

SECOND DIVISION

[G.R. NOS. 160577-94, December 16, 2005]

GREGORIO SINGIAN, JR., PETITIONER, VS. THE HONORABLE SANDIGANBAYAN (THIRD DIVISION), THE PEOPLE OF THE PHILIPPINES, AND THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, RESPONDENTS,

D E C I S I O N

CHICO-NAZARIO, J.:

This is a special civil action for *certiorari* under Rule 65 of the Rules of Court, with a prayer for preliminary injunction and/or temporary restraining order assailing the Resolution^[1] dated 18 August 2003 of the Third Division of the Sandiganbayan dismissing the Motion for Re-determination of Existence of Probable Cause of Gregorio Singian, Jr. in Criminal Cases No. 26297-26314 and its Order dated 24 October 2003 denying his motion for reconsideration.

The facts giving rise to the present petition are as follows:

Atty. Orlando L. Salvador was Presidential Commission On Good Government Consultant on detail with the Presidential Ad Hoc Committee on Behest Loans (Committee).^[2] He was also the coordinator of the Technical Working Group composed of officers and employees of government financing institutions to examine and study the reports and recommendations of the Asset Privatization Trust relating to loan accounts in all government financing institutions.^[3] Among the accounts acted upon by the Committee were the loans granted to Integrated Shoe, Inc. (ISI) by the Philippine National Bank (PNB).^[4]

It would appear that on 18 January 1972, ISI applied for a five-year confirmed irrevocable deferred letter of credit amounting to US\$2,500,000.00 (P16,287,500.00) to finance its purchase of a complete line of machinery and equipment. The letter of credit was recommended to the PNB Board of Directors by then Senior Vice President, Mr. Constantino Bautista.

On 27 January 1972, the PNB approved the loan, subject to certain stipulations.^[5] The said letter of credit was to be secured by the following collaterals: a) a second mortgage on 10,367-square meter lot under Transfer Certificate of Title No. 218999 with improvements, machinery and equipment; b) machinery and equipment to be imported under the subject letter of credit; and c) assignment of US\$0.50 per pair of shoes of ISI's export sales. It was further subjected to the following pertinent conditions: a) that the letter of credit be subject to joint and several signatures of Mr. Francisco J. Teodoro, Mrs. Leticia T. Teodoro, Marfina T. Singian, Tomas Teodoro, and Gregorio Singian, Jr.; b) that ISI, which has a paid-up capital amounting to P1,098,750.00 as of January 1972, shall increase its authorized capital to

P5,000,000.00, and in the event that cash receipts do not come up to the projections, or as may be required by the bank, ISI will further increase its capitalization and the present stockholders will subscribe to their present holdings; and c) that ISI shall submit other collaterals in case the appraised value of the new machinery and equipment be insufficient.

ISI was further extended the following subsequent loan accommodations:

1. P1,500,000.00 on 10 February 1972 for the purchase of raw materials;
2. P1,000,000.00 on 18 January 1973 as export advance;
3. P1,500,000.00 on 21 March 1973 as export advance;
4. P600,000.00 on 06 March 1974 as credit line;
5. P2,500,000.00 renewed on 15 December 1976;
6. P5,000,000.00 on 19 November 1978 as export advance;
7. P1,500,000.00 on 04 August 1980 as export advance; and
8. P7,000,000.00 on 15 December 1980 also as an export advance.^[6]

The Committee found that the loans extended to ISI bore characteristics of behest loans specifically for not having been secured with sufficient collaterals and obtained with undue haste.^[7]

As a result, Atty. Orlando Salvador filed with the Office of the Ombudsman a sworn complaint dated 20 March 1996, for violation of Section 3, paragraphs (e) and (g), of Republic Act No. 3019, as amended, against the following: Panfilo Domingo, former PNB President, Constantino Bautista, former PNB Senior Vice President, Domingo Ingco, former member of the PNB Board of Directors, John Does, former members of the PNB Board of Directors, Francisco Teodoro, President of ISI, Leticia Teodoro, Vice President of ISI, Marfina Singian, Incorporator of ISI, Tomas Teodoro, General Manager of ISI, and Gregorio Singian, Jr., Executive Vice President of ISI. The complaint, docketed as OMB-0-96-0967, was assigned to Graft Investigation Officer I Atty. Edgar R. Navales (Investigator Navales) of the Evaluation and Preliminary Investigation Bureau (EPIB) for investigation.

