operating expenses and the working capital requirements. In all then, the approved loan was, per Atty. Salvador, in the aggregate amount of **Php 191,999,995.00** (P151,999,995.00 + P40,000,000.00 = P191,999,995.00).^[9] The *Sworn Statement* further alleged as follows:

c. The original loan was secured as follows (Annex 4, Evidence 11)

1. Existing Assets

xxx
 Total existing assets P1,405,325

2. Assets to be acquired

xxx xxx xxx
 Total assets to be acquired P 194,068,991

Grand Total P 195,474,316
 % Loan Value
 80%

d) PAFICO's paid up capital as of March 14, 1979

(Annex 4, Evidence 14) - - - - - P4.5 million

5. Said evidence show that the **loan was without sufficient collateral** whereby DBP had to put-up equity in the amount of P40 million to cover the collateral deficiency ... and **PAFICO** itself had **no sufficient capital** to be entitled of the loan (sic), paid-up capital amounts to P4.5 million only.

6. PAFICO obtained additional concessions and/or benefits ... and was approved by the DBP Board under B/R 1809 ... such as:

a) The deletion of [PAFICO board members] ... Antonio Tan, Miguel Gonzales and Federico Ballon as signatories of the loan ...;

b) The exclusion of Messrs. Benedicto and Sabido as co-obligors;

c) xxx xxx xxx

xxx xxx xxx. (Emphasis and words in brackets added).

The *Sworn Statement*, docketed as *OMB Case No. 0-96-0794*, charged the following individuals from DBP, namely: Rafael A. Sison, Jose V. de Ocampo, **Tengco**, Recio M. Garcia and **Crucillo**; and the then members of the PAFICO Board, to wit: Roberto A. Benedicto (now deceased), and four others, with violation of Section 3(e) and (g) of R.A. No. 3019.

Some time after the filing of the *Sworn Statement*, the following events transpired:

1. In a Resolution^[10] of April 20, 1999, as approved by then Ombudsman (Omb.) Aniano Desierto, Graft Investigation Officer (GIO) Fe Q. Palmiano-Salvador of the Evaluation and Preliminary Investigation Bureau (EPIB) **dismissed the case** on the ground that the subject loan, being a developmental loan and sufficiently collateralized, is not behest.
2. After the PCGG's motion for reconsideration was denied, the case was referred to GIO Evangeline Grafil who, in her review-report, recommended **giving due course** to the PCGG's **motion for reconsideration**. GIO Grafil, however, recommended that those involved be charged only with violation of Sec. 3(e) R.A. No. 3019. ^[11]

Special Prosecution Officer (SPO) Victorio Tabanguil disagreed with GIO Grafil's recommendation and **concurred** with GIO Salvador's **resolution**. ^[12]

3. Owing to the conflicting positions taken by the reviewing officials, then Omb. Desierto referred the case to the Office of the Legal Affairs (OLA) for another review.

On February 19, 2001, the **OLA recommended** - and Omb. Desierto approved - the **indictment** of Tengco, Crucillo, *et al.* for violation of Sec. 3(e) of R.A. No. 3019. ^[13]

4. On March 23, 2001, an information^[14] was filed with the Sandiganbayan against the petitioners and eight (8) others. The inculpatory statements in the information read:

That during the period from December 7, 1979 to June 8, 1982, ..., accused RAFAEL A. SISON, JOSE V. DE OCAMPO, JOSE R. TENGCO and RECIO M. GARCIA, all public officers, being the Board Members of the ... (DBP) and DINO A. CRUCILLO, also a public officer, being then the Manager of the DBP, while in the performance of their official and administrative functions as such, taking advantage of the same, **conspiring together** and mutually helping with accused ROBERTO A. BENEDICTO, ROBERTO M. SABIDO, [*et al.*], private individuals and officials of the ... (PAFICO), a private corporation engaged primarily in "Soybean Processing", with **evident bad faith and manifest partiality**, did then and there willfully, unlawfully and criminally give unwarranted benefit, advantage, or preference to PAFICO by facilitating and granting a loan to the said PAFICO in the total sum P207,159,148.42 ..., despite the fact that at the time of the grant thereof, **PAFICO had no adequate**

collateral to offer and was also undercapitalized, thus causing undue injury to the government in the aforesaid amount of the loan.

CONTRARY TO LAW. (Emphasis and words in brackets added)

5. On May 4, 2001, the Sandiganbayan Fifth Division, to which the case, docketed as *Crim. Case No. 26539*, was raffled, ordered the OOMB to conduct a preliminary investigation insofar as the petitioners and accused Rafael Sison were concerned, they not having been accorded the benefit of a preliminary investigation.

Following the submission by those concerned of their counter-affidavits and countervailing evidence, the EPIB, through GIO Myrna A. Corral, *via* a Resolution^[15] dated **June 3, 2002, recommended the dismissal** of this case on the ground of *res judicata*, disposing as follows:

WHEREFORE, in view of the foregoing, it is hereby recommended that the charges against respondents Rafael A. Sison, Jose V. De Ocampo ... Jose R. Tengco, [*et al.*] for violation of Section 3(e) and (g) of [R.A.] No. 3019 be **DISMISSED**, the same having been **previously resolved with finality on May 18, 1992 by this Office in TBP No. 87-02383** entitled *DBP v. Phil-Asia Food Industries Corporation (PAFICO)*.

