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THIRD DIVISION

[G.R. No. 139296, November 23, 2007]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), THE PRESIDENTIAL AD-HOC FACT-FINDING COMMITTEE ON BEHEST LOANS, REPRESENTED BY ORLANDO L. SALVADOR, PETITIONERS, VS. HON. ANIANO DESIERTO, TOMAS B. AGUIRRE (DECEASED), PACIFICO MARCOS (DECEASED), RECIO M. GARCIA (DECEASED), LEONIDES VIRATA (DECEASED), OFELIA CASTELL, PLACIDO MAPA, JR., VICE-CHAIRMAN J.V. DE OCAMPO (DECEASED), JOSE TENGCO, JR., AND RAFAEL SISON C/O DEVELOPMENT BANK OF THE PHILIPPINES, MAKATI CITY, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

We are urged in this petition for *certiorari* to set aside the Memorandum[1] dated February 22, 1999 of then Ombudsman Aniano Desierto in OMB-0-98-0402, dismissing the complaint filed by petitioners against private respondents, and the Order,[2] denying their motion for reconsideration.

On October 8, 1992, then President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential Ad Hoc Committee on Behest Loans (Committee). The Committee was tasked to inventory all alleged behest loans, identify the parties involved, and recommend appropriate actions to be pursued by the government to recover these loans. By Memorandum Order No. 61[3] dated November 9, 1992, the functions of the Committee were subsequently expanded, *viz*.:

> 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:
>
> The following criteria may be utilized as a frame of reference in determining a behest loan:
>
> 1. It is under-collateralized;
>
> 2. The borrower corporation is undercapitalized;
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> 3. Direct or indirect endorsement by high government officials like presence of marginal notes;
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> 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.

Among the accounts referred to the Committee's Technical Working Group (TWG) for investigation were the loan transactions between Bagumbayan Corporation (Bagumbayan) and the Development Bank of the Philippines (DBP). After examining and studying the loan transactions, the Committee determined that they bore the characteristics of a behest loan, as they were under-collateralized and Bagumbayan was undercapitalized at the time the loans were granted. The Committee added that there was undue haste in the approval of these loans. It also alleged that the Chairman of Bagumbayan, Dr. Pacifico Marcos, was the brother of then President Ferdinand Marcos.

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 a sworn complaint for violation of Sections 3(e) and (g) of Republic Act (R.A.) No. 3019 or the *Anti-Graft and Corrupt Practices Act* against Tomas Aguirre, Dr. Pacifico Marcos, and the officials of the DBP, namely: Recio M. Garcia, Leonides S. Virata, Ofelia Castell, Placido Mapa, Jr., Vice-Chairman J.V. de Ocampo, Jose Tengco, Jr., and Rafael A. Sison (private respondents).[4] Pending resolution of the case, respondents Aguirre, Marcos and Virata died.

After evaluating the evidence submitted by the Committee, the Ombudsman handed down the assailed Memorandum,[5] ruling that:

> [T]he undersigned agrees with the observation of GIO Oscar R. Ramos as contained in the Resolution under review that the allegations in the complaint of the PCGG that the loans were behest loans are not properly supported by evidence. The borrower corporation is neither [under-collateralized] nor [undercapitalized]. It has sufficient paid up capital and the loan value of the offered collaterals amply secure the total amount of the loans. The loans were properly secured by existing assets, consisting of lands, the current values of which were very much higher than before; the building and improvements, machineries, equipment, furnishings which were not included in the original valuation. The loans were [properly secured] by as follows: a first mortgage on the lots and improvements therein; by a chattel mortgage on the machinery and equipment to be acquired out of the [proceeds] of the loan; and by a pledge of no less than 67% of the subscribed and [outstanding] shares entitled to vote.
>
> There was no extraordinary speed in the approval of the loan. The period

> between the filing of the application for loan which is June 10, 1974 and the DBP Board approval of the loan application on October 30, 1974 is about five (5) months. This [is] the usual length of time an application is approved.
>
> In this particular instance, the only evident feature/criteria present to consider it as a behest loan is the fact that the stockholders, officers or agents of the borrower corporation are identified as cronies. This is due to the fact that Dr. Pacifico E. Marcos, Chairman of the Board of Bagumbayan Corporation is the brother of the late President Marcos. All the other features/criteria utilized as a frame of reference in determining behest loans are not applicable.
>
> Based on the above, it is therefore crystal clear that the allegations in this complaint that the loans were behest are not supported by the evidence. Therefore, there is no ground to hold respondents liable for violations of Sec. 3(e) and (g) of RA 3019.
>
> Moreover, there is no question that the complaint under consideration has already prescribed. This complaint was filed only last February 28, 1998 for an alleged principal behest loan obtained on June 10, 1974 or 24 years ago and the last alleged behest loan was obtained on December 22, 1981 or 17 years ago. All offenses punishable under the Anti-Graft and Corrupt Practices [Act] shall prescribe in fifteen (15) years. All the offenses were evidenced by public documents, and hence it is presumed that the date of the commission thereof was also the [date] of the discovery of the offense. Prescription period commences to run from the day following the commission of the offense or discovery by the offended party. The Supreme Court stressed that the reckoning of the prescriptive period commences from its recording when the cause of action is a public document. By prescription of the crime, it means the forfeiture or loss of the right of the state to prosecute the offender after the lapse of a certain period.
>
> Three (3) of the respondents in this complaint are already dead namely: Tomas B. Aguirre, Pacifico E. Marcos and Leonides S. Virata. Death extinguishes [criminal] liability of the respondents. Therefore, in so far as the three respondents are concerned, their death set aside their criminal liabilities.[6]

Thus, the Ombudsman disposed:

> Foregoing premises considered, it is respectfully recommended that the instant complaint against the respondents be DISMISSED for insufficiency of evidence and for prescription for all the respondents and an additional ground of death for respondents Aguirre, Marcos and Virata.
>
> SO RESOLVED.[7]

Petitioners filed a Motion for Reconsideration, but the Ombudsman denied it on May 21, 1999.

