Supreme Court E-Library

FIRST DIVISION

[G.R. No. 212269; January 17, 2023]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *Petitioner*, *v.* **OFFICE OF THE OMBUDSMAN, ROBERTO V. ONGPIN, GERARDO AGULTO, JR., DOMINGO INGCO, BERNARDO M. VERGARA, FEDERICO SALCEDO and MERLE JEAN O. DEEN,** *Respondents*.

D E C I S I O N

HERNANDO, *J.*:

This Petition for *Certiorari*[1] under Rule 65 of the Rules of Court assails the August 24, 2012 Resolution[2] and the October 9, 2012 Order[3] of the Office of the Ombudsman [Ombudsman] in OMB-C-C-03-0425-H, which dismissed a complaint for violation of Section 3(e) and (g) of Republic Act No. 3019[4] or the Anti-Graft and Corrupt Practices Act. Petitioner Presidential Commission on Good Government (PCGG) contends that said issuances were tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Antecedents

This case stemmed from an Affidavit-Complaint[5] filed by PCGG, represented by Atty. Virgilio P.A. Ocaya (Atty. Ocaya),

---

1 *Rollo*, Vol. I, pp. 6-34.

2 Id. at 40-75. Penned by Graft Investigation and Prosecution Officer I Renato A. Peralta, Jr., reviewed by Director Nellie P. Boguen-Golez, recommended approval by Assistant Ombudsman Marilou B. Ancheta-Mejica, and approved by Ombudsman Conchita Carpio Morales.

3 Id. at 76-82. Penned by Graft Investigation and Prosecution Officer I Renato A. Peralta, Jr., reviewed by Director Nellie P. Boguen-Golez, recommended approval by Assistant Ombudsman Marilou B. Ancheta-Mejica, and approved by Ombudsman Conchita Carpio Morales.

4 Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT." Approved: August 17, 1960.

5 *Rollo*, Vol. I, pp. 93-105.

Supreme Court E-Library

PCGG Legal Consultant in reviewing behest loan cases. Said complaint was filed against then Minister of Trade and Industry Roberto V. Ongpin (Ongpin), Minister of Tourism Jose D. Aspiras (Aspiras), Philippine National Bank (PNB) President Panfilo O. Domingo (Domingo), PNB Senior Vice-President Gerardo Agulto, Jr. (Agulto), PNB Executive Vice-President Domingo G. Ingco (Ingco), Marbella Club Manila, Incorporated (Marbella) Executive Vice-President Bernardo M. Vergara (Vergara), Marbella Vice-President Federico Salcedo (Salcedo), and Marbella Vice-President Merle Jean O. Deen (Deen).

The Ombudsman summarized the PCGG's complaint in this wise:

> The complainant alleges that in April 1979, barely six (6) months after [Marbella] was incorporated, the National Investment and Development Corporation (NIDC), a subsidiary of PNB, approved the request of [Marbella] for the issuance of an NIDC Letter of Guaranty in favor of Europe-Asia Finance Corporation (EAFC) or any other financiers to guarantee foreign credit in the principal amount of US$20.0 Million. When the credit arrangement with EAFC did not materialize, [Marbella] applied for US$20.0 Million loan with PNB, which the latter approved on September 1, 1980[,] under Board Resolution No. 155.
>
> To fund the loan of [Marbella], the Central Bank (CB) granted PNB a US$20.0 Million loan under its Consolidated Foreign Borrowings Program (CFBP). PNB approved the loan of [Marbella] even before it became the registered owner of the land where the purported tourism resort was to be established. Two years thereafter, or in December 1982, PNB, under Board Resolution No. 291 dated February 14, 1983, advanced Php15.6 Million to [Marbella], to enable the latter to pay the interest due on its foreign loan when it defaulted its interest payment due in November 1982.
>
> The complainant asserts that such early default on mere interest payment, is already a clear indicium that the borrower was a poor credit risk, that loan was unwarranted, and that the loan granted by the respondent officials of PNB was attended with manifest partiality, bad faith and/or inexcusable negligence. The same manifest partiality and/or bad faith were evident in PNB's waiver of its share in the sale proceeds of condominium units bought by the Philippine Tourism Authority (PTA), wherein under the Loan Agreement, [Marbella] assigned to PNB all sale proceeds of the condominium units as a source of payment. With