SO RESOLVED (Words in bracket and emphasis added.)

On **July 5, 2002**, Omb. Desierto **approved** GIO Corral's recommendation. In time, the PCGG filed a *Motion for Reconsideration*, followed by a *Supplement to Motion for Reconsideration*,^[16] upon the **ground** that **TBP Case No. 87-02388 is different from the present case**.

Then came the appointment of respondent Simeon V. Marcelo as Ombudsman.

On March 10, 2003, Omb. Marcelo, acting on the PCGG's motion to reconsider GIO Corral's resolution, issued the herein assailed *Order/Resolution*,^[17] disposing as follows:

IN VIEW OF THE FOREGOING, the ... said Motion for Reconsideration dated 23 July 2002 filed by the [PCGG] is hereby **PARTIALLY GRANTED**. As against respondents **Rafael A. Sison, Jose R. Tengco** and **Dino A. Crucillo**, this Office finds probable cause for violation of Section 3 (e) and (g) of [R.A.] No. 3019 and hence, there is no justification for the withdrawal of the Information against them in *Crim. Case No. 26539*. As to respondents **Miguel V. Gonzales, Antonio L. Tan** and **Federico B. Ballon**, ..., the instant criminal case against them is dismissed. The Office of the Special Prosecutor is hereby ordered to cause the amendment of the Information for the exclusion of respondents **Miguel V. Gonzales, Antonio L. Tan** and **Federico B. Ballon** from Criminal Case No. 26539.

SO ORDERED. (Emphasis in the original; Words in brackets added.)

The petitioners' motion for reconsideration was denied in a resolution^[18] of July 21, 2003.

Hence, these consolidated petitions. In a Resolution^[19] of January 26, 2004 in *G.R. No. 159876*, the Court issued a Temporary Restraining Order enjoining the Sandiganbayan from proceeding with the hearing of Criminal Case No. 26539 (OMB Case No. 0-96-0794).

It is the petitioners' common contention that the instant case is barred by *res judicata*, petitioner Tengco submitting, in addition, that his liability, if there be any, was extinguished by the compromise agreement entered into by and between the Republic of the Philippines (RP), through the PCGG, and Benedicto wherein the latter ceded the PAFICO complex to the PCGG which then sold it to the General Milling Corporation, through the Asset Privatization Trust, for Php 330 million.^[20] This sale, petitioner Tengco would claim, argues against the idea of the government incurring damages or placed at a disadvantage as a consequence to the alleged behest loan grant.

The other grounds petitioner Tengco advanced for the allowance of his petition are as follows:

4. THE MANIFESTLY ERRONEOUS FINDINGS OF RESPONDENT OMBUDSMAN THAT THE P40M EXTENDED TO PAFICO WAS ALLEGEDLY A "LOAN" AND NOT EQUITY INVESTMENT; THAT THE EQUITY ARRANGEMENT WAS ALLEGEDLY "A MERE SUBTERFUGE TO "DRESS UP" THE VALUE OF PAFICO'S COLLATERALS"; OR ALLEGEDLY "TO FRAUDULENTLY SHOW THAT PAFICO HAD MORE THAN ENOUGH COLLATERAL TO SECURE ITS OBLIGATIONS" AND THAT THE LOANS ARE "UNDER-COLLATERALIZED" ARE COMPLETELY NOT JUSTIFIED AS THEY ARE SQUARELY NEGATED AND CATEGORICALLY DISPROVED BY EVIDENCE.
5. THE FINDINGS OF RESPONDENT OMBUDSMAN THAT PAFICO WAS UNDER-CAPITALIZED AND THAT "THE P40 MILLION EQUITY INFUSION BY DBP WAS USED TO INCREASE THE P70 MILLION CAPITAL REQUIREMENT OF PAFICO" ARE ALSO SQUARELY NEGATED AND CATEGORICALLY DISPROVED BY THE RECORDS; AGAIN RESPONDENT OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION IN MAKING CONCLUSIONS THAT ARE COMPLETELY BASELESS AND DIRECTLY DISPROVED BY THE EVIDENCE.

The issues in the instant petitions can be summed up into whether respondent OOMB, through then Omb. Marcelo, committed grave abuse of discretion amounting to lack of jurisdiction when it issued the assailed resolutions which would pave the way for the continued prosecution of the petitioners.

To the petitioners, respondent OOMB gravely abused its discretion in coming up with the assailed resolutions. For, in so doing, it veritably reversed its own resolutions previously rendered by then Omb. Conrado Vasquez and then Omb. Desierto who, between them, thrice dismissed the same complaint for alleged violation of Sec. 3(e) and (g) of R.A. No. 3019 lodged against the herein petitioners and the PAFICO group impleaded as respondents in OMB Case No. 0-96-0794 and as accused in Criminal Case No. 26539.