

Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

REPUBLIC OF THE PHILIPPINES, represented by the  
PRESIDENTIAL COMMISSION  
ON GOOD GOVERNMENT,  
Petitioner,

G.R. No. 198366

Present:

-versus-

PERALTA, J., Chairperson,  
LEONEN,  
REYES, A., JR.,  
HERNANDO, and  
INTING, JJ.

THE HONORABLE  
OMBUDSMAN, RAMON C. LEE,  
JOHNNY TENG, ANTONIO DM.  
LACDAO, and CESAR R.  
MARCELO (as members of the  
BOARD OF DIRECTORS and of  
ALFA INTEGRATED TEXTILE  
MILLS, INC.), CESAR  
ZALAMEA, ALICIA LL. REYES,  
J.V. DE OCAMPO, JOSEPH LL.  
EDRALIN, and RODOLFO  
MANALO (former members of the  
Board of Governors of the  
Development Bank of the  
Philippines),

Respondents.

Promulgated:  
June 26, 2019

*[Signature]*

X-----X

*[Handwritten mark]*

## DECISION

### LEONEN, J.:

Generally, this Court does not interfere when the Office of the Ombudsman has made its finding on the existence of probable cause. This exercise is an executive function, and is pursuant to its constitutionally-granted investigatory and prosecutorial powers. For this Court to review its findings in criminal cases, there must be a clear showing of grave abuse of discretion on its part.

This Court resolves a Petition for Certiorari<sup>1</sup> under Rule 65 of the Rules of Court, assailing the July 31, 2006 Resolution<sup>2</sup> and January 21, 2011 Order<sup>3</sup> of the Office of the Ombudsman in OMB-C-C-03-0271-D.

The Office of the Ombudsman found no probable cause to charge the officers of the Development Bank of the Philippines (Development Bank) and ALFA Integrated Textile Mills, Inc. (ALFA Integrated Textile) for violation of Section 3(e) and (g) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act. It held that the six (6) loans obtained by ALFA Integrated Textile from Development Bank were not behest loans.

Administrative Order No. 13, series of 1992, issued by then President Fidel V. Ramos (President Ramos), created the Presidential Ad Hoc Fact-Finding Committee on Behest Loans (Committee on Behest Loans) to investigate “allegations of loans, guarantees, and other forms of financial accommodations granted, directly or indirectly, by government-owned or controlled bank or financial institutions, at the behest, command, or urging by previous government officials to the disadvantage and detriment of the Philippine Government and the Filipino people[.]”<sup>4</sup>

Presidential Memorandum Order No. 61 laid down the factors that the Committee on Behest Loans used to determine if certain loans were behest:

- a) The borrower corporation in undercollateralized[.]
- b) The borrower corporation is undercapitalized.

---

<sup>1</sup> *Rollo*, pp. 3–43.

<sup>2</sup> *Id.* at 44–86. The Resolution was penned by Graft Investigation & Prosecution Officer II Lolita Micu-Bravo, reviewed by PIAB-B Acting Director Orlando I. Ines, recommended for approval by PAMO Assistant Ombudsman Pelagio S. Apostol, and approved by Deputy Ombudsman for Luzon Mark E. Jalandoni of the Office of the Ombudsman.

<sup>3</sup> *Id.* at 87–106. The Order was penned by Graft Investigation & Prosecution Officer II Lolita Micu-Bravo, recommended for approval by PAMO Acting Assistant Ombudsman Mary Susan S. Guillermo, and approved by Acting Ombudsman Orlando C. Casimiro of the Office of the Ombudsman.

<sup>4</sup> Administrative Order No. 13 (1992).

- c) Direct or indirect endorsement (of the loan or accommodation) 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 project for which financing is being sought.
- h) Extra-ordinary speed in which loan release was made[.]<sup>5</sup>

To assist the Committee on Behest Loans, a Technical Working Group was organized, consisting of officers and employees of government financial institutions.<sup>6</sup>

On February 27, 1987, Development Bank transferred its rights, interests, and titles in certain loans and assets to the government. In exchange, the government assumed some of Development Bank's obligations.<sup>7</sup> Among these loans and assets was the account of textile company ALFA Integrated Textile,<sup>8</sup> which was then examined by the Technical Working Group.

The Technical Working Group's findings, including on ALFA Integrated Textile's account, were later adopted by the Committee on Behest Loans in an Executive Summary.<sup>9</sup>

In a March 15, 1993 Fortnightly Report to President Ramos, the Committee on Behest Loans found that certain loans and accommodations that ALFA Integrated Textile had obtained from Development Bank had "positive characteristics of behest loans[.]"<sup>10</sup> These loans were:

Loan Amount	Purpose of the Loan	Date Approved and DBP Board Resolution Number	Approving Officers
a) US\$10 Million	To refinance ALFA's short-term obligations and partially finance ALFA's working capital requirements	Approved under DBP Board Resolution No. 2025 dated June 27, 1979.	DBP Acting Chairman Rafael A. Sison and DBP Executive Officer Alicia Ll. Reyes
b) US\$20	To refinance ALFA's	Approved per DBP	DBP Acting Chair

<sup>5</sup> *Rollo*, pp. 109-110.