Supreme Court E-Library

the waiver, PNB gave away the main source of funding for the payment of the subject loan, thereby reducing the change of its payment. By so doing, PNB entered into an agreement grossly disadvantageous to it, and ultimately, the government and the Filipino people.[6]

Ongpin, Domingo, Agulto, Ingco, Vergara, except for Salcedo and Deen, filed their respective counter-affidavits. The Ombudsman briefly discussed each, *viz.*:

> The alleged offenses committed in 1980, x x x, has already prescribed. The government, thru the various units and offices tasked with investigating and prosecuting ill-gotten wealth and behest account cases connected with the Marcos Dictatorship regime, was in position to discover, and is considered to have imputed discovery of the anti-graft violations as early as March 1986. So, counting the prescriptive period from March 1986, the reckoning point is laid down in the Desierto rulings, more than 16 years have lapsed when the herein Affidavit-Complaint was filed on March 31, 2003. Clearly, this is beyond the 15-year period prescribed in Section 11, R.A. No. 3019, as amended.
>
> Respondent Ongpin avers that the acts attributed to him do not constitute an offense. The said acts are not supported by competent and admissible evidence. He explains that the only "testimonial evidence" submitted is the Affidavit-Complaint of Virgilio P.A. Ocaya which, on its face, is hearsay, several times over. The papers appended to the Complaint are but photocopies and worse, photocopies of photocopies, not of the original papers (or even photocopies of the original papers), the genuineness and authenticity of which is not shown by any piece of evidence.
>
> Respondent Ingco, for his part, declares that paragraph 24 of the Affidavit-Complaint explicitly alleged and charged him as then PNB Senior Vice President and Panfilo O. Domingo, then PNB President who jointly recommended to the PNB Board of Directors the approval of the US$20.0 Million Central Bank-Consolidated Foreign Borrowings [Program] (CB-[CFBP]) loan. Such act of recommending is the only act being charged against him, thus, he did not commit any violation. He might have been a ranking official of PNB but, unassailably, he neither had the title nor the authority to conclude and bind the bank to the questioned transactions. Like any other corporate banking institution, PNB's affairs were directed and its properties managed and preserved and its corporate powers exercised by its Board of Directors.

---

[6] Id. at 43-45.

Supreme Court E-Library

As for the transaction itself, it is an official FX lending under the CB-CFBP facility wherein the two principal parties are the Central Bank of the Philippines (CBP), which is the lender-fund provider, while [Marbella], which is the end-user borrower. The PNB, as mere institutional conduit or channel for the CB-provided FX funds under the CB-CFBP, was not the one who did the credit decision; rather, it was the CBP, whose FX funds are to be lent out. Therefore, if ever there was any flaw or defect, or even irregularity in that credit judgment, then it is the CBP, who approved the FX loan that should be asked to explain. At any rate, the FX loan approval by the CBP is itself an official act of a governmental instrumentality which enjoys the presumption of regularity and validity.

In addition to the above defenses, respondent Domingo clarifies that [Marbella] is not fictional. It was a duly organized and existing corporation under Philippine laws with its Articles of Incorporation duly registered with the Securities and Exchange Commission on November 29, 1978. The paid-up capital of [Marbella] at the time of the loan application was ₱19,693,961.31 and not merely ₱2.5 Million. Arturo Q. Trinidad, Senior [Vice President] and [Officer-In-Charge] of NIDC prepared a Memorandum addressed to the Board of Directors of the NIDC recommending the approval of the supposed request of [Marbella] for an NIDC Letter of Guaranty. This recommendation was apparently made after Mr. Trinidad conducted a thorough study and evaluation of the following relevant points for consideration: a) Identity of Firm; b) Project Proposal; c) Collateral Position of ₱176.828 Million; d) Capitalization and Management; e) Market Aspects; f) Technical Aspects; g) Financial Aspects. There was nothing irregular or illegal in the methodology adopted by Mr. Trinidad.

