

EN BANC

[G.R. No. 130140, October 25, 1999]

PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS REPRESENTED BY MAGTANGGOL C. GUNIGUNDO, PCGG CHAIRMAN AND ORLANDO C. SALVADOR, AS CONSULTANT, TECHNICAL WORKING GROUP OF THE PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS, PETITIONERS, VS. HON. ANIANO A. DESIERTO AS OMBUDSMAN; JOSE Z. OSIAS; PACIFICO E. MARCOS; EDUARDO V. ROMUALDEZ; FERNANDO C. ORDOVEZA; AND JUANITO ORDOVEZA, MEMBERS OF THE BOARD OF DIRECTORS OF PHILIPPINE SEEDS, INC.; CONCERNED MEMBERS OF THE DEVELOPMENT BANK OF THE PHILIPPINES, RESPONDENTS.

DECISION

DAVIDE, JR., C.J.:

The core issue in this special civil action for *certiorari* is whether public respondent Ombudsman Aniano A. Desierto (hereafter OMBUDSMAN) committed grave abuse of discretion in holding that the offenses with which the other respondents were charged in OMB-0-96-0968 had already prescribed.

This case originated as G.R. No. 129763, the docket number given to the Motion for Extension of Time to File Petition for Review filed by the Presidential Commission on Good Government (PCGG).^[1] The motion was granted. However, what was filed was a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, with the Presidential Ad Hoc Fact-Finding Committee on Behest Loans (hereafter COMMITTEE) as petitioner. The petition was docketed as G.R. No. 130140. Accordingly, G.R. No. 129763 is now deemed *functus officio*.

Initially, the Court dismissed the petition in this case on technical grounds. But, upon petitioner's motion for reconsideration, the petition was reinstated, and the respondents were required to comment on the petition.

In its Manifestation (In Lieu of Comment),^[2] the Development Bank of the Philippines (DBP) manifested that it would "rel[y] on the evaluation and exercise of the discretionary power conferred on Petitioner in the prosecution of the instant petition."

In its Manifestation and Motion^[3] of 16 February 1998, the Office of the Solicitor General (OSG) informed the Court that it could not represent the OMBUDSMAN for the following reasons: (a) the Solicitor General is the *Vice-Chairman* of petitioner COMMITTEE; (b) being an agency of the Government, the COMMITTEE is entitled to be represented by the OSG; and (c) the petition was signed by Associate Solicitor Salvador C. Guevarra, who is presently on detail with the PCGG, and by Commissioner Herminio A. Mendoza of the PCGG, which is also a client of the OSG.

The Court then required the OMBUDSMAN to file his own comment, which he did on 11 June 1998.^[4]

Copies of the resolution requiring comment on the petition sent to the other respondents were returned to sender because the said respondents had "MOVED." Since the challenged resolution and order of the OMBUDSMAN were issued before said other respondents were even required to submit their counter-affidavits, impleading them in this case is not necessary; hence, this case can be resolved without their inclusion as respondents.

As culled from the initiatory pleadings and MEMORANDA of the COMMITTEE and the OMBUDSMAN, the undisputed facts are as follows:

On 8 October 1992, President Fidel V. Ramos issued Administrative Order No. 13, creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans, with the Chairman of the PCGG as *Chairman*; the Solicitor General as *Vice Chairman*; and one representative each from the Office of the Executive Secretary, Department of Finance, Department of Justice, Development Bank of the Philippines, Philippine National Bank, Asset Privatization Trust, Government Corporate Counsel, and the Philippine Export and Foreign Loan Guarantee Corporation as members. The Committee was directed to perform the following functions:

1. Inventory all behest loans; identify the lenders and borrowers, including the principal officers and stockholders of the borrowing firms, as well as the persons responsible for granting the loans or who influenced the grant thereof;
2. Identify the borrowers who were granted "friendly waivers," as well as the government officials who granted these waivers; determine the validity of these waivers.
3. Determine the courses of action that the government should take to recover those loans, and to recommend appropriate actions to the Office of the President within sixty (60) days from the date hereof.

On 9 November 1992, President Ramos issued Memorandum Order No. 61 directing the COMMITTEE to "include in its investigation, inventory, and study all non-performing loans which shall embrace both behest and non-behest loans." It likewise provided for the following criteria which might be "utilized as a frame of reference in determining a behest loan," to wit:

- a. It is undercollateralized.
- b. The borrower corporation is undercapitalized.
- c. Direct or indirect endorsement by high government officials like presence of marginal notes.
- d. Stockholders, officers or agents of the borrower corporation are identified as 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 is being sought.

h. Extraordinary speed in which the loan release was made.

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Moreover, a behest loan may be distinguished from a non-behest loan in that while both may involve civil liability for non-payment or non-recovery, the former may likewise entail criminal liability.”

In its FOURTEENTH (14TH) REPORT ON BEHEST LOANS to President Ramos, dated 15 July 1993,^[5] the COMMITTEE reported that the Philippine Seeds, Inc., (hereafter PSI) of which the respondents in OMB-0-96-0968 were the Directors, was one of the twenty-one corporations which obtained behest loans.

In his instructions handwritten on the cover of the aforementioned Report, President Ramos directed COMMITTEE Chairman Magtanggol C. Gunigundo to, *inter alia*, “proceed with administrative and judicial actions against the twenty-one firms (out of 21) in this batch with positive findings ASAP.”^[6]

On 2 March 1996, the COMMITTEE through Orlando O. Salvador, the PCGG consultant detailed with the COMMITTEE, filed with the OMBUDSMAN a sworn complaint^[7] against the Directors of PSI namely, Jose Z. Osias, Pacifico E. Marcos, Eduardo V. Romualdez, Fernando C. Ordoveza, and Juanito Ordoveza; and the Directors of the Development Bank of the Philippines who approved the loans for violation of paragraphs (e) and (g) of Section 3 of Republic Act No. 3019, as amended, which read:

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:

. . .

