

## THIRD DIVISION

[ G.R. No. 166355, May 30, 2011 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. LUIS J. MORALES, RESPONDENT.**

### DECISION

**BRION, J.:**

We review the petition for review on *certiorari*, filed by the People of the Philippines (the People), to assail the Resolution<sup>[1]</sup> of the First Division of the Sandiganbayan in Criminal Case No. 27431, entitled "*People of the Philippines versus Luis J. Morales.*"

#### **Background Facts**

On June 13, 1991, then President Corazon Aquino issued Administrative Order No. 223 to commemorate the 100<sup>th</sup> anniversary of the declaration of Philippine Independence and thereby created the Committee for the National Centennial Celebrations in 1998 (*Committee*).

In 1993, then President Fidel V. Ramos issued Executive Order No. 128 (*EO 128*), entitled "Reconstituting the Committee for the Preparation of the National Centennial Celebrations in 1998." EO 128 renamed the Committee as the "National Centennial Commission" (*NCC*). The mandate of the NCC was to "take charge of the nationwide preparations for the National Celebration of the Philippine Centennial of the Declaration of Philippine Independence and the Inauguration of the Malolos Congress."<sup>[2]</sup> The late Vice-President Salvador Laurel was appointed as NCC Chairman.

On March 10, 1996, the NCC and the Bases Conversion Development Authority (*BCDA*)<sup>[3]</sup> organized the Philippine Centennial Expo '98 Corporation or Expocorp whose primary purpose was to operate, administer, manage and develop the Philippine Centennial International Exposition 1998 (*Expo '98*).<sup>[4]</sup>

The Philippine Centennial project was marred by numerous allegations of anomalies, among them, the lack of public biddings. In 1998, Senator Ana Dominique Coseteng delivered a privilege speech in the Senate denouncing these anomalies. Because of this speech, the Senate Blue Ribbon Committee conducted an investigation on the Philippine Centennial project. In 1999, then President Joseph Estrada created the *Ad Hoc* and Independent Citizen's Committee (*AHICC*), also for the purpose of investigating these alleged anomalies. Both the Senate Blue Ribbon Committee and the AHICC recommended to the Office of the Ombudsman that a more exhaustive investigation of the Philippine Centennial project be conducted.

The investigation that followed resulted in the filing in 2001 of an Information<sup>[5]</sup> by

the Ombudsman's Fact-Finding and Investigation Bureau against respondent Luis J. Morales (*Morales*), the acting president of Expocorp at the time relevant to the case. This Information served as basis for Criminal Case No. 27431 that we now consider.

The Information against Morales for violation of Section 3(e) of Republic Act (R.A.) No. 3019<sup>[6]</sup> reads:

That on or about September 6, 1997 or sometime prior or subsequent thereto in Pasig City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Pres. of Expo Corporation, Pasig City, a government corporation, and as such was issued one (1) Mercede[s] Benz, Model 1997-C230, bearing Serial No. WDB202023-1F-602122, and Engine No. 111974-12-027093 for his official use, and while in the performance of his official functions, acting thru evident bad faith and manifest partiality, did then and there willfully, unlawfully, and criminally give unwarranted benefits to one Rodolfo M. Lejano by selling to him said Mercede[s] Benz through Newton Motors, Inc. represented by its President Exequiel V. Mariano in the amount of Two Million Two Hundred Fifty Thousand Pesos (P2,250,000.00), without the requisite public bidding nor approval of the Board of Directors of Expo Corporation and thereafter failed to deposit the proceeds of the sale of the aforementioned vehicle to the account of Expo Corporation, to the damage and prejudice of the Corporation and the public interest as well.<sup>[7]</sup>

In the proceedings before the Sandiganbayan, Morales moved for the dismissal of the case for lack of jurisdiction over his person and over the offense charged. He alleged that Expocorp is a private corporation and that he is not a public employee or official. He also alleged that the Sandiganbayan has no jurisdiction over his person or the offense charged as he is a private individual who has not been charged jointly with other public officials or employees. He added that Expocorp is not a government-owned or controlled corporation because it was not created by a special law, it did not have an original charter, and a majority of Expocorp's capital stock is owned by private individuals. He claimed that he did not receive any compensation from the government as defined in Section 2(a) of R.A. No. 3019, and the compensation he received as Expocorp's acting president was paid from Expocorp's funds.<sup>[8]</sup>

In its comment to Expocorp's motion, the Office of the Special Prosecutor, representing the People, insisted that Expocorp is a government-owned corporation since its articles of incorporation showed that of its ten listed subscribers, BCDA held stocks valued at P99,999,100.00, while the stocks held by the rest of the subscribers had a total value of P900.00. The People further argued, based on the Court's ruling in *Salvador H. Laurel v. Aniano A. Desierto*,<sup>[9]</sup> that NCC Chairman Laurel was a public officer; thus, Morales was likewise a public officer since his appointment flowed from the former's exercise of his authority as chairman of both NCC and Expocorp.

