

EN BANC

[G.R. No. 136225, April 23, 2008]

THE PRESIDENTIAL AD-HOC FACT-FINDING COMMITTEE ON BEHEST LOANS (FFCBL), REPRESENTED BY ORLANDO L. SALVADOR, CONSULTANT, TECHNICAL WORKING GROUP (TWG) OF THE PRESIDENTIAL AD-HOC FFCBL, AND DANILO R. V. DANIEL, TWG COORDINATOR, FFCBL, PETITIONERS, VS. HON. OMBUDSMAN ANIANO A. DESIERTO, RAFAEL SISON, JOSE DE OCAMPO, JOSE R. TENGCO, ALICE LL. REYES, AND RODOLFO D. MANALO, PUBLIC RESPONDENTS.

ANGEL G. ROMUALDEZ, JOSE G. ROMUALDEZ, AND JOSE MANUEL ROMUALDEZ, PRIVATE RESPONDENTS.

DECISION

REYES, R.T., J.:

ATTEMPTS to recover ill-gotten wealth acquired during the Marcos era are oft-thwarted for manifold reasons. Petitioner comes to Us in an effort to reinstate one such attempt for redress of the nation's grievance over the loss of funds possibly ill-gotten under the guise of a behest loan.

The present *certiorari* and *mandamus* petition seeks to nullify the Resolution^[1] of the Ombudsman in OMB Case No. 0-96-0057 dismissing petitioner's complaint against private respondents Angel, Jose and Jose Manuel, all surnamed 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.^[2]

Factual Antecedents

On October 8, 1992, then President Fidel V. Ramos issued Administrative Order No. 13^[3] creating the Presidential Ad Hoc Committee on Behest Loans (Committee). The Chairman of the Presidential Commission on Good Government (PCGG) was to chair the Committee with the Solicitor General as Vice-Chairman. As members, representatives were called 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 Government Corporate Counsel and the Philippine Export and Foreign Loan Guarantee Corporation.

The Committee was formed in response to allegations of loans, guarantees and other forms of financial accommodation granted, directly or indirectly, by government-owned and controlled banks or financial institutions at the behest of previous government officials or cronies to the detriment of the Philippine

government. To address this concern, the Committee was tasked to 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 these loans, and to recommend appropriate actions to the Office of the President within sixty (60) days from date hereof.^[4]

The scope of the Committee's function was subsequently broadened under Presidential Memorandum Order No. 61^[5] dated November 9, 1992 to include in its investigation, inventory and study all non-performing loans, whether behest or non-behest. The Memorandum Order then went on to provide the criteria to be used as a frame of reference in determining a behest loan, to wit:

- 1) It is undercollateralized.
- 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 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 sought.
- 8) Extra-ordinary 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.^[6]

Pursuant to the mandate of these presidential issuances, the Committee investigated the loan transactions between Agretronics, Incorporated (Agretronics^[7]) and the DBP. It determined that the loan transactions between DBP and Agretronics were among those found to possess positive characteristics of a behest loan as defined under Memorandum Order No. 61.

Sometime in June 1996,^[8] the Committee, through its consultant Atty. Orlando L. Salvador, filed a complaint^[9] with the Ombudsman against the respondents for

Violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act. The complaint was docketed as OMB 0-96-0057. The supporting documentary proof was appended as annexes.

In the complaint, the Committee alleged that:

- a) Agretonics was incorporated on September 10, 1980 with a paid-up capital of P1.25 million.
- b) Agretonics applied for foreign currency loan on December 15, 1980 in the amount of \$2,866,667 (Equivalent to P21,500,000 @ \$1.00:P7.50) and was approved by DBP under B/R 286 dated December 29, 1980.
- c) Considering date of loan application, December 15, 1980 and DBP approval on December 29, 1980 it shows that the extraordinary speed in the loan approval, a mark of behest loan.
- d) A review of the release sheet on the \$2,666,667 (P15,610,402.50) on February 1, 1981 disclosed that despite the noncompliance by Agretonics of the obligation to put-up under No. 7(d) of B/R 296, the loan was released.
- e) Agretonics was undercapitalized upon approval in December 1980 under the debt-equity ratio of 94:6 considering that the amount of loan was P21.50 million against a paid-up capital of P1.25 million.
- f) As of June 18, 1986 the date of foreclosure of Agretonics assets with an appraisal value of P13.88 million as against its total obligation of P154.97 million will show a collateral ration of 1210.07% instead of the normal banking standard equity remained unchanged to P2.0 million as of June 18, 1986 giving a Debt-Equity Ratio of 98:2.
- g) Among the incorporators/principal officers of Agretonics, brothers Angel G. Romualdez and Jose G. Romualdez and Jose Manuel G. Romualdez who are closely identified with then President Marcos, being nephews of the former First Lady.^[10]

On August 18, 1998, then Ombudsman Aniano A. Desierto issued the assailed Resolution which dismissed the complaint on two grounds: lack of probable cause and prescription of the offense, disposing in the following fashion:

PREMISES CONSIDERED, it is respectfully recommended that the charges against all respondents be DISMISSED and that a study be conducted to determine if the government could still recover the questioned loan from the joint and several signatures of Angel G. Romualdez and Jose Manuel G. Romualdez.

