579 Phil. 312

THIRD DIVISION

[G.R. No. 133756, July 04, 2008]

PRESIDENTIAL AD HOC COMMITTEE ON BEHEST LOANS, REPRESENTED BY ATTY. ORLANDO SALVADOR, PETITIONER, VS. ULPIANO TABASONDRA, ANIANO A. DESIERTO, ENRIQUE M. HERBOSA, ZOSIMO C. MALABANAN, ARSENIO S. LOPEZ, ROMEO V. REYES, HERADEO CUBALLA, NILO ROA, BENIGNO DEL RIOAND JUAN P. TRIVINO, RESPONDENTS.

[G.R. NO. 133757]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), PETITIONER, VS. HON. ANIANO DESIERTO, OMBUDSMAN, PLACIDO L. MAPA, BENJAMIN T. ROMUALDEZ, JOSE R. TENGCO, JR., RAFAEL A. SISON, ALEJANDRO MELCHOR, ROSARIO B. OLIVARES, ALEJANDRO MARAMAG, EVELYN J. NICASIO, TUYNITA SORIANO, JOSE T. ABUNDO, CARIDAD E. ORPIADA, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Before this Court are two special civil actions for *certiorari* under Rule 65 of the Rules of Court which were consolidated per Resolution dated 15 December 2004. The petitioner in G.R. No. 133756, which is the Presidential Ad-Hoc Committee on Behest Loans, represented by Atty. Orlando Salvador, seeks to set aside the public respondent Ombudsman's 12 August 1997 and 16 February 1998 Orders, both of which dismissed the case against private respondents Ulpiano Tabasondra, Enrique Herbosa, Zosimo Malabanan, Arsenio Lopez, Romeo Reyes, Heradeo Cuballa, Nilo Roa, Benigno del Rio and Juan Trivino for violation of Section 3(e) and (g) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act). The petitioner in G.R. No. 133757, the Presidential Commission on Good Government (PCGG), seeks the reversal of two Orders of the Office of the Ombudsman dated 28 November 1997 and 17 February 1998, dismissing two complaints filed by petitioner against private respondents Placido L. Mapa, Benjamin Romualdez, Jose R. Tengco, Jr., Rafael A. Sison, Alejandro Melchor, Rosario B. Olivares, Alejandro Maramag, Evelyn J. Nicasio, Tuynita Soriano, Jose T. Abundo and Caridad E. Orpiada for violation of Section 3(e) and (g) of Republic Act No. 3019, and the Order dated 17 February 1998, denying petitioner's motion for reconsideration.

On 8 October 1992, then President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential Ad-Hoc Fact Finding Committee on Loans (Committee) which was tasked to inventory all behest loans, determine the parties involved and recommend whatever appropriate actions to be pursued thereby. President Ramos later issued Memorandum Order No. 61, dated 9 November 1992, expanding the

functions of the Committee to include the inventory and review of all non-performing loans, whether behest or non-behest. Under the said memorandum, the following criteria may be used as a frame of reference in determining a behest loan:

a. It is undercollaterized (sic);

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; and

h. 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.[1]

Several loan accounts were referred to petitioner Committee for its investigation, with Atty. Orlando Salvador as its coordinator. Among them were the loans of the Coco-Complex Philippines, Inc. (CCPI) from the Philippine National Bank (PNB) and that of the Philippine Journalists, Inc. (PJI) from the Development Bank of the Philippines (DBP). The Committee classified these loans as behest loans, prompting the PCGG to file a complaint with the Office of the Ombudsman against the Board of Directors of the two banks, as well as against the officers and stockholders of CCPI and PJI, for violation of Section 3(e) and (g) of Republic Act No. 3019.