Further, based on the records attached to the Affidavit-Complaint, [Marbella] was a fully owned subsidiary of Philippine Tourism Authority. Its five (5) incorporators/directors were all PTA nominees. However, at the time of the loan application (no stated date in the records), PTA held 60% of the shareholdings in [Marbella] with the remaining 40% held by a British Corporation. The CBP approved PNB's request for a loan in the amount of US$20.0 Million for re-lending to Marbella under its CFBP on December 12, 1980 by way of Resolution No. 2361. In this CBP Resolution, it was stated that, "the authority to finalize the loan shall have a prescriptive period of 90 days reckoned from receipt of notice of (CBP's) approval." Clearly therefore, at the time then President Marcos approved the transfer of land from PTA to [Marbella] on November 6, 1980, the CBP loan to PNB and PNB loan to [Marbella] were not yet finalized. When the loans were finalized after December 23, 1980, the

Supreme Court E-Library

said land was already approved for transfer to [Marbella] and covered by [Transfer Certificate of Title] No. 108288.

The foreign currency loan of [Marbella] was secured by the following: 1) First Mortgage on Marbella's 125 hectare site of Marina Complex in Ternate, Cavite covered by TCT No. T-108288; 2) Full and unconditional guarantee of the PTA duly approved by the President of the Philippines; and, 3) Assignment by way of payment of proceeds of Marbella's sale of units in its resort/Marina complex in Ternate, Cavite in such amounts necessary to meet [Marbella's] maturing amortizations. He stresses that [Marbella] was a fully owned subsidiary of PTA upon its incorporation in 1978. At the time of the loan application, Marbella was [60% owned] by PTA.

Respondent Domingo urges the [Ombudsman] to take into account the following material facts and considerations: 1) That he should be summarily dropped as respondent in this case; 2) That he cannot be held liable for transactions consummated after March 7, 1983, when he completely terminated his services with PNB; 3) That it is the Monetary Board, Central Bank and the Board of Directors of the PNB which approved the two (2) Board Resolutions in this case, and there is total absence of proof that he "conspired and confederate with (other respondents) in granting unwarranted preference, advantage and benefits to the fictional Marbella"; 4) That all the charges, under any manner of computation, are barred forever by the rules on prescription, Statute of Limitations, estoppel and laches; 5) That the Affidavit-Complaint and the Executive Summary and the Reports are based on inadmissible hearsay evidence; without evidentiary value; 6) That the proposed documentary evidence, being mere photocopies (or even photocopies of photocopies are inadmissible as evidence, most especially in criminal cases); 7) That Administrative Order No. 13 and Memorandum No. 61 are not material or relevant to the charges and are inapplicable under the rule on Ex Post Facto laws/rules/regulations; 8) That he cannot be held liable for official acts as PNB President under the Corporation Code and the New Civil Code; 9) That he was never a "crony" of former President Marcos; 10) That he never conspired with any of the respondents or [Marbella] to enter into a loan or credit agreement, inimical or disadvantageous to the government and the people.

As for respondent Vergara, he alleges that [Marbella] was in the business of tourism development. [Marbella's] main project was the construction of a first class, all-exclusive international tourist resort at Ternate, Cavite. The project was ambitious, but it had a very high chance of success. It was consistent with the objectives of the government to

Supreme Court E-Library

promote the country's tourism industry. There was absolutely nothing irregular or suspicious about the rationale behind the project. Further, since the terms and conditions of the Loan Agreement were regular, nothing therein appeared to be in contravention of the law and the terms of the loan was sufficiently covered by collaterals, respondent Vergara co-signed the agreement with PNB's [Ingco]. [Marbella] was clearly a corporation under the control of the Philippine government. [Marbella's] resort project was in essence a project of the government. The Loan Agreement was necessary for the PTA to pursue its tourism project. Furthermore, [Marbella's] proponents planned on infusing additional capital into the company. From the above, it appeared to respondent Vergara that the transactions of [Marbella] were all in the regular course of business of the corporation and in consonance with the purposes of the PTA.[7]

August 24, 2012 Resolution of the Ombudsman

In its Resolution,[8] the Ombudsman held that the prescription for the offense had not yet set in, whichever of the 10-year or the 15-year prescriptive period would be applied.[9] Nonetheless, it found no probable cause for the respondents to be indicted for violation of Sec. 3 (e) and (g) of Republic Act No. 3019.[10] For these charges to prosper, there must be evident bad faith, manifest partiality, or inexcusable negligence, and that the respondent entered into a grossly disadvantageous contract affecting the government, respectively.[11] The PNB Board of Directors acted within the parameters of acceptable banking practices and exercised sound business judgment considering that Marbella was a duly organized corporation with PHP37,500,000.00 subscribed capital and PHP19,693,961.31 paid-up capital at the time of its loan application, and whose proposed project was evaluated since 1979.[12] The Philippine Tourism Authority's (PTA) guarantee, which served as a collateral for the said loan,