<sup>6</sup> *Id.* at 110.

<sup>7</sup> *Id.* at 111.

<sup>8</sup> *Id.* at 112.

<sup>9</sup> *Id.* at 111.

<sup>10</sup> *Id.*

Million	obligations with other commercial banks	Board Resolution No. 3796 dated November 21, 1979.	Rafael A. Sison and DBP Exec. Officer Alicia Ll. Reyes
c) P11.4 Million	Supposed to cover ALFA's procurement of locally-grown cotton.	Approved in 1980 under DBP Board Resolution No. 2655.	DBP Vice Chairman J.V. De Ocampo and DBP Acting Exec. Officer Joseph Ll. Edralin
d) P25 Million	To finance ALFA's working capital requirements for 6 months.	Approved under DBP Board Resolution No. 4096 dated 10 December 1980.	DBP Vice-Chairman J.V. De Ocampo and DBP Acting Executive Officer Joseph Ll. Edralin.
e) US\$2,666,667	To cover ALFA's operations for one (1) month.	Approved in 1981 under DBP Board Resolution No. 947.	Acting DBP Chairman Rafael A. Sison; DBP Vice-Chairman Jose R. Tengco, Jr. and DBP Exec. Officer R.D. Manalo
f) P137 Million	1) Acquisition of plant equipment; 2) Payment of rehabilitation loan earlier extended to ALFA by DBP; and 3) Working capital.	Approved in 1981 under DBP Board Resolution No. 1811.	DBP Acting Chairman Rafael A. Sison and DBP Executive Officer R.D. Manalo <sup>11</sup>

The Committee on Behest Loans alleged that the collaterals offered as security for the US\$10 million loan were the land, buildings, and machinery with a collective value of P294,993,000.00.<sup>12</sup> The same collaterals were used to secure the US\$20 million loan. After securing these loans, ALFA Integrated Textile's paid-up capital was P65,746,900.00 as of December 1979.<sup>13</sup>

The third and fourth loans were also secured with the same collaterals used for the first two (2) loans, although the paid-up capital did not increase. As for the fifth loan, other assets, machinery, and equipment valued at P98,811,000.00 were offered as security in addition to the same collaterals as the first three (3) loans. By this time, ALFA Integrated Textile's paid-up capital increased to P71,746,900.00.<sup>14</sup>

<sup>11</sup> Id. at 113-114.

<sup>12</sup> Id. at 114.

<sup>13</sup> Id. at 115.

<sup>14</sup> Id.

l

Then, in 1981, despite incurring a net loss of ₱649,345,035.00, which resulted in a ₱458,187,453.00 capital deficiency, ALFA Integrated Textile was able to secure from Development Bank its sixth loan, using the same collaterals it had offered for its five (5) other loans.<sup>15</sup>

In sum, as of September 30, 1982, ALFA Integrated Textile had a total outstanding obligation of ₱634,800,000.00 to Development Bank.

According to the Committee on Behest Loans, Development Bank President Cesar Zalamea (Zalamea) wrote to former President Ferdinand Marcos (President Marcos), recommending a rehabilitation plan that would stifle the bank's chances of recouping the amounts that ALFA Integrated Textile had borrowed. In a marginal note to the letter, President Marcos approved the plan.<sup>16</sup>

The Committee on Behest Loans further reported that in 1986, Development Bank agreed to sell ALFA Integrated Textile's fixed assets worth ₱462,323,000.00 to Cape Industries, Inc., a company owned by Eduardo Cojuangco, Jr. (Cojuangco), who was "a known crony of former President Ferdinand E. Marcos."<sup>17</sup> The assets were sold for only ₱100 million.<sup>18</sup>

At the time of these transactions, the corporate officers of ALFA Integrated Textile were: (1) Ramon C. Lee (Lee), its president; (2) Johnny Teng (Teng), the vice president for finance; (3) Antonio Dm. Lacdao (Lacdao), the vice president and general manager; and (4) Cesar R. Marcelo (Marcelo), the vice president and comptroller. The relevant Development Bank officers were: (1) Zalamea, its president; (2) Rafael A. Sison (Sison), the acting chair; (3) Alicia Ll. Reyes (Reyes), the executive officer; (4) J.V. de Ocampo (de Ocampo), the vice chair; (5) Joseph Ll. Edralin (Edralin), an acting executive officer; and (6) Rodolfo D. Manalo (Manalo), an executive officer.<sup>19</sup>

Based on these findings, the Presidential Commission on Good Government filed before the Office of the Ombudsman an Affidavit-Complaint<sup>20</sup> for violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act against the officers of ALFA Integrated Textile and Development Bank.