G.R. No. 133756

This case arose from the Sworn Statement filed before the Office of the Ombudsman by Atty. Orlando L. Salvador on 23 June 1997, accusing the officers and board members of PNB,[2] namely: Ulpiano Tabasondra, Enrique Herbosa, P.O. Domingo and Zosimo Malabanan; and the stockholders and officers of CCPI, namely: Arsenio Lopez, Romeo Reyes, Heradeo Cuballa, Nilo Roa, Benigno del Rio and Juan Trivino, for violation of Section 3(e) and (g) of Republic Act No. 3019, as amended. The case was docketed as OMB-0-97-1138. The complaint originated from the guarantee loan application of CCPI, a domestic corporation primarily incorporated for manufacturing coconut oil, in the total amount of P9,277,080.00 for the purchase of an oil mill to be supplied by Krupp of Germany. On 17 January 1968, the loan application was approved. According to petitioner, the loan granted to CCPI was without sufficient collateral and that CCPI had no sufficient capital to be entitled to the amount of the loan considering that at the time the loan was granted, CCPI's existing assets amounted only to P495,300 and its paid-up capital amounted to P2,111,000.00 as

of 31 December 1969.

Subsequently, on 10 February 1972, CCPI allegedly obtained an additional loan for restructuring and equity conversion of its outstanding obligation up to 1972 without sufficient collaterals and adequate capital to ensure not only the viability of its operation but its ability to repay all its loans, to wit:

Nature	Date	Amount
1. Restructuring increase from DM 7.4 M to DM 12.2 M	11-25-70	DM 4.8 million
2. Equity conversion	12-02-70	P7.07 million
3. Equity conversion	6-09-71	P14.2 million
4. Credit Line with PNB	2-10-72	P4.5 million
5. Guarantee Loan	2-10-72	$750,000.00[3]

Petitioner also alleged that per Statement of Deficiency as of 31 March 1992, the outstanding obligation of CCPI to the bank amounted to P205,889,545.76. According to petitioner, these transactions entered into by CCPI and the bank violated Section 3(e) and (g) of Republic Act No. 3019 and the aforementioned officers of DBP and CCPI were the ones responsible.

In an Order dated 12 August 1997, the Office of the Ombudsman dismissed the complaint on the sole ground of prescription, *viz*:

> The respondents are being charged with violation of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act. In Section 11 of said law, it is provided that "All offenses punishable under this Act shall prescribe in fifteen years." In the instant case, the last date of the loan obtained by CCPI was on February 10, 1972. This complaint was filed on June 23, 1997 and with due consideration to our laws on prescription, the offense allegedly committed by respondents had already prescribed. Generally, the period of prescription commences to run from the day on which the crime is discovered by the offended party, the authorities or their agents. However, in People vs. Dinsay (C.A.,40 O.G.,12th Supp. 50), "if there is nothing that was concealed or needed to be discovered, because the entire series of transactions was by public instruments, duly recorded, the crime of estafa committed in connection with said transaction was known to the offended party when it was committed and the period of prescription commenced to run from the date of its commission". In this case, since the transactions have been duly recorded and by public instruments, the period of prescription ran from the date of its commission, i.e., from February 10, 1992. **When this was filed on June 23, 1997, fifteen years had already elapsed and, hence, it has already prescribed.**[4] (Emphasis supplied.)

Petitioner filed a motion for reconsideration of the said order which was dismissed by the Office of the Ombudsman based again on prescription of the crime per its Order dated 16 February 1998, ratiocinating:

> After reviewing the record of the instant case, the undersigned finds no reversible error in the Order of August 12, 1997. The period of prescription is reckoned from February 10, 1972 (final loan release) and June 23, 1997 the time of the filing of the complaint in this Office.
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> x x x x

Premises considered x x x the instant Motion for Reconsideration [is] DENIED.[5]

On 18 May 1998, petitioner filed the instant petition assailing the Ombudsman's Orders dated 12 August 1997 and 16 February 1998 and raising this single issue:

> WHETHER OR NOT THE PUBLIC RESPONDENT OMBUDSMAN GRAVELY ABUSED HIS DISCRETION IN HOLDING THAT THE PRESCRIPTIVE PERIOD IN THIS CASE SHOULD BE COUNTED FROM THE DATE OF THE GRANT OF THE BEHEST LOANS INVOLVED, i.e., FROM THE DATE OF THE COMMISSION OF THE CRIME, AND NOT FROM THE DATE OF DISCOVERY OF SAME BY THE COMMITTEE.[6]

