

## SECOND DIVISION

[ G.R. NO. 135703, April 15, 2009 ]

**PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS, REPRESENTED BY ORLANDO L. SALVADOR, PETITIONER, VS. OMBUDSMAN ANIANO A. DESIERTO, PANFILO O. DOMINGO, CONRADO S. REYES, ZOSIMO C. MALABANAN, JOSE R. TENGCO, JR., PLACIDO L. MAPA, JR., VERDEN C. DANGILAN, ARMANDO T. ROMUALDEZ, VILMA S. ROMUALDEZ, JUAN L. SYQUIAN AND ALFREDO T. ROMUALDEZ. RESPONDENTS.**

### D E C I S I O N

**CARPIO MORALES, J.:**

On challenge by the Presidential Ad Hoc Fact Finding Committee on Behest Loans, represented by Orlando L. Salvador (petitioner), is the Resolution of then Ombudsman Aniano A. Desierto (Ombudsman) dated August 19, 1998 in OMB-0-97-1911 dismissing its complaint against Panfilo O. Domingo, Conrado S. Reyes, Zosimo C. Malabanan, Jose R. Tengco, Jr., Placido L. Mapa, Jr., Verden C. Dangilan, Armando T. Romualdez, Vilma S. Romualdez, Juan L. Syquian, and Alfredo T. Romualdez, for violation of Section 3(e) and (g) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

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 (Committee) which was tasked to conduct an inventory of all behest loans, determine the parties involved, and recommend the appropriate action to be pursued. The Committee was composed of the Chairman of the Presidential Commission on Good Government (PCGG) as Chairman, the Solicitor General, representatives from the Office of the Executive Secretary, the Department of Finance, the Department of Justice, the Development Bank of the Philippines (DBP), the Philippine National Bank, the Asset Privatization Trust, the Philippine Export and Foreign Loan Guarantee Corporation, and the Government Corporate Counsel, as members.<sup>[1]</sup>

The Committee's functions were later expanded by President Ramos via Memorandum Order No. 61 dated November 9, 1992 to include the inventory and review of all non-performing loans, whether behest or non-behest. For this purpose, the following criteria were established as a frame of reference in determining a behest loan:

- a. It is undercollateralized;
- b. The borrower corporation is under-capitalized;

- 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;
- [and]

(a) Extra-ordinary speed in which the loan release was made.<sup>[2]</sup>

Among the accounts referred to the Committee for investigation were those of Golden Country Farms, Inc. (GCFI), which involved loans from the National Investment Development Corporation (NIDC) and DBP.

After its investigation, the Committee concluded that GCFI's loan transactions with NIDC and DBP bore badges of a behest loan, particularly the following: (1) the loans were undercollateralized; (2) the GCFI was undercapitalized; (3) stockholders, officers, or agents of GCFI were identified as cronies; (4) direct or indirect endorsement by high government officials like the presence of marginal notes; and (5) extraordinary speed in which the proceeds of the loan were released.

Atty. Orlando L. Salvador (Atty. Salvador), PCGG consultant of the Committee, thereupon filed a sworn complaint<sup>[3]</sup> with the Ombudsman alleging that GCFI's loan transactions were behest loans that violated R.A. No. 3019, specifically Section 3(e) and (g) thereof:

Sec. 3. Corrupt Practice of Public Officers. -- In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful.

Xxx xxx xxx

e. Causing any undue injury to any party, including the Government or giving any private party any unwarranted benefit, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

Xxx xxx xxx

(a) Entering on behalf of the Government into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

Atty. Salvador identified ten individuals who could be held liable. Six of them - Panfilo O. Domingo, Conrado S. Reyes, Zosimo C. Malabanan, Jose R. Tengco, Jr., Placido L. Mapa, Jr., and Verden C. Dangilan - were officers and members of the board of directors of NIDC and DBP. The remaining four - Armando T. Romualdez, Vilma S. Romualdez, Juan L. Syquian, and Alfredo T. Romualdez - were stockholders and officers of GCFI.

In his accompanying sworn statement,<sup>[4]</sup> Atty. Salvador detailed the Committee's findings as follows:

GCFI applied for a credit facility of \$5.7 million (P43 million at the then prevailing exchange rate) and a letter of guarantee in the amount of \$7.6 million (P57 million), or a total of \$13.3 million (P100 million). Panfilo O. Domingo endorsed the loan on October 17, 1975 to the NIDC board of directors and the latter approved a credit facility of \$5.7 million (P43 million) in favor of GCFI on October 22, 1975. The documents pertinent to GCFI's application for a letter of guarantee for \$7.6 million (P57 million) were thereafter forwarded to DBP and approved on May 5, 1976.

At the time the NIDC loan of P43 million was approved, GCFI had a paid-up capital of only P3.5 million; whereas at the time the DBP loan of P57 million was approved, it had a paid-up capital of only P10 million. The loans were also undercollateralized, the appraised value of GCFI's collateral having amounted to only P50,540,301 as of April 29, 1977, while the loan releases then had already totaled P72 million.