---

7 Id. at 45-53.

8 Id. at 40-75.

9 Id. at 55-57.

10 Id. at 58-73.

11 Id. at 59.

12 Id. at 61-62.

Supreme Court E-Library

was created in 1974 with PHP500,000,000.00 authorized capital and fully subscribed by the Republic of the Philippines and other government institutions and instrumentalities. Likewise, the 125-hectare parcel of land in Ternate, Cavite was ceded and conveyed by the government to PTA in 1978. Also, the said loan required the stamp of approval from the government, the Central Bank (CB) Monetary Board in particular. The CB, which is presumed to have regularly discharged its functions, considered the capitalization, management, and collateral of the proposed project in approving the undertaking.[13] Lastly, Ingco, Agulto, Ongpin, Domingo, and the PNB Board of Directors could not be criticized for acknowledging the feasibility of the proposed project.[14]

The *fallo* of the Resolution reads in this wise:

WHEREFORE, this case is **DISMISSED**, for lack of probable cause.

SO RESOLVED.[15]

PCGG moved for the reconsideration of the Ombudsman's resolution,[16] however, it was denied in the Ombudsman's October 9, 2012 Order.[17] Hence, this present Petition for *Certiorari*[18] raising the following issues:

I.

CERTIORARI LIES TO REVIEW THE ACTION OF THE OMBUDSMAN IN FINDING LACK OF PROBABLE CAUSE TO INDICT RESPONDENTS FOR SECTION 3(e) AND (g) OF R.A. NO. 3019.

II.

GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION TAINTED THE DISMISSAL OF THE

---

[13] Id. at 64-68.

[14] Id. at 70-73.

[15] Id. at 73.

[16] Id. at 83-88.

[17] Id. at 76-82.

[18] Id. at 6-34.

Supreme Court E-Library

SUBJECT COMPLAINT FOR VIOLATION OF SECTION 3(e) and (g) OF R.A. NO. 3019.

III.

PROBABLE CAUSE EXISTS TO INDICT RESPONDENTS FOR VIOLATION OF SECTION 3(e) and (g) [OF] R.A. NO. 3019.[19]

PCGG contends that this Court is "not precluded from reviewing the Ombudsman's action when there is grave abuse of discretion"[20] despite the latter's wide latitude of judgment whether to proceed with the charge or not. The Ombudsman committed grave abuse of discretion when it found no probable cause against respondents even if Marbella received unwarranted benefits brought about by the approval of the loan to the prejudice and disadvantage of the government. Ongpin, Aspiras, the officials of PNB, and the directors of Marbella conspired and confederated to grant preference and advantage to a fictional corporation Marbella, through manifest partiality, evident bad faith, and gross inexcusable negligence.[21] It specifically avers:

> The approval of the loan was highly irregular and bore badges of former President [Ferdinand] Marcos' direct intervention to accommodate [Marbella], as can be gleaned from the following: (i) the transfer of the land owned by [PTA], a government agency created pursuant to Presidential Decree No. 189, to [Marbella] to be used as collateral for the loan secured by the latter from PNB; (ii) PTA's guaranty of said loans of [Marbella]; (iii) PNB's waiver of its share in the proceeds of the condominium units purchased by National Development Company (NDC) in favor of [Marbella]; (iv) the PTA-NDC's venture regarding 48 condominium units in the [Marbella] project; (v) the *pro bono* dredging of Caylabne Bay for [Marbella]; and (vi) the additional capital infusion of NDC and PTA in [Marbella].[22]

In addition, Marbella's loan may be characterized as under collateralized and lacking in sufficient equity. These factors, coupled with the non-feasibility of the project and the swift release of the loan, would point to the existence of probable cause for

---

[19] Id. at 14-15.

[20] Id. at 15.

[21] Id. at 16.

[22] Id.

Supreme Court E-Library

violation of Sec. 3 (e) and (g) of Republic Act No. 3019.[23] Hence, the Office of the Ombudsman gravely abused its discretion in dismissing the case for lack of probable cause.