The Presidential Commission on Good Government alleged that the

---

<sup>15</sup> Id. at 116.

<sup>16</sup> Id. at 117-118.

<sup>17</sup> Id. at 118. Cape Industries, Inc. later changed its name to Southern Textile Mills, Inc.

<sup>18</sup> Id. at 119.

<sup>19</sup> Id. at 112-113 and 122-124.

<sup>20</sup> Id. at 109-124.

loans that Development Bank had extended to ALFA Integrated Textile caused gross disadvantage to the government and the Filipino people because these loans were made under unfavorable circumstances. There was also a rehabilitation plan that supposedly made it difficult for Development Bank to recover its exposure from ALFA Integrated Textile.<sup>21</sup>

On July 31, 2006, the Office of the Ombudsman issued a Resolution<sup>22</sup> dismissing the Complaint. Its dispositive portion read:

WHEREFORE, it is hereby recommended that the instant complaint for violation of Section 3(e) and (g) of R.A. 3019, as amended, against Public Respondents, namely: Cesar Zalamea, Rafael Sison, Alicia Reyes, J.V. De Ocampo, Joseph Edralin and Rodolfo Manalo, all officers of the DBP, as well as Private Respondents, namely: Ramon Lee, Johnny Teng, Antonio DM. Lac[d]ao, and Cesar Marcelo, all officers of ALFA, be DISMISSED.

SO RESOLVED.<sup>23</sup>

Preliminarily, the Office of the Ombudsman found that the Complaint had not been barred by prescription, citing *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*,<sup>24</sup> in which this Court held that prescription of the offense in behest loans started to run from the day of discovery, not commission. Here, the period of prescription commenced on March 15, 1993, when the Fortnightly Report was issued. The Presidential Commission on Good Government filed the Complaint on March 12, 2003, which was still within the 10-year prescriptive period under the Anti-Graft and Corrupt Practices Act.<sup>25</sup>

Nonetheless, the Office of the Ombudsman found that there was no reasonable ground to indict the ALFA Integrated Textile and Development Bank officers.<sup>26</sup>

The Office of the Ombudsman held<sup>27</sup> that not all the elements under Section 3(e)<sup>28</sup> of the Anti-Graft and Corrupt Practices Act existed, citing

<sup>21</sup> Id. at 121.

<sup>22</sup> Id. at 44–86.

<sup>23</sup> Id. at 83.

<sup>24</sup> 375 Phil. 697 (1999) [Per C.J. Davide, En Banc].

<sup>25</sup> *Rollo*, pp. 70–71.

<sup>26</sup> Id. at 71.

<sup>27</sup> Id. at 71–72.

<sup>28</sup> Republic Act No. 3019, sec. 3(e) states:

SECTION 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 benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.

*Quibal v. Sandiganbayan*.<sup>29</sup>

1. The accused is a public officer discharging official administrative or judicial functions or private persons in conspiracy with them;
2. The public officer committed the prohibited act during the performance of his official duty in relation to his public position;
3. The public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
4. His actions caused undue injury to the Government or any private party, or gave any party unwarranted benefit, advantage or preference.<sup>30</sup> (Citation omitted)

The Office of the Ombudsman pointed out that the Committee on Behest Loans itself stated in its Fortnightly Report that it “did not find any characteristics to classify ALFA [Integrated Textile]’s loans as behest.”<sup>31</sup>

Furthermore, the Office of the Ombudsman found that the Presidential Commission on Good Government failed to establish with certainty that the value of the real estate, buildings, machinery, and equipment offered by ALFA Integrated Textile to secure its loans were insufficient.<sup>32</sup>

For the ₱25 million loan, the additional security of ₱45,470,700.00 in chattel mortgages and equipment was given, covered by a trust receipts agreement. The US\$2,666,667.00 loan was applied for and released when ALFA Integrated Textile was already managed by a Development Bank-controlled board, and was secured by real estate and chattel mortgages valued at ₱418,290,800.00.<sup>33</sup>

Similarly, the ₱137 million loan was applied for and released by the bank-controlled board.<sup>34</sup> Nonetheless, as the Office of the Ombudsman found, this loan was given under certain conditions:

However, Private Respondent Lee was still required to (a) constitute a first mortgage on ALFA’s 126,483 sq.m. land in Calamba, Laguna on 6 July 1981 including the buildings, machinery and equipment found thereat; (b) to assume joint and several obligation[s] with ALFA for the repayment of the obligation; and (c) to assign to DBP ALFA’s export sales proceeds in an amount sufficient to cover the yearly amortization on the loans approved by the DBP. And as a condition for the P137 Million loan, ALFA had to execute a Voting Trust Agreement (VTA) dated March 11,

---

This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

<sup>29</sup> 314 Phil. 66 (1996) [Per J. Puno, Second Division].

