781 Phil. 643

FIRST DIVISION

[G.R. No. 193176, February 24, 2016]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, RENATO D. TAYAG, ISMAEL M. REINOSO, GENEROSO TANSECO, MANUEL MORALES, RUBEN B. ANCHETA, GERONIMO Z. VELASCO, TROADIO T. QUIAZON, JR., FERNANDO MARAMAG, EDGARDO TORDESILLAS, ARTURO R. TANCO, JR., GERARDO SICAT, PANFILO O. DOMINGO, POTENCIANO ILUSORIO, MANUEL B. SYQUIO, RAFAEL M. ATAYDE, HONORIO POBLADOR, JR., GEORGE T. SCHOLEY,[1] TIRSO ANTIPORDA, JR., CARLOS L. INDUCTIVO, AND TEODORO VALENCIA, RESPONDENTS.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for *certiorari*[2] are the Resolution[3] dated July 28, 2006 and Order[4] dated June 9, 2010 rendered by the Office of the Ombudsman (Ombudsman) in OMB-C-C-05-0110-C, which dismissed the complaint for violation of Sections 3 (e)[5] and (g)[6] of Republic Act No. (RA) 3019, also known as the "Anti-Graft and Corrupt Practices Act," for failure to establish probable cause against respondents.

The Facts

On October 8, 1992, former President Fidel V. Ramos issued Administrative Order No. 13[7] creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans (Committee) which was tasked to investigate alleged behest loans granted by the Philippine National Bank (PNB), among others, during the Marcos years.[8] The Committee was composed of the Chairman of the Presidential Commission on Good Government (PCGG) as Chairman, the Solicitor General as Vice Chairman, and representatives from the Office of the Executive Secretary, Department of Finance, Department of Justice (DOJ), the Development Bank of the Philippines (DBP), PNB, the Asset Privatization Trust (APT), Philippine Export and Foreign Loan Guarantee Corporation, and the Government Corporate Counsel, as members.[9]

Subsequently, through the issuance of Memorandum Order No. 61,[10] the Committee's functions were broadened in scope. To aid in its investigation of behest loans, the following criteria were established as a frame of reference:

a. It is undercollateralized.
b. The borrower corporation is undercapitalized.
c. Direct or indirect endorsement by high government officials like presence of marginal notes.

d. Stockholders, officers or agents of the borrower corporation are identified as cronies.
e. Deviation of use of loan proceeds from the purpose intended.
f. Use of corporate layering.
g. Non-feasibility of the project for which financing is being sought.
h. Extra-ordinary speed in which the loan release was made.[11]

Assisted by a Technical Working Group (TWG),[12] the Committee investigated the loans granted by PNB to Hercules Minerals and Oils, Inc. (HMOI), a domestic corporation engaged in mining copper ores to produce copper concentrates. It was incorporated on May 9, 1969 with an initial authorized capital stock of P20,000,000.00, of which P4,000,000.00 was subscribed and P1,000,000.00 was paid-up. On November 17, 1978, it increased its authorized capital stock to P50,000,000.00, and then to P200,000,000.00 on May 15, 1981.[13]

The Committee's investigation revealed that on June 27, 1978, the HMOI, through its Chairman of the Board, respondent Potenciano Ilusorio (Ilusorio), filed with the PNB an application for a guarantee loan in the amount of US$17,000,000.00 (US$17M), which the latter approved *via* PNB Resolution No. 548 dated July 16, 1979 where it stated that the proceeds of the loan will finance HMOI in developing, extracting, and milling its copper reserves in Ilocos Norte, dubbed as "*The Bully Bueno Copper Project*." Thus, HMOI and PNB executed a Loan Agreement on February 1, 1980 for the US$17M loan, then equivalent to P125,290,000.00.[14]

The US$17M loan was purportedly secured by several collaterals amounting to PI38,783,000.00, which exceeded the maximum amount of loan in proportion to the value of the mortgaged assets fixed by Section 78 of RA 337,[15] otherwise known as the "General Banking Act,"[16] which provides:

> SEC. 78. Loans against real estate security shall not exceed seventy percent (70%) of the appraised value of the respective real estate security, plus seventy percent (70%) of the appraised value of insured improvements, and such loans shall not be made unless title to the real estate, free from all encumbrances, shall be in the mortgagor. x x x.
>
> Similarly, loans on the security of chattels shall not exceed fifty percent (50%) of the appraised value of the security, and such loans shall not be made unless title to the chattels, free from all encumbrances, shall be in the mortgagor.
>
> x x x x