PCGG maintains that the manner by which the loans were approved in favor of Marbella is comparable to the criteria of a behest loan. As laid down in Memorandum Order No. 61[24] dated November 9, 1992, the following may be used as reference in ascertaining behest loans, to wit: (a) the loan is undercollateralized; (b) the borrower is undercapitalized; (c) there may be direct or indirect endorsement of high government officials, *i.e.*, presence of marginal notes; (d) the stockholders, officers, or agents of the borrower are identified as cronies; (e) there may be deviation of use of the loan proceeds other than the intended purpose; (f) the use of corporate layering; (g) the non-feasibility of the project for which the loan was sought; and (h) the extraordinary speed in which the loan was released.[25]

Following the criteria, PCGG attests that there was inadequate security for the loans and that Marbella did not have sufficient capital to fund the project.[26] The processing and approval of the loans were hastily accomplished despite Marbella's existence as a corporate entity for less than a year,[27] and upon the instruction and endorsement of former President Ferdinand Marcos and the officials of the Ministry of Trade and Industry.[28] All of these factors would lead to a conclusion that they were behest loans. In sum, the grant of behest loans to Marbella meant giving unwarranted benefits to the detriment of the government as penalized by Republic Act No. 3019.[29]

---

[23] Id. at 17.

[24] Entitled "BROADENING THE SCOPE OF THE AD-HOC FACT FINDING COMMITTEE ON BEHEST LOANS CREATED PURSUANT TO ADMINISTRATIVE ORDER NO. 13, DATED 8 OCTOBER 1992." Signed: November 9, 1992.

[25] Id. at 20-21.

[26] Id. at 21-24.

[27] Id. at 24-25.

[28] Id. at 25-26.

[29] Id. at 27-31.

Supreme Court E-Library

On the other hand, Vergara, in his Comment,[30] finds PCGG's petition to be procedurally flawed because it falls under the cognizance of the Court of Appeals following the principle of hierarchy of courts. Likewise, there was no grave abuse of discretion considering that the Ombudsman's resolution was anchored on substantial evidence and factual findings of the Ombudsman. Finally, Vergara, not being a public officer, cannot be made liable under Sec. 3 (e) and (g) of Republic Act No. 3019.[31]

Similarly, in his Comment,[32] Agulto, contends that there was no grave abuse of discretion on the part of the Ombudsman because PCGG, in its complaint, failed to discharge its burden of proving that probable cause exists to indict respondents for violation of Republic Act No. 3019.[33] He had no power to authorize nor recommend approval of the loan to the Board of Directors of PNB because the final decision remained with the latter.[34] And there is no showing that he acted in bad faith or with gross inexcusable negligence for liability to attach.[35]

For its part, the Ombudsman, in its Comment,[36] maintains its finding that there is no sufficient evidence that "would engender a well-founded belief that an offense has been committed or that the respondents are probably guilty thereof."[37] In relation to Sec. 3(e) of Republic Act No. 3019, the element of manifest partiality, evident bad faith, or gross inexcusable negligence could not be ascertained. Whereas in Sec. 3(g) of Republic Act No. 3019, respondents did not enter into a contract which was grossly disadvantageous on the part of the government[38] because the following were established: (1) Marbella was not a fictional

---

30 *Rollo*, Vol. II, pp. 1021-1025.

31 Id. at 1021-1024.

32 Id. at 1035-1045.

33 Id. at 1037.

34 Id. at 1041.

35 Id. at 1042.

36 Id. at 1048-1068.

37 Id. at 1058-1059.

38 Id. at 1059.

Supreme Court E-Library

company; (2) the proposed project had already been studied and evaluated since 1979 before the grant of the US$20 million loan to Marbella in 1980; (3) PNB had to apply for the loan under the CB-CFBP and request for the latter's approval in view of the guarantee of the PTA and the mortgage of the 125-hectare Marina complex with the estimated amount of ₱209,421,000.00; (4) the CB approved Marbella's requested loan after evaluating the latter's corporate profile, loan data including collateral, and the project specifications and feasibility; (5) the 125-hectare land in Ternate, Cavite was already transferred to Marbella when the CB approved the loan; and (6) Domingo and Agulto reported Marbella's status in good faith.[39] Since there was no clear and convincing evidence showing probable cause against respondents, the Ombudsman dismissed the case accordingly.[40] PCGG failed to prove that the subject loans were behest loans.[41] Lastly, the Ombudsman echoes this Court's stance in not interfering with the investigatory and prosecutorial powers of the Ombudsman as held in a catena of cases.[42]

Ongpin, on the other hand, essentially argues in his Comment[43] that the Ombudsman's resolution was not tainted with grave abuse of discretion. Consequently, this Court should observe the policy of non-interference with the Ombudsman.[44] Laying the foundation, the complainant must submit competent and sufficient evidence during preliminary investigation to show that the elements of the offense charged are all present. However, PCGG's evidence which consisted of the affidavit of Atty. Ocaya and its attachments are incompetent evidence because

---

[39] Id. at 1059-1061.

