418 Phil. 715

SECOND DIVISION

[G.R. No. 137777, October 02, 2001]

THE PRESIDENTIAL AD-HOC FACT FINDING COMMITTEE ON BEHEST LOANS, PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), PETITIONER, VS. THE HON. OMBUDSMAN ANIANO DESIERTO, CONCERNED PNB DIRECTORS, MANUEL NIETO, JR., JOSE MARIA OZAMIS, CARLOS FORTICH, RODOLFO CUENCA, JOSE AFRICA (DECEASED), JULIO OZAMIS AND MIGUEL V. GONZALES, RESPONDENTS.

D E C I S I O N

DE LEON, JR., J.:

Before us is a special civil action for *certiorari* under Rule 65 of the Rules of Court seeking to nullify the Resolution[1] dated August 20, 1998 of the public respondent, Ombudsman Aniano Desierto, dismissing the complaint against the private respondents for violation of Section 3, paragraphs (e) and (g), of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and the Order[2] dated November 23, 1998 denying the motion for reconsideration.

The facts, as culled from the record are as follows:

On October 8, 1992 the then President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential Ad-Hoc Fact Finding Committee on Behest Loans[3] (Fact Finding Committee, for brevity) to make an inventory of all alleged behest loans, determine the parties involved therein and recommend appropriate actions to be pursued by the government. The function of the Fact Finding Committee was subsequently expanded with the issuance of Memorandum No. 61 dated November 9, 1992 to include in its investigation, inventory and study all non-performing loans which shall embrace both behest and non-behest loans.

Among the accounts referred to the Technical Working Group (TWG, for brevity) of the Fact Finding Committee by the Asset Privatization Trust (APT, for brevity) for investigation was the loan account of the Bukidnon Sugar Milling Co., Inc. (BUSCO, for brevity) which has been transferred and assigned by the PNB to APT.

After its investigation, the Fact Finding Committee concluded that the loan transaction between the Philippine National Bank (PNB, for brevity) and BUSCO bore characteristics of a behest loan[4] specifically for not having been secured with sufficient collateral and obtained with undue haste. The Fact Finding Committee found that the assets offered as collateral by BUSCO which had a paid-up capital of One Million Five Hundred Thousand Pesos (P1,500,000.00) only when its application for loan was approved, were valued at Three Hundred Seventy-Three Million Seven Hundred Seventy-Nine Thousand Four Hundred Fifty-Three Pesos (P373,779,453.00) as against the loan in the amount of Sixty Million Forty-Three Thousand Eight

Hundred Fifty-Five US Dollars ($60,043,855.00) equivalent to Four Hundred Twenty-Four Million Eight Hundred Forty Thousand Two Hundred Ninety-Six Pesos (P424,840,296.00) at the then prevailing exchange rate of P7.0755 to US $1.00. It also found that while BUSCO applied for the loan on October 15, 1974, the same was approved by the PNB Board of Directors on November 20, 1974 under Board Resolution No. 1026.[5]

Consequently, Atty. Orlando L. Salvador, Consultant of the Fact Finding Committee, and representing the Presidential Commission on Good Government (PCGG, for brevity) filed a sworn complaint, for violation of Section 3, paragraphs (e) and (g), of Republic Act No. 3019, as amended, with the Office of the Ombudsman against the directors and officials of BUSCO, namely: respondents Manuel H. Nieto, Jr., Jose Ma. Ozamis, Carlos O. Fortich, Rodolfo M. Cuenca, Jose L. Africa, Julio H. Ozamis, and Miguel V. Gonzales; and the concerned members of the Board of Directors of the Philippine National Bank (PNB).[6]

Respondents Julio H. Ozamis, Jose Ma. Ozamis, Carlos O. Fortich, Miguel V. Gonzales and Rodolfo M. Cuenca filed their counter-affidavits. They contended that the PCGG was estopped from filing the complaint against them when it gave clearance to the APT for the extrajudicial foreclosure of the mortgage/collateral of the subject loan; that the APT issued a waiver of its right to any deficiency claim; that the complaint of PCGG is barred by prescription having been filed more than twenty (20) years after the approval of the alleged behest loan; that the loan was secured by sufficient collateral; and that the application for the loan followed the standard loan processing procedure of the PNB.[7]