However, the collaterals were apparently over-valued, as the true amount thereof, *i.e.*, P94,656,000.00, was discovered when HMOI subsequently applied for additional loans, which PNB likewise, approved.[17] Moreover, the assets used as collateral were inexistent, as these were yet "to be acquired," "to be constructed," and "to be produced," in violation of the said Section 78 of RA 337.[18]

Thereafter, PNB extended additional loans to'HMOI, amounting to US$2,500,000.00 and P11,325,000,00. However, the Central Bank reduced the US$2,500,000.00 loan to US$1,970,000.00. At this time, the Total PNB Exposure was already

P149,000,000.00 but the total value of the collateral was only P94,656,000.00. Moreover, the additional loans were secured by the same collaterals used in the initial US$17M loan, whose value was now ascertained to be only P94,656,000.00 instead of P138,783,000.00. Apparently, the value of the collaterals was exaggerated when HMOI applied for the US$17M loan.[19]

Subsequently, in a letter[20] dated March 10, 1981, respondent Rafael M. Atayde (Atayde), in his capacity as President of Hercules' Solid State Systems (HSSS), a new division of HMOI, wrote to then. President Ferdinand Marcos (President Marcos) to seek the latter's intervention in the approval of HMOI's additional US$5,000,000.00 loan with PNB. President Marcos then endorsed[21] the letter to then PNB President, respondent Panfilo Domingo (Domingo), by personally noting thereon, "*Let us help Ilocos Norte by setting up this factory*." As a result of the President's endorsement, HMOI was able to obtain an additional unsecured loan of P4,400,000.00. Likewise, PNB granted a P20,000,000.00 Export Advance against the US$3,800,000,00 letter of credit that was opened in favor of HMOI by Dai-ichi Kangyo Finance (HK) Ltd. Subsequently, PNB approved the refinancing of interest on HMOI loans in the aggregate amount of US$4,200,284.41 and the conversion of the P20,000,000.00 Export Advance to an Export Advance Line against existing collaterals. At this time, the Total PNB Exposure was P167,770,000.00 but the total value of collaterals was only P119,193,000.00.[22]

Sometime in 1982, HMOI ceased operations. Consequently, it was unable to meet its overdue and maturing obligations with PNB. Nonetheless, despite stoppage of its operations, PNB granted another loan to HMOI amounting to P650,000.00. By this time, the Total PNB Exposure had already ballooned to P203,610,000.00, while its collateral was only P94,656,000.00.[23]

Upon PNB's foreclosure of HMOI's chattel and real estate mortgages, a deficiency claim amounting to P252,388,000.00 was left, as a substantial portion of the loans obtained by HMOI from PNB was utilized in assets with no collateral value.[24]

With the foregoing findings, petitioner PCGG, through its Legal Consultant, Atty. Liezel G. Chico (Atty. Chico), filed on December 15, 2004 an affidavit-complaint[25] before the Ombudsman accusing respondents of violating Sections 3 (e) and (g) of RA 3019 for their participation in the alleged behest loans extended by PNB to HMOI.[26] At the time of the application and approval of said loans, respondents Domingo, Renato D. Tayag (Tayag), Ismael M. Reinoso (Reinoso), Generoso Tanseco (Tanseco), Manuel Morales (Morales), Ruben B. Ancheta (Ancheta), Geronimo Z. Velasco (Velasco), Troadio T. Quiazon, Jr. (Quiazon), Fernando Maramag (Maramag), Edgardo Tordesillas (Tordesillas), Arturo R. Tanco, Jr. (Tanco), and Gerardo Sicat (Sicat)[27] were members of the PNB Board of Directors, while respondents Ilusorio, Atayde, Manuel B. Syquio (Syquio), Honorio Poblador, Jr. (Poblador), George T. Scholey (Scholey), Tirso Antiporda, Jr. (Antiporda), and Carlos L. Inductivo (Inductivo) were members of the HMOI Board of Directors.[28] Respondent Teodoro Valencia (Valencia) was likewise impleaded as part of HMOI,[29] although in what capacity, the affidavit-complaint does not clearly state.