In a Resolution dated 04 October 1999, Investigator Navales recommended the dismissal of the complaint on the grounds of prescription and insufficiency of evidence. Director Angel C. Mayoralgo of the EPIB recommended the approval of the findings and conclusion of Investigator Navales. The resolution partly reads:^[8]

Be that as it may, the present case may still be dismissed on the ground of insufficiency of evidence.

Perusal of the record shows that except for the allegations that the public respondents herein have illegally entered into a contract with ISI and that the respondents have given unwarranted benefits to ISI through

manifest partiality, evident bad faith or gross inexcusable negligence, there is nothing on record that would concretely show that, indeed, the respondents have acted in such a manner, and that the transactions entered by the respondent public officers were illegal.

Further, the allegation of the complaint that the subject five-year confirmed irrevocable, deferred L/C for U.S.\$2.5 million extended to ISI, through the private respondents, was only secured by a piece of land valued at P1,646,700.00 and, therefore, undercollateralized, was inaccurate.

A careful review of the record shows that aside from the aforesaid collateral, ISI had likewise offered as securities the joint and several signatures of Mr. and Mrs. Francisco J. Teodoro, private respondents herein; machinery and equipment to be imported under said L/C; and assignment of US\$0.50 per pair of shoes to be exported by ISI (see Memorandum, dated January 18, 1972, pp. 59-69, Record). These collaterals were offered by private respondents aside from the fact that the releases and disbursements of the proceeds of the subject L/C were subject to the rigid control of the PNB Board of Directors. These, therefore, belied the contention of the complainant that the subject L/C was without sufficient security.

It is worth stressing that the public respondents herein were not the ones who entered the subject transactions with ISI but the members of the PNB Board of Directors who, incidentally, have in their favor the presumption of regularity in the performance of their official duties and functions, of which the complainant herein, as borne by the record, had failed to overcome or disprove by clear and solid evidence.

The recommendation of Investigator Navales was disapproved by then Ombudsman Aniano A. Desierto. Thereafter, the case was assigned to Special Prosecution Officer I Florita S. Linco (Prosecutor Linco) for review.

In a Memorandum dated 02 May 2000, Prosecutor Linco found that probable cause existed to indict petitioner, among other respondents, and recommended that they be charged with violation of Section 3(e) and (g) of Rep. Act No. 3019. Director Wendell Barreras-Sulit and Special Prosecutor Leonardo P. Tamayo approved Prosecutor Linco's recommendation, while Deputy Special Prosecutor Robert E. Kallos disapproved the same and expressed his concurrence in the resolution of Investigator Navales. Ombudsman Desierto approved Prosecutor Linco's recommendation on 13 October 2000.

Hence, the corresponding eighteen (18) Informations against petitioner and his co-accused for violation of Section 3(e) and (g) of Rep. Act No. 3019, docketed as Criminal Cases No. 26297 to No. 26314, were filed before the Sandiganbayan and were raffled to the Third Division thereof. The eighteen (18) Informations correspond to the nine (9) loan accommodations granted to ISI, each loan being the subject of two informations alleging violations of both paragraphs of Section 3 of Rep. Act No. 3019.

On 26 July 2001, petitioner filed before the Sandiganbayan an Urgent Consolidated

Motions for Reinvestigation and Reduction of Bail on the ground that he was not notified of the proceedings conducted in OMB-0-96-0967 and that the notices due him were sent to an erroneous address.

On 31 August 2001, the Sandiganbayan issued an order granting petitioner's motion for reinvestigation. Pursuant thereto, the Office of the Special Prosecutor conducted the reinvestigation of Criminal Cases No. 26297 to No. 26314 through Special Prosecution Officer III Joselito R. Ferrer (Prosecutor Ferrer).