[40] Id. at 1061.

[41] Id. at 1062.

[42] *Vergara v. Ombudsman*, 600 Phil. 26 (2009); *Presidential Ad Hoc Fact Finding Committee on Behest Loans v. Desierto*, 560 Phil. 42 (2007); *Presidential Ad-Hoc Fact Finding Committee on Behest Loans v. Desierto*, 418 Phil. 715 (2001); *Presidential Commission on Good Government v. Desierto*, 402 Phil. 821 (2001); *Camanag v. Guerrero*, 335 Phil. 945 (1997).

[43] *Rollo*, Vol. III, pp. 1100-1150.

[44] Id. at 1117-1120.

the contested transactions did not emanate from his personal knowledge but derived from his review of the submitted reports by the Presidential Ad Hoc Fact Finding Committee on Behest Loans. Similarly, the annexes of Atty. Ocaya's affidavit, which formed part of PCGG's documentary evidence failed to comply with the requirements to prove due execution and authenticity, and with the best evidence rule. The attachments were not original documents but mere certified photocopies of photocopies. It cannot be ascertained that efforts were made to comply with Secs. 20, 24, and 25, Rule 132 of the Rules of Court.[45] Furthermore, the acts imputed against Ongpin do not amount to a violation of Sec. 3(e) and (g) of Republic Act No. 3019. The alleged breaches stated in the affidavit pertained to the officials of PNB and of Marbella of which Ongpin is not. Mere suggestion or request is not tantamount to giving unwarranted benefit to the disadvantage of the government.[46] Ongpin disputes that said acts were within normal banking business transactions which were not against the law. The PNB Board of Directors exercised sound business judgment in approving Marbella's loan.[47] In sum, the Ombudsman committed no grave abuse of discretion, hence, this Court should adhere to the policy of non-interference.[48]

PCGG, in its Consolidated Reply,[49] maintains that the petition before this Court was properly filed pursuant to Rule 65 of the Rules of Court.[50] During preliminary investigation, only the existence of probable cause is determined, and questions as to the admissibility of evidence may be raised during trial proper.[51] Ultimately, the respondents' comments did not address the vital issues concerning the merits of the case in relation to the criteria of behest loans.[52]

---

45 Id. at 1127-1129.

46 Id. at 1129-1141.

47 Id. at 1142-1148.

48 Id. at 1148.

49 Id. at 1167-1181.

50 Id. at 1168-1169.

51 Id. at 1169-1172.

52 Id. at 1172-1178.

Supreme Court E-Library

Our Ruling

The petition lacks merit.

This Court reaffirms the well-entrenched remedy of filing a petition for *certiorari* pursuant to Rule 65 of the Rules of Court before this Court in assailing the resolution of the Ombudsman in criminal or non-administrative cases.[53] *Yatco v. Office of the Deputy Ombudsman for Luzon*[54] *(Yatco)* laid down this clear-cut procedure, to wit:

> Meanwhile, with respect to criminal charges, the Court has settled that the remedy of an aggrieved party from a resolution of the Ombudsman finding the presence or absence of probable cause is to file a petition for *certiorari* under Rule 65 of the Rules of Court and the petition should be filed not before the CA, but before the Supreme Court. In the fairly recent case of *Gatchalian v. Office of the Ombudsman*, (decided on August 1, 2018), the Court traced the genesis of the foregoing procedure and cited a wealth of jurisprudence recognizing the same:
>
> x x x x
>
> With regard to orders, directives, or decisions of the Ombudsman in criminal or non-administrative cases, the Court, in *Tirol, Jr. v. Del Rosario*, held that the remedy for the same is to file a petition for *certiorari* under Rule 65 of the Rules of Court. x x x.
>
> x x x x
>
> The Court in *Tirol, Jr.*, however, was unable to specify the court—whether it be the RTC, the CA, or the Supreme Court—to which the petition for *certiorari* under Rule 65 should be filed given the concurrent jurisdictions of the aforementioned courts over petitions for *certiorari*.
>
> Five years after, the Court clarified in *Estrada v. Desierto* that a petition for *certiorari* under Rule 65 of the Rules of Court questioning the finding of the existence of probable cause—or the lack thereof—by the Ombudsman should be filed with the Supreme Court. x x x:
>
> x x x x

---

[53] *Yatco v. Office of the Deputy Ombudsman for Luzon*, G.R. No. 244775, July 6, 2020.