Petitioner argues that the right of the State to recover behest loans as ill-gotten wealth does not prescribe pursuant to Article XI, Section 15, of the 1987 Constitution and that the Court of Appeals' ruling in *People v. Dinsay*[7] is not a controlling doctrine to be followed in the instant case since decisions of the Court of Appeals have only a persuasive character. Petitioner stresses that the ruling in *Dinsay* is not applicable to the case under consideration because the former involved a prosecution for estafa in that the accused disposed of his property claiming that it was free from any lien or encumbrance despite the fact that a notice of *lis pendens* was registered with the Registry of Deeds. The sale, cancellation of the accused's title, and issuance of a new title to the buyer could not have been concealed from the offended parties or their lawyers because these transactions took place when the civil case involving the said property and the offended parties was in progress. Also, *Dinsay* involved private parties, while the instant case involves the Government and public officers.

Petitioner likewise theorizes that the nature of behest loans calls for the application of the "discovery rule," *i.e.*, when the *gravamen* of the cause of action is fraud, the statute of limitations does not begin to run against the injured person until discovery of the facts constituting the fraud or until, by reasonable diligence, such facts may have been discovered. Such rule is an exception to the general rule that the statute of limitations begins to run from the commission of the offense or when the crime is complete and not from the date the crime is discovered.

Petitioner notes that the Revised Penal Code adopts the "discovery rule" for prescription of offenses. Article 91 thereof states that "**the period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities or their agents x x x**." The Revised Penal Code, being suppletory in application to special laws such as Republic Act No. 3019, should govern the instant case.

Making use of the "discovery rule" and the Revised Penal Code in a suppletory manner,petitioner argues that, considering the discovery of the behest loan and the other related transactions during the evaluation of the pertinent documents by the Committee, the cause of action against respondents for violation of Section 3(e) and (g) of Republic Act No. 3019 has not yet prescribed.

Lastly, petitioner insists that even assuming that the "discovery rule" does not apply, nevertheless, on account of the principle of "equitable tolling," prescription has not yet set in for the offenses with which respondents in OMB-0-97-1138 were charged. This principle is based on the doctrine "*contra non valentem agere nulla currit praescriptio," i.e*., "no prescription shall run against a person unable to bring an action." The Committee was unable to bring the action, for the cause therefor was not known or reasonably known to it owing to the fact that (1) the loans, being behest, were concealed; (2) both parties to the loan transactions were in conspiracy to perpetrate the fraud against the State; and (3) the loans were granted at the time when then President Ferdinand E. Marcos was at the threshold of his authority and no one dared question, much less investigate, any of his orders.

In the meantime, this Court, on 25 October 1999, rendered a decision in G.R. No. 130140 entitled, "*Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,*" another case which involved the grant of an alleged behest loan by a government financial institution to a private corporation. The Court, in said case, resolved the issue of prescription of crimes relative to one of the behest loan cases filed with the Committee. The Court categorically enunciated that the prescriptive period for offenses involving behest loans, which the Committee charged the responsible persons with had not yet prescribed. It also directed the Office of the Ombudsman to conduct a preliminary investigation.

The ruling of this Court in G.R. No. 130140 prompted the Office of the Ombudsman to conduct a preliminary investigation of the instant case which was docketed as OMB-0-97-1138. The Office of the Ombudsman eventually dismissed the instant case against private respondents in a Resolution dated 16 October 2000 opining that the Board of Directors of the National Investment and Development Corporation, which approved the loan in favor of CCPI, should be the one indicted and not the private respondents. Petitioner filed a motion for reconsideration which was denied in an Order dated 27 February 2001. Dissatisfied, petitioner elevated anew the case to this Court questioning the finding that private respondents could not have been responsible for the crime charged. Said case which is docketed as G.R. No. 148269, is still pending.

In his Comment dated 23 October 2003, private respondent Enrique M. Herbosa urged this Court to dismiss the herein case for being moot and academic since the Office of the Ombudsman had already conducted the appropriate preliminary investigation on the merits after this Court settled the issue of prescription.

The Court agrees with private respondent Herbosa that this case has been rendered moot and academic. It is a rule of universal application, almost, that courts of justice constituted to pass upon substantial rights will not consider questions in which no actual interests are involved; they decline jurisdiction of moot cases.[8] And where the issue has become moot and academic, there is no justiciable