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# THIRD DIVISION

# [ G.R. No. 135080, November 28, 2007 ]

## ORLANDO L. SALVADOR, FOR AND IN BEHALF OF THE PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS, PETITIONER, VS. PLACIDO L. MAPA, JR., RAFAEL A. SISON, ROLANDO M. ZOSA, CESAR C. ZALAMEA, BENJAMIN BAROT, CASIMIRO TANEDO, J.V. DE OCAMPO, ALICIA L. REYES, BIENVENIDO R. TANTOCO, JR., BIENVENIDO R. TANTOCO, SR., FRANCIS B. BANES, ERNESTO M. CARINGAL, ROMEO V. JACINTO, AND MANUEL D. TANGLAO, RESPONDENTS.

## D E C I S I O N

**NACHURA, J.:**

The Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans, (the Committee), through Atty. Orlando L. Salvador (Atty. Salvador), filed this Petition for Review on *Certiorari* seeking to nullify the October 9, 1997 Resolution[1] of the Office of the Ombudsman in OMB-0-96-2428, dismissing the criminal complaint against respondents on ground of prescription, and the July 27, 1998 Order[2] denying petitioner's motion for reconsideration.

On October 8, 1992 then President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans, which reads:

> WHEREAS, Sec. 28, Article II of the 1987 Constitution provides that "Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest";
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> WHEREAS, Sec. 15, Article XI of the 1987 Constitution provides that "The right of the state to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel";
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> WHEREAS, there have been allegations of loans, guarantees, and other forms of financial accommodations granted, directly or indirectly, by government-owned and controlled bank or financial institutions, at the behest, command, or urging by previous government officials to the disadvantage and detriment of the Philippines government and the Filipino people;
>
> ACCORDINGLY, an "Ad-Hoc FACT FINDING COMMITTEE ON BEHEST LOANS" is hereby created to be composed of the following:

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|---|---|
| Chairman of the Presidential Commission on Good Government | - Chairman |
| The Solicitor General | - Vice-Chairman |
| Representative from the Office of the Executive Secretary | - Member |
| Representative from the Department of Finance | - Member |
| Representative from the Department of Justice | - Member |
| Representative from the Development Bank of the Philippines | -Member |
| Representative from the Philippine National Bank | - Member |
| Representative from the Asset Privatization Trust | - Member |
| Government Corporate Counsel | - Member |
| Representative from the Philippine Export and Foreign Loan Guarantee Corporation | - Member |

The Ad Hoc Committee shall 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;

3. Determine the courses of action that the government should take to recover those loans, and to recommend appropriate actions to the Office of the President within sixty (60) days from the date hereof.

> The Committee is hereby empowered to call upon any department, bureau, office, agency, instrumentality or corporation of the government, or any officer or employee thereof, for such assistance as it may need in the discharge of its functions.[3]

By Memorandum Order No. 61 dated November 9, 1992, the functions of the Committee were subsequently expanded, viz.:

> WHEREAS, among the underlying purposes for the creation of the Ad Hoc Fact-Finding Committee on Behest Loans is to facilitate the collection and recovery of defaulted loans owing government-owned and controlled banking and/or financing institutions;
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> WHEREAS, this end may be better served by broadening the scope of the fact-finding mission of the Committee to include all non-performing loans which shall embrace behest and non-behest loans;
>
> NOW THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the power vested in me by law, do hereby order:
>
> Sec. 1. The Ad Hoc Fact-Finding Committee on Behest Loans shall include in its investigation, inventory, and study, all non-performing loans which shall embrace both behest and non-behest loans:
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> The following criteria may be utilized as a frame of reference in determining a behest loan:
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> 1. It is under-collateralized;
> 2. The borrower corporation is undercapitalized;
> 3. Direct or indirect endorsement by high government officials like presence of marginal notes;
> 4. Stockholders, officers or agents of the borrower corporation are identified as cronies;
> 5. Deviation of use of loan proceeds from the purpose intended;
> 6. Use of corporate layering;
> 7. Non-feasibility of the project for which financing is being sought; and
> 8. Extraordinary speed in which the loan release was made.
>
> Moreover, a behest loan may be distinguished from a non-behest loan in that while both may involve civil liability for non-payment or non-recovery, the former may likewise entail criminal liability.[4]

Several loan accounts were referred to the Committee for investigation, including the loan transactions between Metals Exploration Asia, Inc. (MEA), now Philippine Eagle Mines, Inc. (PEMI) and the Development Bank of the Philippines (DBP).

After examining and studying the documents relative to the loan transactions, the Committee determined that they bore the characteristics of behest loans, as defined under Memorandum Order No. 61 because the stockholders and officers of PEMI were known cronies of then President Ferdinand Marcos; the loan was under-collateralized; and PEMI was undercapitalized at the time the loan was granted.