In a memorandum dated 26 February 2003, Prosecutor Ferrer resolved the reinvestigation setting forth the following recommendations:

WHEREFORE, premises considered, it is respectfully recommended that the OSP Review Memorandum^[9] dated May 2, 2000 be MODIFIED as follows:

1. That accused Panfilo O. Domingo, Domingo G. Ingco, Constantino Bautista, Leticia T. Teodoro, Gregorio Singian, Tomas T. Teodoro and Marfina T. Singian be EXONERATED from any criminal liability in the following Criminal Cases:
 - (a) Criminal Cases Nos. 26298, 26301-304 and 26306-26314 against all the accused charged therein;
 - (b) Criminal Case No. 26297 as against accused Panfilo Domingo and Domingo Ingco;
 - (c) Criminal Case No. 26299 as against accused Constantino Bautista;
 - (d) Criminal Cases Nos. 26300 and 26305 as against Domingo Ingco and Constantino Bautista;
2. That the Informations in Criminal Cases Nos. 26297, 26299-26300 and 26305 be correspondingly amended to conform with the evidence on records.^[10]

The recommendations of Prosecutor Ferrer exonerating petitioner and his co-accused of the charges were, however, disapproved by Ombudsman Simeon V. Marcelo.

From the adverse finding of the Ombudsman, petitioner filed before the Sandiganbayan a Motion for Re-determination of Existence of Probable Cause which was denied by the latter in a resolution dated 18 August 2003. Petitioner filed a motion for reconsideration which was eventually denied by the Sandiganbayan in a resolution dated 24 October 2003.

Hence, this petition for *certiorari*.

Petitioner ascribes to the Sandiganbayan grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolution dated 18 August

2003, and order dated 24 October 2003 on the following grounds:

I

PETITIONER SINGIAN CANNOT BE HELD LIABLE FOR VIOLATING SECTIONS 3(e) AND (g) OF R.A. 3019 BECAUSE NO PROOF WAS EVER ADDUCED TO ESTABLISH THAT THE LOANS SUBJECT OF CRIMINAL CASES NOS. 26297 TO 26314 NOW PENDING WITH THE RESPONDENT SANDIGANBAYAN WERE BEHEST LOANS.

A. THE CONTENTION OF THE PROSECUTION THAT THE SUBJECT LOANS WERE UNDERCOLLATERALIZED IS COMPLETELY BELIED BY THE FACT THAT OTHER SECURITIES WERE GIVEN BY ISI IN ADDITION TO THE LAND THAT IT PUT UP AS COLLATERAL.

B. THE PROSECUTION'S CLAIM THAT ISI ALLEGEDLY SUFFERED FROM A VERY LOW CAPITAL RATIO OF 6.75% IS BOTH GRATUITOUS AND SELF-SERVING, IN VIEW OF ITS FAILURE TO ADDUCE THE BANKING STANDARD OF ACCEPTABILITY.

II

THE RULING OF THE RESPONDENT COURT THAT PETITIONER SINGIAN IS CRIMINALLY RESPONSIBLE FOR ISI'S PURPORTED FAILURE TO PUT UP ADDITIONAL CAPITALIZATION AND COLLATERALS IS MANIFESTLY INCONSISTENT WITH ITS FINDING THAT SAID PETITIONER IS NEITHER A STOCKHOLDER NOR A DIRECTOR OF THE COMPANY.

III

THERE IS NO EVIDENCE THAT PETITIONER WAS PART OF ANY CONSPIRACY RELATIVE TO THE EVALUATION AND GRANT OF THE LOANS SUBJECT OF THE CRIMINAL CASES BEFORE THE RESPONDENT SANDIGANBAYAN.

In dealing with cases of this kind, we have invariably refused to interfere with the discretion of the Ombudsman. The act of the Ombudsman in finding probable cause to indict petitioner is an exercise of his powers based upon constitutional mandate and the courts should not interfere with such exercise, unless clothed with grave abuse of discretion.^[11] The rule is based not only upon respect for the investigatory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well.^[12] Otherwise, the functions of the Court will be grievously hampered by innumerable petitions assailing the findings by the Ombudsman with respect to complaints filed before him.^[13]

Grave abuse of discretion is the capricious and whimsical exercise of judgment on the part of the public officer concerned which is equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.^[14]