

THIRD DIVISION

[G.R. NO. 135687, July 24, 2007]

PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS, REPRESENTED BY: PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), PETITIONER, VS. HON. OMBUDSMAN ANIANO DESIERTO, WENCESLAO PASCUAL, GAUDENCIO VIDUYA, JULIA M. MACUJA, PLACIDO MAPA, JR., JOSE TEVES, ALEJANDRO MELCHOR, RECIO M. GARCIA, DBP BOARD OF DIRECTORS LORENZA N. SALCEDO, JOSEPHINE S. GARCIA, STOCKHOLDERS OF P.R. GARCIA & SONS DEVELOPMENT AND INVESTMENT CORPORATION, RESPONDENTS.

(RE: OMB-0-96-2643)

PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS, REPRESENTED BY: PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), PETITIONER, VS. PLACIDO MAPA - BOARD OF DIRECTOR/ CHAIRMAN DBP, RECIO GARCIA-MEMBER, JOSE TENGCO, JR. - MEMBER, RAFAEL SISON - CHAIRMAN, JOSE R. TENGCO - MEMBER, ALICE L. REYES - MEMBER, CESAR SALAMEA - CHAIRMAN, DON PERRY -VICE CHAIRMAN, ROLANDO M. SOZA - MEMBER, RICARDO SILVERIO, SR., RICARDO SILVERIO, JR. RICARDO S. TANGCO, STOCKHOLDERS/ DIRECTORS OF GOLDEN RIVER MINING CORP., RESPONDENTS.

(RE: OMB-0-96-2644)

PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS, REPRESENTED BY: PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), PETITIONER, VS. PANFILO O. DOMINGO -FORMER PNB PRESIDENT, CONRADO S. REYES - FORMER NIDC GENERAL MANAGER, CONRADO T. CALALANG, ANTONIO M. GONZALES, NORBERTO L. VILLARAMA, SENEN B. DE LA COSTA, ANTONIO O. MENDOZA, JR., IGNACIO C. BERTUMEN, STOCKHOLDERS/OFFICERS OF FILIPINO CARBON AND MINING CORPORATION, RESPONDENTS.

(RE: OMB-0-96-2645)

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a petition for review on *certiorari* seeking to annul and set aside the Order^[1] of the Ombudsman dated July 6, 1998 dismissing three complaints filed by petitioner docketed as OMB-0-96-2643, OMB-0-96-2644 and OMB-0-96-2645, and its Order^[2] of August 31, 1998, denying petitioner's motion for reconsideration.

The factual and procedural antecedents of the case are as follows:

On October 8, 1992, then President Fidel V. Ramos issued Administrative Order No. 13, which created herein petitioner Presidential Ad Hoc Fact-Finding Committee on Behest Loans (Committee).

On March 6, 1996 and June 28, 1996, Orlando S. Salvador (Salvador), in his capacity as PCGG consultant, executed three separate Sworn Statements stating that among the loan accounts referred by the Assets Privatization Trust to the Committee for investigation, report and recommendation are those of the following corporations: P.R. Garcia and Sons Development and Investment Corporation (PRGS), Golden River Mining Corporation (Golden River), and Filipinas Carbon and Mining Corporation (Filcarbon).

With respect to the loan account of PRGS, Salvador alleged that the said corporation obtained from the Development Bank of the Philippines (DBP) an initial loan guarantee of P26,726,774.72 and a straight industrial loan amounting to P29,226,774.72 on October 26, 1967 for the purpose of redeeming mortgaged properties, rehabilitating buildings and equipment and defraying its operational expenses.

Anent the loan account of Golden River, Salvador claimed that the corporation obtained loan accommodations from DBP beginning from 1975 until 1982 and that as of October 31, 1986, it had a total obligation of P43,193,000.00; that out of its five loan accounts, only the first two loans of Golden River obtained in 1975 and 1977 were sufficiently collateralized, leaving three other loans without any sufficient collateral, to wit: refinancing loan obtained in 1980 for the amount of P14,724,430.00; refinancing loan obtained on March 13, 1982 for the amount of P5,551,000.00; and refinancing loan obtained on December 1, 1982 for the amount of P7,118,656.52.