PCGG contended that the loans extended by PNB to HMOI were in the nature of behest loans, being characterized by the following: (*a*) the loans were

undercollateralized; (*b*) the borrower corporation was undercapitalized; (*c*) the stockholders, officers, or agents of the borrower corporation are identified as cronies; and (*d*) the extra-ordinary speed in which the loan release was made.[30] It asseverated that because PNB unduly accommodated HMOI, as evidenced by said loans which were grossly disadvantageous to the government, as well as the public, respondents must be prosecuted under Sections 3 (e) and (g) of RA 3019.[31]

Only respondent Domingo submitted his counter-affidavit,[32] raising as defenses lack of personality of Atty. Chico, prescription, and insufficiency of evidence. He claimed that Atty. Chico had no personal knowledge of the questioned loan transactions between PNB and HMOI and was without any legal authority to prosecute or initiate the cases falling under RA 3019, as amended.[33] He also claimed that the action under RA 3019 had already prescribed, applying the original 10-year prescriptive period fixed by Section 11 thereof before it was amended on March 16, 1982 to 15 years. He maintained that the reckoning point to count the prescriptive period was from the time of commission of the act complained of, which should have been on February 1, 1980, the date of the execution of the first Loan Agreement. Even if the reckoning point was to be counted from the discovery of the offense, he contended that the date thereof would have been February 1986 after the EDSA Revolution. Thus, the complaint filed on December 15, 2004 was already barred by prescription.[34]

Likewise, he claimed that the collaterals used in obtaining the loans were valid and acceptable in the banking industry, and that other properties posted as security were overlooked by the PCGG. He also maintained that the PCGG made no independent appraisal of the said properties and, thus, had no credible knowledge on the true value of the collaterals.[35] Finally, he denied that he was an identified "crony" of President Marcos.[36]

The Ombudsman Ruling

In a Resolution[37] dated July 28, 2006, the Ombudsman dismissed the complaint.[38] On the issue of prescription, it found that the complaint has not yet prescribed, having been filed within the 15-year prescriptive period reckoned from the date of the discovery of the commission of the offense, which is February 1, 1994, the date of the PCGG's Terminal Report from which it ascertained that the loan accounts of HMOI with PNB were behest.[39]

With respect, however, to the existence of probable cause to hold respondents liable as charged, the Ombudsman ruled in the negative. It held that the PCGG's argument that the loans were undercollateralized was specious, as the Committee did not make any independent valuation of the said collaterals. Neither did it secure any documentation which could show that HMOI exaggerated the value thereof. It also had no inventory of the properties acquired for the copper project and from the loan proceeds to show that HMOI merely used the same assets for the subsequent loans and exaggerated its value. Moreover, it held that future assets or after-acquired properties are acceptable securities and thus, not inimical to sound banking practice.[40]

Likewise, the Ombudsman found that there was nothing on the loan agreements to

indicate that HMOI unduly influenced PNB into granting it loans or that unwarranted favors had been extended to it. Thus, the presumption that regular duty was observed and exercised stands.[41] As regards the marginal note endorsement by President Marcos that purportedly paved the way for the approval of an additional loan, the Ombudsman held that there were no indications that the loan rested solely on said endorsement for its approval.[42]

Dissatisfied, PCGG moved for reconsideration,[43] which was, however, denied in an Order[44] dated June 9, 2010; hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the Ombudsman committed grave abuse of discretion when it found no probable cause to hold respondents liable for violation of Sections 3 (e) and (g) of RA 3019 and consequently, dismissed the complaint for insufficiency of evidence.

The Court's Ruling

At the outset, it must be stressed that the Court does not ordinarily interfere with the Ombudsman's determination as to the existence or non-existence of probable cause. The rule, however, does not apply if there is grave abuse of discretion.[45]

Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[46]

After a punctilious review of the records, the Court finds that such judicial intervention is justified and proper in this case.

Violation of Section 3 (e) of RA 3019 requires that there be injury caused by giving unwarranted benefits, advantages or preferences to private parties who conspire with public officers.[47] Its elements are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they caused undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.[48]

On the other hand, Section 3 (g) of RA 3019 does not require the giving of unwarranted benefits, advantages or preferences to private parties who conspire with public officers, its core element being the engagement in a transaction or contract that is grossly and manifestly disadvantageous to the government.[49] The elements of the offense are: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that