Specifically, the investigation revealed that in 1978, PEMI applied for a foreign currency loan and bank investment on its preferred shares with DBP. The loan application was approved on April 25, 1979 per Board Resolution (B/R) No. 1297, but the loan was never released because PEMI failed to comply with the conditions imposed by DBP. To accommodate PEMI, DBP subsequently adopted B/R No. 2315 dated June 1980, amending B/R No. 1297, authorizing the release of PEMI's foreign currency loan proceeds, and even increasing the same. Per B/R No. 95 dated October 16, 1980, PEMI was granted a foreign currency loan of $19,680,267.00 or P146,601,979.00, and it was released despite non-compliance with the conditions imposed by DBP. The Committee claimed that the loan had no sufficient collaterals and PEMI had no sufficient capital at that time because its acquired assets were only valued at P72,045,700.00, and its paid up capital was only P46,488,834.00.

Consequently, Atty. Orlando L. Salvador, Consultant of the Fact-Finding Committee, and representing the Presidential Commission on Good Government (PCGG), filed with the Office of the Ombudsman (Ombudsman) a sworn complaint for violation of Sections 3(e) and (g) of Republic Act No. 3019, or the *Anti-Graft* and *Corrupt Practices Act,* against the respondents Placido I. Mapa, Jr., Rafael A. Sison; Rolando M. Zosa; Cesar C. Zalamea; Benjamin Barot, Casimiro Tanedo, J.V. de Ocampo, Bienvenido R. Tantoco, Jr., Francis B. Banes, Ernesto M. Caringal, Romeo V. Jacinto, Manuel D. Tanglao and Alicia Ll. Reyes.[5]

After considering the Committee's allegation, the Ombudsman handed down the assailed Resolution,[6] dismissing the complaint. The Ombudsman conceded that there was ground to proceed with the conduct of preliminary investigation. Nonetheless, it dismissed the complaint holding that the offenses charged had already prescribed, viz.:

> [W]hile apparently, PEMI was undercapitalized at the time the subject loans were entered into; the financial accommodations were undercollateralized at the time they were granted; the stockholders and officers of the borrower corporation are identified cronies of then President Marcos; and the release of the said loans was made despite non-compliance by PEMI of the conditions attached therewith, which consequently give a semblance that the subject Foreign Currency Loans are indeed Behest Loans, the prosecution of the offenses charged cannot, at this point, prosper on grounds of prescription.
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> It bears to stress that Section 11 of R.A. No. 3019 as originally enacted, provides that the prescriptive period for violations of the said Act (R.A. 3019) is ten (10) years. Subsequently, BP 195, enacted on March 16, 1982, amended the period of prescription from ten (10) years to fifteen (15) years
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> Moreover as enunciated in [the] case of People vs. Sandiganbayan, 211

SCRA 241, the computation of the prescriptive period of a crime violating a special law like R.A. 3019 is governed by Act No. 3326 which provides, thus:

> x x x x
>
> Section 2. Prescription shall begin to run from the day of the commission of the violation of law, and if the same be not known at the time, from the discovery thereof and the institution of the judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when the proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

Corollary thereto, the Supreme Court in the case of People vs. Dinsay, C.A. 40 O.G. 12th Supp., 50, ruled that when there is nothing which was concealed or needed to be discovered because the entire series of transactions were by public instruments, the period of prescription commenced to run from the date the said instrument were executed.

The aforesaid principle was further elucidated in the cases of People vs. Sandiganbayan, 211 SCRA 241, 1992, and People vs. Villalon, 192 SCRA 521, 1990, where the Supreme Court pronounced that when the transactions are contained in public documents and the execution thereof gave rise to unlawful acts, the violation of the law commences therefrom. Thus, the reckoning period for purposes of prescription shall begin to run from the time the public instruments came into existence.

In the case at bar, the subject financial accommodations were entered into by virtue of public documents (e.g., notarized contracts, board resolutions, approved letter-request) during the period of 1978 to 1981 and for purposes of computing the prescriptive period, the aforementioned principles in the Dinsay, Villalon and Sandiganbayan cases will apply. Records show that the complaint was referred and filed with this Office on October 4, 1996 or after the lapse of more than fifteen (15) years from the violation of the law. [Deductibly] therefore, the offenses charged had already prescribed or forever barred by Statute of Limitations.

It bears mention that the acts complained of were committed before the issuance of BP 195 on March 2, 1982. Hence, the prescriptive period in the instant case is ten (10) years as provided in the (sic) Section 11 of R.A. 3019, as originally enacted.

Equally important to stress is that the subject financial transactions between 1978 and 1981 transpired at the time when there was yet no Presidential Order or Directive naming, classifying or categorizing them as Behest or Non-Behest Loans.