In his reply, Morales averred that upon Expocorp's incorporation, BCDA owned essentially all of Expocorp's stocks. Two months after its incorporation, however, the

Board of Directors of Expocorp issued a resolution declaring all its unissued and unsubscribed shares open for subscription. Global Clark Assets Corporation (*Global*) subscribed to essentially all of these unissued and unsubscribed shares; thus, Global became the majority owner with 55.16% of Expocorp's stocks, while BCDA was left as minority stockholder with 44.84% of Expocorp's stocks. Morales also asserted that the ruling in *Laurel*<sup>[10]</sup> applied *exclusively* to Chairman Laurel. Morales concluded that since Expocorp is a private corporation and an entity distinct from NCC, he, as its president, is not a public officer.

### **The Sandiganbayan Resolution**

The Sandiganbayan, after considering the arguments of the parties, ruled that the position of a president of a government-owned or controlled corporation clearly falls within its jurisdiction. However, before Morales could be held accountable as Expocorp's president, it must first be established that Expocorp is a government-owned or controlled corporation.

The Sandiganbayan explained in *Laurel*,<sup>[11]</sup> that the Court only held that Laurel is a public officer without ruling on whether Expocorp is a private or a government-owned corporation. The Court also held that NCC performed executive functions, hence, it was a public office; consequently, its chairman, Laurel, was a public officer. Morales, in the case at bar, is being charged as president of Expocorp only and not as an NCC official.

In ruling that Expocorp is a private corporation, the Sandiganbayan stated that it was not created by a special law nor did it have an original charter. It was organized under the Corporation Code and was registered with the Securities and Exchange Commission. According to the Sandiganbayan, Expocorp could not derive its public character from the fact that it was organized by the NCC. The Sandiganbayan ruled that applying the provisions of the Revised Administrative Code of 1987, Expocorp is a private corporation because Global owns 55.16% of its stocks; hence, its officers and employees are private individuals who are outside the jurisdiction of the Sandiganbayan. On this basis, the Sandiganbayan dismissed the information against Morales.

The Sandiganbayan denied the motion the People subsequently filed;<sup>[12]</sup> hence, the present petition.

### **The Issues**

The People submits the following grounds:

- (1) Expocorp was organized and created for the sole purpose of performing the executive functions of the National Centennial Commission and the sovereign functions of the government, and should be considered as a public office.
- (2) Petitioner, as president of Expocorp, should rightfully be considered as a "public officer", falling under the jurisdiction of the Sandiganbayan.<sup>[13]</sup>

### **The Court's Ruling**

## **We deny the petition for lack of merit.**

### The nature of Expocorp

The People submits that Expocorp was an extension of the NCC as provided in Expocorp's Articles of Incorporation, specifically Section 2<sup>[14]</sup> which states Expocorp's primary purpose. It provides that Expocorp's primary purpose was to establish and operate Expo '98 - an NCC project. The People stated in its petition, thus -

The position occupied by respondent as President of Expocorp stemmed from his appointment as such by NCC Chair and Expocorp Chief Executive Officer Salvador H. Laurel. On the basis of such appointment, respondent served as the government's representative and Laurel's alter ego in running the affairs of Expocorp. As held in the *Laurel vs. Desierto* case, "even assuming that Expocorp is a private corporation, petitioner's position as Chief Executive officer (CEO) of Expocorp arose from his Chairmanship of the NCC. Consequently, his acts or omissions as CEO of Expocorp must be viewed in the light of his powers and functions as NCC Chair."

Having established that Expocorp, by extension, performed part of the sovereign functions delegated to the NCC, it follows that respondent, as President of Expocorp, performed tasks that likewise fall within the contemplation of the government's sovereign functions.<sup>[15]</sup>

We do not agree with the People.

Expocorp is a private corporation as found by the Sandiganbayan. It was not created by a special law but was incorporated under the Corporation Code and was registered with the Securities and Exchange Commission.<sup>[16]</sup> It is also not a government-owned or controlled corporation. Although BCDA, which owned 999,991 shares<sup>[17]</sup> of its shares, was one of Expocorp's original incorporators, the Board of Directors of Expocorp allowed Global to buy 1,229,998 of its unused and unsubscribed shares two months after its incorporation. With the BCDA as a minority stockholder, Expocorp cannot be characterized as a government-owned or controlled corporation. In *Dante V. Liban, et al. v. Richard J. Gordon*,<sup>[18]</sup> we pointedly said:

A government-owned or controlled corporation must be owned by the government, and in the case of a stock corporation, at least a majority of its capital stock must be owned by the government.

### The Sandiganbayan's Jurisdiction

Section 5, Article XIII of the 1973 Constitution defines the jurisdiction of the

Sandiganbayan:<sup>[19]</sup>

Sec. 5. The [Batasang Pambansa] shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.

R.A. No. 8249,<sup>[20]</sup> which amended Presidential Decree No. 1606,<sup>[21]</sup> delineated the jurisdiction of the Sandiganbayan as follows:

Section 4. Section 4 of the same decree is hereby further amended to read as follows:

Sec. 4. Jurisdiction. -- The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the *Sangguniang panlalawigan* and provincial treasurers, assessors, engineers and other provincial department heads;

(b) City mayors, vice-mayors, members of the *sangguniang Panlungsod*, city treasurers, assessors, engineers and other city department heads;

(c) Officials of the diplomatic service occupying the position of consul and higher;

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher;

(f) City and provincial prosecutors and their assistants, and officials