As to the loan account of Filcarbon, Salvador averred that the said corporation applied with the National Investment Development Corporation (NIDC) a loan guarantee of P27.4 Million on January 17, 1977; that the loan application was favorably recommended by the President of the Philippine National Bank (PNB); that the application was subsequently approved by PNB's Board of Directors on August 17, 1977.

Salvador alleged that, based on the evidence submitted to the Committee, these three corporations did not have sufficient collaterals for the loans they obtained, except with respect to the loans obtained by Golden River in 1975 and 1977. Salvador also alleged that the above-mentioned corporations did not have adequate capital to ensure not only the viability of their operations but also their ability to repay all their loans. Accordingly, the Committee found the loan accounts of the above-mentioned three corporations as behest loans.

The Committee submitted its report to President Ramos who instructed then PCGG Chairman Magtanggol Gunigundo, sitting as the Committee's ex-officio Chairman, to file the necessary charges against the DBP Chairman and members of the Board of Directors, the former PNB President and former NIDC General Manager, together with the respective stockholders/officers of the three corporations.

Subsequently, the Sworn Statements of Salvador were used by the Committee as its bases in filing separate complaints with the Office of the Ombudsman against herein private respondents for alleged violation of the provisions of Sections 3 (e)^[3] and (g)^[4] of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

The complaint against respondents Lorenzo N. Salcedo and Josephine S. Garcia, stockholders of PRGS; and Wenceslao Pascual, Gaudencio Viduya, Julia D. Macuja, Placido L. Mapa, Jr., Jose Teves, Alejandro Melchor, Recio Garcia, Rafael Sison, Cesar Zalamea, Don M. Perry and Rolando Soza, then officers and members of the Board of Directors of DBP, is docketed as OMB-0-96-2643.

The complaint against Ricardo Silverio, Sr., Ricardo Silverio, Jr., and Ricardo S. Tangco, stockholders of Golden River; and Placido Mapa, Jose de Ocampo, Recio Garcia, Jose Tengco, Jr., Rafael Sison, Jose de Ocampo, Jose R. Tengco, Alice L. Reyes, Cesar Zalamea, Don Perry and Rolando M. Soza, then officers and members of the Board of Directors of DBP, is docketed as OMB-0-96-2644.

The complaint against Panfilo O. Domingo, then PNB President; Conrado S. Reyes, then NIDC General Manager; and Conrado Calalang. Antonio M. Gonzales, Norberto L. Villarama, Sene B. dela Costa, Antonio O. Mendoza, Jr. and Ignacio C. Bertumen, officers and stockholders of Filcarbon, is docketed as OMB-0-96-2645.

Subsequently, the three aforementioned cases were consolidated by the Office of the Ombudsman.

In his assailed Order of July 6, 1998, the Ombudsman, upon the recommendation of the Evaluation and Preliminary Investigation Bureau, dismissed the complaints against herein respondents. The Ombudsman ruled that, except with respect to the two loan transactions entered into by Golden River in 1982, all the offenses alleged by the Committee as having been committed by herein respondents had already prescribed under the provisions of Section 11 of R.A. No. 3019. As to the two 1982 transactions of Golden River, the Ombudsman found that, contrary to the claims of herein petitioner, the loan accounts obtained by the said corporation have sufficient collaterals.

Petitioner filed a Motion for Reconsideration but the Ombudsman denied it in its Order dated August 31, 1998.

Hence, herein petition.

Petitioner contends that the Ombudsman erred in dismissing, *motu proprio*, the three complaints without first requiring respondents to submit their counter-affidavits and petitioner to file its reply thereto. Such dismissal, petitioner avers, is premature. Petitioner further argues that even granting that the Ombudsman feels

that petitioner's evidence is insufficient, the Ombudsman should have first required petitioner to clarify said evidence or to adduce additional evidence, in accordance with due process.

Petitioner also asserts that the Ombudsman erred in dismissing petitioner's Motion for Reconsideration on the ground that it was filed out of time as evidence shows that the said motion was timely filed.

Petitioner contends that the consolidation of the three complaints and the subsequent issuance of a single Order dismissing them is erroneous. Petitioner argues that the three complaints cannot be lumped together and a single order issued for their resolution as these complaints involve different sets of facts and are based on different loan transactions.