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

. . .

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 complaint, later docketed as OMB-0-96-0968, alleged as follows:

4. The evidence submitted to us show that:

a) Philippine Seeds, Inc. (PSI) obtained its initial loan guarantee on April 17, 1969 under B/R 2805 (Annex 1, Evidence 3) with an aggregate amount of \$3,452,535. or P13,568,463. (P3.93 to \$1)

Based on the foregoing DBP approved Guarantee Loans, PSI still had a collateral deficiency of P5,444,432, and likewise DBP infused the amount of P3,824,911 as against the corporation's paid-up capital of P2,225,000 only.

b) Subsequent loans/guarantees were extended by DBP for the benefit and/or advantage of PSI under the following Board Resolutions:

1) B/R 3353 dated August 13, 1975 (Annex 2, Evidence 4) for the following purposes:

(a) DBP to extend a loan of P215,000 at 12% interest per annum for repairs & rehabilitation of the PSI plant within a period of four (4) months from the full release of the amount.

(b) DBP to extend a short term of P6 million at 12% interest per annum for its working capital.

(c) DBP to assume PSI loans with commercial banks.

(d) DBP to restructure PSI existing obligations if after 6 months of trial period, operations proved profitable and viable.

(e) DDBP to suspend foreclosure for 10 months.

2) B/R 883 series 1978, (Annex 3, Evidence 9) DBP Board approved a P2.9 million loan for the following purposes:

(a) P1.9 million to liquidate PSI's obligation with other creditors.

(b) P1.0 million to finance PSI's special projects.

(c) DBP initiated PSI foreclosures starting March 1975 but it was not implemented by virtue of then President Marcos' marginal notes dated April 1975 (Annex 4, Evidence 6) and June 1995 (Annex 5, Evidence 7).

(d) Pacifico Marcos and Eduardo Romualdez, relatives of the late President Marcos, were the principal stockholders and officers of the subject firm.

5. As a private entity, Philippine Seeds, Inc., did not deserve the concessions given it without sufficient collateral for the loan and adequate capital to ensure not only the viability of its operations but its ability to repay all its loans.

In the resolution^[8] dated 14 May 1996 and approved on 9 June 1996, the OMBUDSMAN dismissed the complaint in OMB-0-96-0968 on the ground of prescription. Relying on *People v. Dinsay*,^[9] a case decided by the Court of Appeals, he ratiocinated that since the questioned transactions were evidenced by public instruments and were thus open for the perusal of the public, the prescriptive period commenced to run from the time of the commission of the crime, not from the discovery thereof. Reckoning the prescriptive period from 1969, 1970, 1975, and 1978, when the disputed transactions were entered into, the OMBUDSMAN ruled that the offenses with which respondents were charged had already prescribed.

Its motion for reconsideration having been denied by the OMBUDSMAN in the Order^[10] of 19 May 1997, the COMMITTEE filed this case raising this sole issue:

WHETHER OR NOT THE PUBLIC RESPONDENT OMBUDSMAN GRAVELY ABUSED HIS DISCRETION IN HOLDING THAT THE PRESCRIPTIVE PERIOD IN THIS CASE SHOULD BE COUNTED FROM THE DATE OF THE GRANT OF THE BEHEST LOANS INVOLVED, AND NOT FROM THE DATE OF DISCOVERY OF THE SAME BY THE COMMITTEE.

The COMMITTEE argues that the right of the Republic of the Philippines to recover behest loans as ill-gotten wealth is imprescriptible pursuant to the mandate of Section 15 of Article XI of the Constitution, which provides:

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

Behest loans are part of the ill-gotten wealth which former President Marcos and his cronies accumulated and which the Government through the PCGG seeks to recover. Besides, even assuming *ex gratia* that the right to file criminal charges against the respondents is prescriptible, the prescriptive period should be counted from the discovery of the crimes charged, and not from the date of their commission. The ruling in *Dinsay* is not applicable to the case at bar. First, it is a decision of the Court of Appeals; hence, it does not establish a doctrine and can only have a persuasive value. Second, it involved a prosecution for estafa in that the accused disposed of his property claiming that it was free from any lien or encumbrance despite the fact that a notice of *lis pendens* was registered with the Registry of Deeds. The sale, cancellation of the accused's title, and issuance of a new title to the buyer could not have been concealed from the offended parties or their lawyers because these transactions took place when the civil case involving the said property and the offended parties was in progress. Third, *Dinsay* involved private parties, while the instant case involves the Government and public officers. Fourth, the ruling is not absolute, since no less than this Court in *People vs. Monteiro*^[11] said:

[T]he period of prescription for the offense of failure to register with the SSS shall begin from the day of the discovery of the violation if this was not shown at the time of its commission. A contrary view would be dangerous as the successful concealment of an offense during the period fixed for its prescription would be the very means by which the offender may escape punishment. (Emphasis supplied)

Also, in *People v. Duque*,^[12] which involved a prosecution for illegal recruitment under Article 38 of the Labor Code, this Court held:

Even if it be assumed *arguendo* that ordinary prudence required that a person seeking overseas employment ought to check the authority or status of persons pretending to be authorized or to speak for a recruitment or placement agency, the offended parties' failure to do so did not start the running of the prescriptive period. In the nature of things, acts made criminal by special laws are frequently not immoral or obviously criminal in themselves; for this reason, the applicable statute requires that if the violation of the special law is not known at that time, the prescription begins to run only from the discovery thereof, i.e.,