

## THIRD DIVISION

[ G.R. NO. 140231, July 09, 2007 ]

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG),  
REPRESENTED BY ORLANDO L. SALVADOR, PETITIONER, VS.  
HON. ANIANO A. DESIERTO, OFFICE OF THE OMBUDSMAN-  
MANILA, CONCERNED MEMBERS OF THE PNB BOARD OF  
DIRECTORS, REYNALDO TUASON, CARLOS CAJELO, JOSE  
BARQUILLO, JR., LORETO SOLSONA, PRIMICIAS BANAGA, JOHN  
DOES, AND NORTHERN COTABATO SUGAR INDUSTRIES, INC.  
(NOCOSII), RESPONDENTS.**

### D E C I S I O N

#### AUSTRIA-MARTINEZ, J.:

The Presidential Commission on Good Government<sup>[1]</sup> (petitioner) filed the herein Petition for *Certiorari* under Rule 65 of the Rules of Court assailing the Resolution<sup>[2]</sup> dated May 21, 1999 of Ombudsman Aniano A. Desierto in OMB No. 0-95-0890 which dismissed petitioner's criminal complaint for violation of Section 3(e) and (g) of Republic Act (R.A.) No. 3019<sup>[3]</sup> against concerned members of Philippine National Bank (PNB) Board of Directors and Northern Cotabato Sugar Industries, Inc. (NOCOSII) officers, namely: Reynaldo Tuason, Carlos Cajelo, Jose Barquillo, Jr., Loreto Solsona, Primicias Banaga and John Does (respondents); and the Order<sup>[4]</sup> dated July 23, 1999 which denied petitioner's Motion for Reconsideration.

The facts:

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 inventory all behest loans, determine the parties involved and recommend whatever appropriate actions to be pursued thereby.

On November 9, 1992, President Ramos issued Memorandum Order No. 61 expanding the functions of the Committee to include the inventory and review of all non-performing loans, whether behest or non-behest.

The Memorandum set the following criteria to show the earmarks of a "behest loan," to wit: "a) it is undercollateralized; b) the borrower corporation is undercapitalized; c) a direct or indirect endorsement by high government officials like presence of marginal notes; d) the stockholders, officers or agents of the borrower corporation are identified as cronies; e) a deviation of use of loan proceeds from the purpose intended; f) the use of corporate layering; g) the non-feasibility of the project for which financing is being sought; and, h) the extraordinary speed in which the loan release was made."

Among the accounts referred to the Committee's Technical Working Group (TWG)

were the loan transactions between NOCOSII and PNB.

After it had examined and studied all the documents relative to the said loan transactions, the Committee classified the loans obtained by NOCOSII from PNB as behest because of NOCOSII's insufficient capital and inadequate collaterals. Specifically, the Committee's investigation revealed that in 1975, NOCOSII obtained loans by way of Stand-By Letters of Credit from the PNB; that NOCOSII was able to get 155% loan value from the offered collateral or an excess of 85% from the required percentage limit; that the plant site offered as one of the collaterals was a public land contrary to the General Banking Act; that by virtue of the marginal note of then President Marcos in the letter of Cajelo, NOCOSII was allowed to use the public land as plant site and to dispense with the mortgage requirement of PNB; that NOCOSII's paid-up capital at the time of the approval of the guaranty was only P2,500,000.00 or only about 6% of its obligation.

Based on the Sworn Statement of PCGG consultant Orlando Salvador, petitioner filed with the Office of the Ombudsman the criminal complaint against respondents. Petitioner alleges that respondents violated the following provisions of Section 3 (e) and (g) of R.A. No. 3019:

*Sec. 3. Corrupt practices 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:

x x x

e. Causing undue injury to any party, including the Government or giving any private party any unwarranted benefits, 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.

x x x

g. 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.

The respondents failed to submit any responsive pleading before the the Ombudsman, prompting Graft Investigator Officer (GIO) I Melinda S. Diaz-Salcedo to resolve the case based on the available evidence.

In a Resolution dated January 12, 1998 in OMB-0-95-0890, GIO Diaz-Salcedo recommended the dismissal of the case on the ground of insufficiency of evidence or lack of probable cause against the respondents and for prescription of the offense. Ombudsman Desierto approved the recommendation on May 21, 1999.<sup>[5]</sup>

Petitioner filed a Motion for Reconsideration<sup>[6]</sup> but it was denied by GIO Diaz-Salcedo in the Order dated July 9, 1999, which was approved by Ombudsman Desierto on July 23, 1999.<sup>[7]</sup>

Forthwith, petitioner elevated the case to this Court and in support of its petition alleges that:

A)The Respondent Ombudsman gravely abused his discretion or acted without or in excess of jurisdiction in dismissing the complaint filed by the Petitioner on the ground of Prescription considering that:

1. THE RIGHT OF THE STATE TO RECOVER BEHEST LOANS AS ILL-GOTTEN WEALTH IS IMPRESCRIPTIBLE UNDER ARTICLE XI, SECTION 15, OF THE 1987 CONSTITUTION;
2. PRESCRIPTION DOES NOT RUN IN FAVOR OF A TRUSTEE TO THE PREJUDICE OF THE BENEFICIARY;
3. THE OFFENSES CHARGED ARE IN THE NATURE OF CONTINUING CRIMES AS THE STATE CONTINUES TO SUFFER INJURY ON EACH DAY OF DEFAULT IN PAYMENT. HENCE, PRESCRIPTION DOES NOT APPLY;
4. PRESCRIPTION AS A MATTER OF DEFENSE MUST BE PLEADED, OTHERWISE, IT IS DEEMED WAIVED;
5. PRESCRIPTION HAS NOT BEEN INVOKED IN THIS CASE. SINCE IT MAY BE WAIVED OR MAY NOT BE SET IN DEFENSE, THE OMBUDSMAN CANNOT **MOTU PROPRIO** DISMISS THE COMPLAINT ON GROUND OF PRESCRIPTION;
6. ARTICLE 91 OF THE REVISED PENAL CODE WHICH ADOPTS THE "DISCOVERY RULE" SHALL APPLY IN THIS CASE;
7. THE LOAN CONTRACT AS OTHER LOAN TRANSACTIONS IN THE NATURE OF BEHEST LOANS ARE KEPT SECRET.<sup>[8]</sup>

B) The respondent Ombudsman gravely abused his discretion or acted without or in excess of jurisdiction in not finding that a probable cause exists for violation by the private respondents of section 3 (e) and (g) of RA 3019 despite the presence of clear, overwhelming and un rebutted evidence.<sup>[9]</sup>

In its Comment, the Ombudsman, without delving on the issue of prescription, in view of *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* (1999),<sup>[10]</sup> contends that its finding of insufficiency of evidence or lack of probable cause against respondents deserves great weight and respect, and must be accorded full weight and credit.

No comment was filed by the rest of the respondents.

The issue before the Court is whether the Ombudsman committed grave abuse of