[54] Id.

Supreme Court E-Library

> *Kuizon* and the subsequent case of *Mendoza-Arce v. Office of the Ombudsman (Visayas)* drove home the point that the remedy of aggrieved parties from resolutions of the Office of the Ombudsman finding probable cause in criminal cases or non-administrative cases, when tainted with grave abuse of discretion, is to file an original action for *certiorari* with this Court and not with the Court of Appeals. In cases when the aggrieved party is questioning the Office of the Ombudsman's finding of lack of probable cause, as in this case, there is likewise the remedy of *certiorari* under Rule 65 to be filed with this Court and not with the Court of Appeals following our ruling in *Perez v. Office of the Ombudsman*.
>
> In the 2009 case of *Ombudsman v. Heirs of Margarita Vda. De Ventura*, the Court reiterated *Kuizon*, *Golangco*, and *Estrada*, and ruled that the CA did not have jurisdiction over orders and decisions of the Ombudsman in non-administrative cases, and that the remedy of aggrieved parties was to file a petition for *certiorari* under Rule 65 with this Court. The foregoing principles were repeatedly upheld in other cases, such as in *Soriano v. Cabais* and *Duyon v. Court of Appeals*. x x x.

Thus, it is evident from the foregoing that the remedy to assail the ruling of the Ombudsman in non-administrative/criminal cases (*i.e.*, file a petition for *certiorari* under Rule 65 of the Rules of Court before the Supreme Court) is well-entrenched in our jurisprudence.[55] (Citations omitted)

While PCGG correctly chose and properly filed a petition for *certiorari* before this Court as confirmed by *Yatco* and the numerous cases promulgated before it, it must, however, be dismissed, because the Ombudsman acted pursuant to its mandate and did not commit grave abuse of discretion in issuing the assailed resolution and order. Accordingly, this Court upholds the principle of non-interference with the investigatory and prosecutorial powers of the Ombudsman absent any showing of grave abuse of discretion on its part and of the established exceptions[56] for this Court to do so.

---

[55] Id.

[56] *Vergara v. Ombudsman*, supra note 41 at 42: "We have enumerated instances where the courts may interfere with the Ombudsman's investigatory powers:
(a) To afford protection to the constitutional rights of the accused;

Supreme Court E-Library

Grave abuse of discretion has been defined as a capricious or whimsical exercise of judgment which renders the tribunal acting without or in excess of its jurisdiction. To expound on this definition, *People v. Sandiganbayan*[57] characterized such as "so patent and gross as to amount to an 'evasion of a positive duty or to 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 in arbitrary and despotic manner by reason of passion and hostility.'"[58] This cannot be ascribed to the Ombudsman for it is evident in its resolution that the conclusion and findings were based on facts as supported by evidence sufficient to show that no probable cause existed to indict respondents for violation of Sec. 3(e) and (g) of Republic Act No. 3019.

The Ombudsman found no proof of manifest partiality, evident bad faith, or gross inexcusable negligence on the part of the respondents, nor a contract entered into to the great disadvantage or prejudice of the Philippine government; hence, no liability under Sec. 3(e) and (g) of Republic Act No. 3019 attached to respondents. Its decision was anchored on the following: (1) Marbella was not a fictional corporation being organized and registered with the Securities and Exchange Commission on November 29, 1978, with a subscribed capital of PHP37,500,000.00 and a paid-up capital worth PHP19,693,961.31 at the time of its loan application;[59] (2) On April 22, 1979, which was before PNB Resolution No. 155 was approved on September 2, 1980, the proposed project had

(b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
(c) When there is a prejudicial question which is sub judice;
(d) When the acts of the officer are without or in excess of authority;
(e) Where the prosecution is under an invalid law, ordinance or regulation;
(f) When double jeopardy is clearly apparent;
(g) Where the court has no jurisdiction over the offense;
(h) Where it is a case of persecution rather than prosecution; [and]
(i) Where the charges are manifestly false and motivated by the lust for vengeance."

