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FIRST DIVISION

[G.R. No. 138142, September 19, 2007]

THE PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS AND PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, PETITIONERS, VS. OMBUDSMAN ANIANO A. DESIERTO, ALICIA LL. REYES, LEONIDES S. VIRATA, RODOLFO D. MANALO, VERDEN C. DANGILAN, ISMAEL A. MATHAY, JR., JOSE Y. CAMPOS, FRANCISCO DE GUZMAN AND ERWIN G. VORSTER, RESPONDENTS.

D E C I S I O N

CORONA, J.:

This is a petition for certiorari[1] seeking to nullify the resolution of then Ombudsman Aniano A.Desierto dated October 12, 1998[2] dismissing the complaint against private respondents in OMB-0-98-0364,as well as the order dated January 5, 1999[3] denying the motion for reconsideration.On February 17, 1998, a complaint was filed by Orlando L. Salvador in hisofficial capacity as consultant of petitioner Presidential Commission onGood Government (PCGG) detailed with the Presidential Ad Hoc Fact-FindingCommittee on Behest Loans (Fact-Finding Committee) against the followingprivate respondents, all former officers of the Development Bank of thePhilippines (DBP) and Pagdanan Timber Products, Inc. (PTPI):

1. Leonides S. Virata (chairperson of the Board of Governors of DBP)
2. Alicia Ll. Reyes (manager of Industrial Projects, Department I of DBP)
3. Rodolfo D. Manalo and Verden C. Dangilan (both executive officers of DBP),[4]
4. Jose Y. Campos
5. Francisco de Guzman
6. Ismael A. Mathay, Jr. and
7. Erwin G. Vorster[5]

The latter four were officers and stockholders of PTPI.

All eight were charged with violation of Section 3 (e) and (g) of RA 3019, otherwiseknown as the Anti-Graft and Corrupt Practices Act.

In our resolution dated August 29, 2001, we dismissed the case insofar as privaterespondent Virata was concerned since he had passed away.

Petitioner Presidential Ad Hoc Fact-Finding Committee on Behest Loans wascreated pursuant to Administrative Order No. 13 dated October 8, 1992 issuedby former President Fidel V. Ramos, with the chairman of PCGG as chairman,the Solicitor General as vice chairman and one representative each from theOffice of the Executive Secretary, Department of Finance, Department ofJustice, DBP, Philippine

National Bank, Asset Privatization Trust, Office ofthe Government Corporate Counsel and the Philippine Export and ForeignLoan Guarantee Corporation as members. It was tasked to inventory all behestloans, identify the lenders and borrowers and recommend the course of actionthat the government should take to recover such loans.

On November 9, 1992, President Ramos issued Memorandum Order No. 61which provided the following criteria to indicate a behest loan:

a. it was undercollateralized;
b. the borrower corporation was undercapitalized;
c. direct or indirect endorsement by high government officials like presence ofmarginal notes;
d. stockholders, officers or agents of the borrower corporation were identifiedas 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 was sought and
h. extraordinary speed at which the loan release was made.

The Fact-Finding Committee determined that the loan transaction between DBP andPTPI bore the characteristics of a behest loan. Specifically, petitioners alleged thatPTPI was a joint venture of Anchor Estate Corporation and Jardine Group ofCompanies. It was organized on August 9, 1974 to take over the properties acquired byDBP from Fil-Eastern Wood Industries, Inc. On the same date, PTPI applied for aforeign guarantee loan in the amount of US $13.5 million to purchase these and otherbrand-new equipment such as sawmill, veneering plant and logging equipment. Thefinancial accommodation was approved on August 14, 1974 or after only fivedays.[6]

According to petitioners, PTPI had no sufficient capital at the time the loan wasgranted since its paid-up capital amounted to P25,000 only. However, it was able toobtain additional accommodations and restructuring of accounts up to July 18, 1979.As of June 30, 1986, it had an outstanding and unpaid balance of P454.85million.[7] In addition, the loan wasundercollateralized since there were no existing assets offered as security except forassets to be acquired using the loan proceeds, assignment of the forest concessions ofPTPI and the joint and several undertaking of MacMillan Jardine. Petitioner claimedthat the processing of the original loan application was attended with haste and thatthere was a deviation of the loan funds to other purposes.[8] They contended that there was evidence that the loan wasgranted at the urging of former President Marcos.[9] They also asserted that DBP leased the properties it acquired byforeclosure to PTPI beyond five years which was a violation of Section 25 of theGeneral Banking Act.[10]

Accordingly, a complaint was filed in the Office of the Ombudsman for violation of RA 3019, section 3 (e) and (g). In a resolution dated October 12, 1998, the Office of the Ombudsman dismissed the complaint. It held that :

(1) there was no evidence that the loan was granted at the behest, command or urging of previous government officials;

(2) PTPI complied with the DBP requirement that it would increase its

paid-up capital from P25,000 to P1 million;

(3) the loan was not under collateralized and

(4) the complaint was barred by prescription. It denied reconsideration in an order dated January 5, 1999.