SO RESOLVED.^[11]

The Ombudsman reasoned out:

The claim of complainant that there was extraordinary speed in the loan approval, a mark of behest loan was not supported by evidence. While it is true that the loan was approved on December 29, 1980, no evidence had been presented that the loan application was filed on December 15, 1980. On the contrary, December 15, 1980 was the date of the Evaluation Report on the loan application of Agretronics. Page 4 of the evaluation report shows that the security for the loan was appraised in November 1980 while the balance sheet of Agretronics as of October 31, 1980 was submitted to show the financial condition of the borrower. These facts clearly show that the date of the loan application was not December 15, 1980.

Republic Act No. 3019, specifically Section 3(e) thereof, punishes acts which cause undue injury to any party, including the government, or giving any private party any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence. While Section 3(g) punishes the act of entering on behalf of the Government into any contract or transaction manifestly and grossly disadvantageous to the same.

A perusal of the records revealed that the loan entered into by DBP and Agretronics is not grossly disadvantageous to the government. The allegation of the complaint that the questioned transaction caused damage to the government was negated by the evidence on record. DBP Board Resolution No. 296 which approved the loan transaction clearly shows that various safety measures were imposed by the DBP Board of Governors to protect the interest of the Bank. The loan granted was \$2,866,667 (equivalent to P21,500,000 at \$1.00: P7.50) and the same was secured:

- 1) By first mortgage on the following assets registered in the name of Agretronics:

a) Land	P 5,487,000
b) Building and improvements	8,887,000
c) Machinery and equipment	14,587,680
d) Transportation equipment	35,000
e) Furniture and office equipment	<u>692,270</u>
Total =	P29,690,950

- 2) By joint and several signatures with Agretronics, Inc. of Messrs. Angel G. Romualdez and Jose Manuel G. Romualdez;
- 3) By assignment to DBP of the company's export sales proceeds in amounts sufficient to meet the company's yearly amortizations on the loan;
- 4) By an assignment to DBP of not less than 67% of the total subscribed and outstanding voting shares of the company.

Assuming that the government suffered injury by reason of the transaction under controversy, the public respondents herein cannot be made answerable for violation of Section 3(e) of R.A. 3019, in view of the absence of any evidence to prove that the respondents acted with evident bad faith, manifest partiality or gross inexcusable negligence in the discharge of their official duties.

Finally, the provision of Section 11 of the R.A. 3019 should be taken into consideration, providing that:

Section 11. *Prescription of offenses.* - All offenses punishable under this Act shall prescribe in ten years.

The aforequoted provision, however, was amended by B.P. Blg. 195 dated March 16, 1982, increasing the period of prescription to fifteen (15) years. Therefore, the applicable prescriptive period in the case at bar is ten (10) years since the act complained of was committed in 1980 or prior to the amendment.

The Supreme Court in the case of *People vs. Sandiganbayan*, 211 SCRA 241, ruled that in the computation of the prescriptive period, the same should be reckoned either from the date of the commission of the violation of the law, or if the same is not known, at the time of the discovery thereof.

Considering that pronouncement, in the case of *People vs. Dinsay*, C.A. 40 O.G. 12th Supplement 50, that when the series of transactions were by public instruments, like the case at bar, the period of prescription shall commence to run from the date of the execution of the public instruments.

Therefore, the questioned transaction herein involved has already been barred by prescription considering the lapse of more than ten (10) years from the date of the questioned transaction which happened in 1980.^[12]
(Underscoring supplied)

Petitioner Committee remains staunch in its view of the behest character of the subject loan. It assails the findings and conclusions of the Ombudsman as being vividly tainted with grave abuse of discretion. Hence, through the present petition, petitioner prays for the reversal of the assailed Resolution and for the issuance of an Order directing the Ombudsman to file the necessary information against respondents before the appropriate forum.

Issues

Petitioner Committee hoists two issues for Our consideration:

WHETHER OR NOT PUBLIC RESPONDENT OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AND/OR ACTED IN EXCESS OF JURISDICTION IN HOLDING THAT THERE WAS NO CAUSE TO PROCEED AGAINST ANY OF THE PRIVATE RESPONDENTS; AND