[57] G.R. No. 228281, June 14, 2021.

[58] Id., citing *Miranda v. Sandiganbayan*, 815 Phil. 123, 141 (2017).

[59] *Rollo*, Vol. I, pp. 61-62.

Supreme Court E-Library

already been studied and evaluated;[60] (3) Presidential Decree No. 564[61] which created PTA whose guarantee was used as collateral for the loan was signed on October 2, 1974, and the 125-hectare parcel of land for the Marina Complex in Ternate, Cavite was already transferred and conveyed by the government to PTA on June 11, 1978;[62] and (4) Marbella's request for loan was approved by CB through Monetary Board Resolution No. 2361 dated December 12, 1980 after the latter evaluated Marbella's corporate profile, loan and collateral data among others.[63] Clearly, the Ombudsman based the dismissal of the complaint on facts and substantial evidence presented before it.

The Ombudsman's determination of probable cause does not resolve the accused's guilt or innocence but evaluates whether the evidence presented before it would engender a well-founded belief that a crime has been committed or that the accused is probably guilty of committing said crime.[64] The Ombudsman did not arbitrarily exercise its bounden duty for the dismissal was based on substantial evidence that the parties presented. Since no grave abuse of discretion may be shown, this Court is constrained to accede to the Ombudsman's findings in observance of the principle of non-interference. This restraint was emphasized and explained in *Arroyo v. Sandiganbayan*,[65] which reads:

> The Ombudsman is endowed with a wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints. As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. It is an executive function, which must be respected consistent with the principle of separation of powers, thus:

---

[60] Id. at 62.

[61] Entitled "REVISING THE CHARTER OF THE PHILIPPINE TOURISM AUTHORITY CREATED UNDER PRESIDENTIAL DECREE NO. 189, DATED MAY 11, 1973." Dated: October 2, 1974.

[62] *Rollo*, Vol. I, p. 64.

[63] Id. at 65-67.

[64] *Arroyo v. Sandiganbayan*, G.R. No. 210488, January 27, 2020, citing *Ganaden v. Ombudsman*, 665 Phil. 224, 230 (2011).

[65] Id.

Supreme Court E-Library

> Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[.]"
>
> An independent constitutional body, the Office of the Ombudsman is "beholden to no one, acts as the champion of the people[,] and [is] the preserver of the integrity of the public service." Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is executive in nature.
>
> The executive determination of probable cause is a highly factual matter. It requires probing into the "existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he [or she] was prosecuted."
>
> The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.
>
> Practicality also leads this Court to exercise restraint in interfering with the Office of the Ombudsman's finding of probable cause. *Republic v. Ombudsman Desierto* explains:
>
> > [T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complaint. x x x.

Jurisprudence has consistently ruled in favor of non-interference in the Ombudsman's determination of the existence of probable cause, unless there is a clear showing of grave abuse of discretion. This policy

Supreme Court E-Library

is based on respect for the Ombudsman's mandate and on practical grounds. x x x.[66]

This Court, in a petition for *certiorari*, will not hesitate to correspondingly address the issues when a tribunal acts with grave abuse of discretion in rendering judgment, in order to dispense and administer justice to the parties especially when the citizenry is affected by the actions of an errant public officer or tribunal. Conversely, this Court will exercise restraint when the petition for *certiorari* fails to show or lacks adequate evidence to support the assertion that the decision, resolution, decree, or order was tainted with grave abuse of discretion, as in this case.

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**. The assailed August 24, 2012 Resolution and the October 9, 2012 Order of the Office of the Ombudsman in OMB-C-C-03-0425-H are **AFFIRMED**.

SO ORDERED.

Zalameda, Rosario, Marquez, and *Singh,*[*] *JJ.*, concur.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Estelito P. Mendoza for respondent Ongpin.
M. Reyes & Associates for respondent Agulto.

---

[66] Id., citing *Ramiscal, Jr. v. Sandiganbayan*, 645 Phil. 69, 82 (2010) and *Dichaves v. Office of the Ombudsman*, 802 Phil. 564, 589-591 (2016).

[*] Designated additional Member per Raffle dated October 4, 2022 vice Chief Justice Alexander G. Gesmundo who recused due to prior participation in the PCGG.