The heirs of respondent Jose L. Africa filed a motion to quash the complaint on the ground that said respondent died on December 20, 1995. On his part, respondent Manuel H. Nieto, Jr. filed an omnibus motion which was treated by the Ombudsman as a responsive pleading to the complaint.[8]

In its reply, petitioner PCGG argued that the date of discovery of the offense was on April 18, 1994 when the Fact Finding Committee submitted its report to the President; that the said date should be the reckoning point for computing the prescriptive period since the acquisition of the loan was attended with fraud; that Article XI, Section 15, of the 1987 Constitution provides that prescription does not apply to actions for the recovery of ill-gotten wealth; and that the deed of release and discharge issued by the APT to private respondents applies only to their respective civil liabilities.[9]

By way of rejoinder, respondents belied that fraud attended the acquisition of the loan, and also contended that the imprescriptibility of action for the recovery of ill-gotten wealth is not applicable in criminal cases for violation of the Anti-Graft Law. [10]

After considering the evidence adduced, the Ombudsman dismissed the complaint of the PCGG on August 28, 1998 on the ground that "there is no sufficient evidence against respondents, both public and private, so as to make them liable for criminal prosecution in court for violation of the Anti-Graft Law xxx." In other words, there was no probable cause. The PCGG filed a motion for reconsideration on October 7, 1998 but it was subsequently denied by the Ombudsman on January 4, 1999.

Hence, the petition for certiorari.

All that petitioner PCGG contends in the instant petition is that the criminal complaint against the respondents is not barred by prescription based on the following grounds: 1) 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; 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; 4) prescription is a matter of defense which must be pleaded, otherwise, it is deemed waived; 5) the Ombudsman cannot *motu propio* dismiss the complaint on the ground of prescription; 6) Article 91 of the Revised Penal Code which adopts the "discovery rule" shall apply and not Act No. 3326 which followed "date of commission" rule; and 7) prescription, both acquisitive and extinctive, does not run against the state as per Article 1108, par. 4, of the Civil Code.[11]

The issue regarding the computation of prescriptive period for offenses involving the acquisition of behest loans has already been laid to rest in the case of *Presidential Ad-Hoc Fact Finding Committee on Behest Loans vs. Desierto*[12] thus:

xxx[I]t was well-nigh impossible for the State, the aggrieved party, to have known the violations of R.A. No. 3019 at the time the questioned transactions were made because, as alleged, the public officials concerned connived or conspired with the "beneficiaries of the loans". Thus, we agree with the COMMITTEE that the prescriptive period for the offenses with which the respondents in OMB-0-96-0968 were charged should be computed from the discovery of the commission thereof and not from the day of such commission.

The assertion by the OMBUDSMAN that the phrase "if the same be not known" in Section 2 of Act No. 3326 does not mean "lack of knowledge" but that the crime "is not reasonably knowable" is unacceptable, as it provides an interpretation that defeats or negates the intent of the law, which is written in a clear and unambiguous language and thus provides no room for interpretation but only application.

Significantly, however, it appears from the assailed resolution and order of respondent Ombudsman that the sole basis for the dismissal of the complaint was insufficiency of evidence or lack of probable cause that respondents violated Section 3, paragraphs (e) and (g), of Republic Act No. 3019 as amended. Unfortunately, nowhere in the instant petition nor in the consolidated reply[13] to the comments[14] of the respondents did the petitioner question the said basis of the dismissal of the complaint. By reason of the petitioner's failure to squarely address the said issue in the instant petition for certiorari, the finding and conclusion of the Ombudsman that "there is no sufficient evidence against respondents, both public and private, so as to make them liable for criminal prosecution in court for violation of the Anti-Graft Law" remains uncontroverted.

In any event, there is no grave abuse of discretion on the part of the Ombudsman in his determination of whether or not probable cause exists against the respondents. This Court has consistently held that the Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not. It