Hence this petition for certiorari.The issue for our resolution is whether the Ombudsman committed grave abuse ofdiscretion in (1) holding that the offenses charged in the complaint had alreadyprescribed and (2) dismissing the complaint for lack of probable cause to indict privaterespondents for violation of Section 3 (e) and (g) of RA 3019.Had the Offenses Prescribed . The Ombudsman held that the ten-year prescriptive period commenced on the date ofthe violation of law under Section 11 of RA 3019. The transaction occurred in 1974.Hence, the complaint was allegedly barred by prescription when it was filed on February17, 1998.This issue had previously been resolved in *Presidential Ad Hoc Fact-Finding Committeeon Behest Loans v. Desierto.*[11] TheCourt held:

> Since the law alleged to have been violated, i.e., paragraphs (e) and (g) of Section 3,R.A. No. 3019, as amended, is a special law, the applicable rule in the computation ofthe prescriptive period is Section 2 of Act No. 3326, as amended, which provides:
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> > Sec. 2. **Prescription shall begin to run from the day of the commission of theviolation of the law, and if the same be not known at the time, from the discoverythereof and institution of judicial proceedings for its investigation and punishment.** The prescription shall be interrupted when proceedings are instituted against the guiltyperson and shall begin to run again if the proceedings are dismissed for reasons notconstituting double jeopardy.This simply means that if the commission of the crime is known, theprescriptive period shall commence to run on the day it was committed.
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> In the present case, it was well-nigh impossible for the State, the aggrievedparty, to have known the violations of R.A. No. 3019 at the time thequestioned transactions were made because, as alleged, the public officialsconcerned connived or conspired with the "beneficiaries of the loans." Thus,we agree with the COMMITTEE that the prescriptive period for the offenseswith which the respondents in OMB-0-96-0968 were charged should becomputed from the discovery of the commission thereof and not from theday of such commission.[12](Emphasis supplied)

This doctrine was reiterated in subsequent cases also involving petitioners and publicrespondent and is now well-settled.[13]Therefore, the counting of the prescriptive period commenced from the date ofdiscovery of the offenses in 1992 after the investigation of the Fact-FindingCommittee.[14] When the complaintwas filed in 1998 or after six years, prescription had not set in.[15]Was There Probable Cause?The Ombudsman did not act with grave abuse of discretion when he found that therewas no evidence to establish probable cause to sustain the charges against privaterespondents. Section 3 (e) and (g) of RA 3019 provide:

> Sec. 3. *Corrupt practices of public officers.* ⊥ In addition to acts oromissions of public officers already penalized by existing law, the followingshall constitute corrupt practices of any public officer and are hereby declaredto be unlawful:
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> xxx xxx xxx
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> e. Causing undue injury to any party, including the Government or giving anyprivate party any unwarranted benefits, advantage or preference in the discharge of hisofficial, administrative or judicial functions through manifest partiality, evident badfaith or gross inexcusable negligence. This provision shall apply to officers andemployees of offices or government corporations charged with the grant of licenses orpermits or other concessions.
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> xxx xxx xxx
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> g. Entering, on behalf of the Government, into any contract or transactionmanifestly and grossly disadvantageous to the same, whether or not the public officerprofited or will profit thereby.[16]

Grave abuse is defined as:

> ... such capricious and whimsical exercise of judgment on the part of the public officerconcerned which is equivalent to an excess or lack of jurisdiction. The abuse ofdiscretion must be so patent and gross as to amount to an evasion of a positive dutyor a virtual refusal to perform a duty enjoined by law, or to act at all incontemplation of law as where the power is exercised in an arbitrary and despoticmanner by reason of passion or hostility.[17]

The Ombudsman explained his reasons for dismissing the complaint:

> There is no evidence on record to prove that the loan was granted to PTPIat the behest, command or urging by previous government officials. Asappearing from its Corporate Profile, PTPI is a company organized onAugust 9, 1974 to take over the properties acquired by DBP from Fil-EasternWood Industries, Inc. (FEWI). The foreign currency loan of US $13.5million will be used to purchase brand new sawmill and veneering plant andadditional logging equipment since the old equipment were found to beobsolete.Although at the inception or at the time the loan was applied, its paid-upcapital amounted to P25,000.00 only, DBP required, under BoardResolution No. 2415, that prior to the issuance of letter of guarantee andexecution of deed of sale, in order to cover the pre-operating expenses, PTPIshall first increase its paid-up capital from P25,000.00 to P1.0 million. Thetraditional equity requirement equivalent to 25% of investment was waived inview of the joint and several signature of Macmillan Jardine and the guaranteeof Macmillan Bloedel and Jardine Matheson. In addition, PTPI shouldalso comply with DBP's requirement that the 80% collateral ratio ismaintained.Moreover, the loan granted to PTPI was not undercollateralized. Based onthe evidence on record, the financial accommodation was secured by theassets to be acquired; the forest concession and the joint and several signatureof Macmillan Jardine. In fact, DBP Board of Governors Chairman LeonidesS.