GCFI loan proponents Armando T. Romualdez, Vilma S. Romualdez, and Alfredo T. Romualdez are related to then First Lady Imelda R. Marcos. On five occasions, then President Ferdinand E. Marcos gave instructions to DBP regarding the management of GCFI's loan and disposition of its assets, *viz*:

1. On December 7, 1978, President Marcos instructed Chairman Placido Mapa to grant the request for the restructuring of the maturity period of the loans and condonation of interest. (Annex 9, Evidence 21)
2. On June 26, 1980, President Marcos gave instructions to Chairman Rafael Sison to release the balance of P18.9 million and restructure the entire loan. (Annex 10, Evidence 22)
3. On July 15, 1980, President Marcos approved the takeover by DBP and NIDC of GCFI for its rehabilitation. (Annex 11, Evidence 23)
4. On March 4, 1981, President Marcos instructed Chairman Rafael Sison to approve the request for tax exemption. (Annex 12, Evidence 24)
  - (a) On January 11, 1983, President Marcos gave clearance to Chairman Cesar Zalamea on the proposed disposition of the assets of GCFI. (Annex 13, Evidence 25)<sup>[5]</sup>

GCFI had an outstanding balance of P211,950,520.76 owing to NIDC as of June 30, 1986, and of P302,685,193.31 to DBP as of December 31, 1986.

Only Armando T. Romualdez and Vilma S. Romualdez (spouses Romualdez) complied with the Ombudsman's order to file a counter-affidavit.

In their Joint Counter-Affidavit dated August 17, 1998, spouses Romualdez alleged, among other things, that the offenses charged had prescribed and not all the elements of a behest loan were present; and that GCFI had infused an additional capital of P100 million, as well as caused the installation of NIDC and DBP comptrollers at GCFI as signatories to all its disbursements.<sup>[6]</sup>

By Resolution of August 19, 1998,<sup>[7]</sup> the Ombudsman dismissed the complaint, finding that there was insufficient evidence to warrant the indictment of the persons charged, and that the alleged offenses had prescribed. The Ombudsman explained:

To hold herein respondents for violation of Sec. 3(e) of R.A. 3019, it is but significant to establish the injury suffered by the offended party or the unwarranted benefit afforded to any party and the means employed to accomplish the object of the questioned act or deed. For such purpose, concrete and convincing evidence pointing to such facts are necessary.

A cursory look at the records at hand discloses that there was **absence of a clear proof showing that the government has suffered damage by reason of the questioned financial transaction**. On record is the fact that even prior to the issuance of the Sequestration Order, dated July 27, 1987, by the herein complainant, former President Marcos or per the allegation of the complainant had already approved the take-over by DBP and NIDC of the GCFI's management and operation. This was likewise the response of the GCFI's Corporate Secretary in a letter, dated September 2, 1997, to the Sequestration Order issued by the complainant. The said letter tacitly disclosed that GCFI's management and operation had been taken over by DBP, PNB and NFA, its major creditors, since August of 1980.

X x x Absent such indispensable element of the act complained of, the respondents cannot be held liable herefore.

Moreover, **prescription has already intervened in the prosecution of the offenses charged**.

X x x x

x x x [T]he 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 during the period of 1975 to 1976 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 1, 1997 or after the lapse of more than twenty (20) years from the violation of the law. Deducibly therefore, the offenses charged have already prescribed or forever barred by the Statute of Limitations.

It must be pointed out 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 Section 11 of R.A. 3019, as originally enacted.<sup>[8]</sup> (Emphasis and underscoring supplied)

Hence, this petition for review on certiorari.<sup>[9]</sup>

The Court initially referred the case to the Court of Appeals for appropriate action by Resolution dated November 25, 1998.<sup>[10]</sup> On the Ombudsman's motion for reconsideration, however, the Court recalled the November 25, 1998 Resolution and required respondents to comment on the petition within ten days from notice.<sup>[11]</sup>

The Committee argued that the Ombudsman erred in holding that the Government did not suffer any damage as its takeover of GCFI's management and operation was actually prompted by the losses it had incurred;<sup>[12]</sup> that the right of the State to recover behest loans as ill-gotten wealth is imprescriptible under Section 15, Article XI of the 1987 Constitution;<sup>[13]</sup> and that assuming that the period to file criminal charges herefore is subject to prescription, the prescriptive period should be counted from the time of discovery of the behest loans or sometime in 1992 when the Committee was constituted.<sup>[14]</sup>

The Ombudsman, in his Comment,<sup>[15]</sup> countered that his finding of insufficiency of evidence to warrant an indictment must be accorded full faith and credit; that the offenses charged had prescribed, more than ten years having elapsed from the time of their commission; and that absent any showing of jurisdictional error, his dismissal of the complaint must be upheld.

Alfredo T. Romualdez, for his part, contended that the proper remedy to challenge the Ombudsman's findings is a petition for certiorari under Rule 65 of the Rules of Court, and not a petition for review on certiorari under Rule 45 thereof; that the Committee's failure to move for reconsideration with the Ombudsman warrants the outright dismissal of its petition; that the courts should not interfere with the Ombudsman's exercise of his constitutional power to determine the sufficiency of a complaint to merit an indictment; and that the State had lost its right to prosecute the alleged offenses by prescription.<sup>[16]</sup>

In their Comment,<sup>[17]</sup> spouses Romualdez averred that the Ombudsman has ample discretion to determine whether to prosecute or dismiss a complaint, and that the Committee has no legal right to question his findings. They also posited that Section 15, Article XI of the 1987 Constitution applies only to civil cases and not to criminal cases involving supposedly ill-gotten wealth, hence, the Committee's action has prescribed, the complaint having been filed only in 1997 or more than ten years from the approval of the loans in 1975 and 1976. They added that the same is true even if the prescriptive period of ten years is counted from the time the Marcoses left the country and the Aquino administration took over in 1986.

Jose R. Tengco, Jr., on the other hand, filed a Comment<sup>[18]</sup> and a Manifestation in further support thereof,<sup>[19]</sup> wherein he maintained that the Ombudsman's findings are supported by the records and should not be disturbed; that the Court has