Hence, this petition positing the following issues:

1. Whether or not Public Respondent committed jurisdictional error or grave abuse of discretion when he dismissed the charge against the private respondents on the ground of insufficiency of evidence.

2. Whether or not the case is barred by prescription.[8]

Before addressing the issues raised in the present petition, we note that what was filed before this Court is a petition captioned as a *Petition for Review on Certiorari.* We must point out that a petition for review on *certiorari* is not the proper mode by which resolutions of the Ombudsman in preliminary investigations of criminal cases are reviewed by this Court. The remedy from the adverse resolution of the Ombudsman is a petition for certiorari under Rule 65,[9] not a petition for review on certiorari under Rule 45.

However, we have decided to treat this petition as one filed under Rule 65 since a reading of its contents reveals that petitioners impute grave abuse of discretion and reversible legal error to the Ombudsman for dismissing the complaint. After all, the averments in the complaint, not the nomenclature given by the parties, determine the nature of the action.[10] In previous rulings, we have treated differently labeled actions as special civil actions for *certiorari* under Rule 65 for acceptable reasons such as justice, equity, and fair play.[11]

On the substantive issues raised, the Committee ascribes legal error and grave abuse of discretion to the Ombudsman for dismissing the complaint for insufficiency of evidence and on the ground of prescription.

The Court shall first deal with the issue of prescription.

It is true that all offenses penalized by the *Anti-Graft and Corrupt Practices Act* prescribe in fifteen (15) years. Since the subject loans were obtained in 1974 to 1981, the Ombudsman concluded that the offense allegedly committed by the respondents had already prescribed when the complaint was filed on February 28, 1998. This position of the Ombudsman is erroneous.

The computation of the prescriptive period for offenses involving the acquisition of behest loans had already been laid to rest in *Presidential Ad-Hoc Fact-Finding Committee on Behest Loans v. Desierto,*[12] thus:

> [I]t was well-nigh impossible for the State, the aggrieved party, to have known the violations of R.A. No. 3019 at the time the questioned transactions were made because, as alleged, the public officials concerned connived or conspired with the "beneficiaries of the loans." Thus, we agree with the COMMITTEE that the prescriptive period for the offenses with which the respondents in OMB-0-96-0968 were charged should be computed from the discovery of the commission thereof and not from the day of such commission.[13]

The ruling was reiterated in Presidential Ad-Hoc Fact-Finding Committee on Behest Loans v. Ombudsman Desierto,[14] wherein the Court explained:

> In cases involving violations of R.A. No. 3019 committed prior to the February 1986 EDSA Revolution that ousted President Ferdinand E. Marcos, we ruled that the government as the aggrieved party could not have known of the violations at the time the questioned transactions were made. Moreover, no person would have dared to question the legality of those transactions. Thus, the counting of the prescriptive period commenced from the date of discovery of the offense in 1992 after an exhaustive investigation by the Presidential Ad Hoc Committee on Behest Loans.[15]

This is now a well-settled doctrine which the Court has applied in subsequent cases involving petitioners and public respondent.[16]

It is true that the Sworn Statement filed by Atty. Salvador did not specify the exact dates when the alleged offense was discovered. However, the records show that it was the Committee that discovered the same. As such, the discovery could not have been made earlier than October 8, 1992, the date when the Committee was created. The complaint was filed on February 28, 1998, less than six years from the presumptive date of discovery. Thus, the criminal offense allegedly committed by the private respondents had not yet prescribed when the complaint was filed.

Even the Ombudsman in his Comment[17] conceded that the prescriptive period commenced from the date the Committee discovered the crime, and not from the date the loan documents were registered with the Register of Deeds.

Having resolved the issue of prescription, we proceed to the merits of the case.

The Committee insists that the loan transactions between DBP and Bagumbayan bore the characteristics of a behest loan. It claims that the loans were under-collateralized and Bagumbayan was undercapitalized when the questioned loans were hastily granted. The Committee believed that there exists probable cause to indict the private respondents for violation of Sections 3(e) and (g) of R.A. No. 3019. Thus, it contends that the Ombudsman committed grave abuse of discretion amounting to excess of jurisdiction in ruling otherwise.

Case law has it that the determination of probable cause against those in public office during a preliminary investigation is a function that belongs to the Office of the Ombudsman.[18] The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. It is basically his call. He may dismiss the complaint forthwith should he find it to be insufficient in form or substance, or he may proceed with the investigation if, in his view, the complaint is in due and proper form and substance. [19] We have consistently refrained from interfering with the constitutionally mandated investigatory and prosecutorial powers of the Ombudsman.[20] Thus, if the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings, unless the exercise of such discretionary powers is tainted by grave abuse of discretion.[21]

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as