Petitioner further avers that the pieces of evidence submitted as part of the complaints were not considered by the Ombudsman when it issued the assailed Orders; that the findings of the Committee that the subject loans are behest loans prevail; and, that the right of the State to recover behest loans as ill-gotten wealth is not barred by prescription.

In his Comment, the Ombudsman, citing the proceedings of the 1986 Constitutional Commission as authority, contends that the provisions of Section 15, Article XI of the Constitution, which provides for the imprescriptibility of the right of the State to recover ill-gotten wealth, applies only to civil actions and not to criminal cases. The Ombudsman further avers that prior to its amendment, Section 11 of R.A. No. 3019 provided that the period for the prescription or extinguishment of a violation of the Anti-Graft and Corrupt Practices Act was ten years. Subsequently, the said provision was amended in 1982 increasing the prescriptive period to fifteen years. Applying the Constitution and the law to the present case, the Ombudsman argues that, except with respect to the two loan transactions entered into by Golden River in 1982, all the other alleged criminal acts of herein private respondents in connection with the loan transactions they entered into in the years 1967 until 1980 had already prescribed in 1995. Hence, private respondents can no longer be prosecuted with respect to these transactions.

The Ombudsman also avers that under Section 2, Rule II of Administrative Order No. 7 (Rules of Procedure of the Office of the Ombudsman), the Ombudsman is authorized to dismiss, *motu proprio*, a complaint even without requiring the respondents to file their counter-affidavits and even without conducting a preliminary investigation.

As to the loan accounts of Golden River obtained on March 13, 1982 and December 1, 1982, the Ombudsman contends that based on pieces of evidence presented by the complainant, the said loans had more than sufficient collateral.

The Ombudsman asserts that his findings of fact and his application of pertinent laws as well as rules of evidence deserve great weight and respect and even accorded full faith and credit in the absence of any showing of any error or grave abuse of discretion.

Respondents Panfilo O. Domingo, Jose R. Tengco, Jr., Alicia Ll. Reyes, Cesar Zalamea, Placido L. Mapa, Jr., Conrado T. Calalang, Norberto Villarama and Ricardo

C. Silverio filed their respective Comments. While the present petition is pending in this Court, respondents Conrado Reyes and Jose Teves died.^[5] In a Resolution^[6] issued by this Court dated February 22, 2006, respondents Wenceslao Pascual, Senen dela Costa, Lorenzo Salcedo and Antonio Mendoza were dropped as respondents for an earlier resolution of the case after all efforts of petitioner to ascertain their correct and present addresses proved to be in vain.

With respect to the other respondents who failed to file their respective comments, the Court dispenses with the comments in order that the present petition may be resolved.

The Court shall first deal with the issue of prescription as this was the main basis of the Ombudsman in dismissing petitioner's complaints.

Section 15, Article XI of the 1987 Constitution provides:

The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel.

In *Presidential Ad Hoc Committee v. Hon. Desierto*^[7], the Court held that the imprescriptibility of the right of the State to recover ill-gotten wealth applies only to civil actions for recovery of ill-gotten wealth, and not to criminal cases. In other words, the prosecution of offenses arising from, relating or incident to, or involving ill-gotten wealth contemplated in the above-mentioned provision of the Constitution may be barred by prescription.^[8]

Under Section 11 of R.A. No. 3019, as amended by *Batas Pambansa* (B.P.) Blg. 195, which took effect on March 16, 1982, the prescriptive period for offenses punishable under the said Act was increased from ten to fifteen years.

As to whether or not the subject complaints filed against herein respondents had already prescribed, the Court's disquisition on an identical issue in *Salvador v. Desierto*^[9] is instructive, to wit:

The applicable laws on prescription of criminal offenses defined and penalized under the Revised Penal Code are found in Articles 90 and 91 of the same Code. For those penalized by special laws, Act No. 3326, as amended, applies. Here, since R.A. 3019, the law alleged to have been violated, is a special law, the applicable law in the computation of the prescriptive period is Section 2 of Act No. 3326, as amended, which provides:

Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same not be known at the time, **from the discovery thereof** and the institution of judicial proceedings for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run