<sup>30</sup> *Rollo*, pp. 71–72.

<sup>31</sup> *Id.* at 72 *citing* the Fortnightly Report.

<sup>32</sup> *Id.* at 73.

<sup>33</sup> *Id.* at 73–74.

<sup>34</sup> *Id.* at 74.

l

1981 granting the DBP full and complete control over ALFA. Once in full control, the DBP-controlled Board of ALFA constituted additional mortgages over several other valuable assets of ALFA, which mortgages should have no longer been necessary as the constitution of the same was not agreed upon nor necessary under the terms of the VTA.<sup>35</sup>

Moreover, the Office of the Ombudsman pointed out that there was no law requiring a corporation's capital to be fully paid-up or be increased to be equivalent or greater than a loan obtained from a bank. It noted that a loan would only be under-collateralized if the loan amount exceeded the maximum allowable proportion of the mortgaged assets' appraised value. As the Technical Working Group of the Committee on Behest Loans itself found, ALFA Integrated Textile had favorable debt-equity ratios in 1978 and 1979.<sup>36</sup>

The Office of the Ombudsman also found that prioritizing payment of taxes and duties, along with ALFA Integrated Textile's obligations to foreign suppliers, over servicing its debts to Development Bank did not make the plan disadvantageous to the bank. It pointed out that the priority for taxes and duties was required by law, and that foreign loans were covered by a sovereign guarantee. Their payment, it noted, benefited the government.<sup>37</sup>

Likewise, the Office of the Ombudsman did not consider the sale of ALFA Integrated Textile's fixed assets to Cape Industries, Inc. as a behest sale. While the disposal price of ₱100 million was much lower than ₱462,323,000.00, the value appraised by Development Bank—an indication that a sale may have been behest—it noted that what finally determined a behest sale was “the resulting effect of the sale or disposal, [or] whether such sale or disposal could be considered highly prejudicial, inimical and iniquitous or manifestly disadvantageous to the government given the circumstances surrounding the approval of the sale and the policies and rules governing such sale or disposal.”<sup>38</sup> Since the sale included a repayment schedule for ALFA Integrated Textile's loans to Development Bank and other obligations, it was not, “by itself, disadvantageous to the government.”<sup>39</sup>

Thus, the Office of the Ombudsman ruled that there was no showing that the Development Bank and ALFA Integrated Textile officers acted with manifest partiality, evident bad faith, or gross inexcusable negligence. Instead, it held that the acts complained of were done in the exercise of the bank officials' sound business judgment in Development Bank's interest.<sup>40</sup>

---

<sup>35</sup> Id.

<sup>36</sup> Id. at 76–77.

<sup>37</sup> Id. at 77.

<sup>38</sup> Id. at 78–79 and 154.

<sup>39</sup> Id. at 79.

<sup>40</sup> Id. at 80.



It also found no showing that they gave unwarranted benefits, advantage, or preference to ALFA Integrated Textile, Cape Industries, Inc., or any party. Likewise, it declared that no undue injury to any party or the government had been proven.<sup>41</sup>

Similarly, the Office of the Ombudsman found no violation of Section 3(g) of the Anti-Graft and Corrupt Practices Act:

SECTION 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: . . .

(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.

According to the Office of the Ombudsman, the Presidential Commission on Good Government failed to prove that the loans and accommodations in favor of ALFA Integrated Textile, the rehabilitation plan, and the fixed assets sale were grossly or manifestly disadvantageous or prejudicial to the government. It found that between the Development Bank and ALFA Integrated Textile officers, there had been no proven conspiracy that would permit prosecuting them for violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act.<sup>42</sup>

In its January 21, 2011 Order,<sup>43</sup> the Office of the Ombudsman denied the Presidential Commission on Good Government's Motion for Reconsideration.

On September 15, 2011, the Republic of the Philippines, represented by the Presidential Commission on Good Government, filed before this Court a Petition for Certiorari<sup>44</sup> assailing the Office of the Ombudsman's July 31, 2006 Resolution and January 21, 2011 Order.

Petitioner argues that public respondent Office of the Ombudsman acted with grave abuse of discretion when it found no probable cause to charge private respondents with violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act.<sup>45</sup>

---

<sup>41</sup> Id. at 81.

<sup>42</sup> Id. at 81–83.

<sup>43</sup> Id. at 87–106.

<sup>44</sup> Id. at 3–43. In its June 27, 2012 Resolution, this Court noted that Rafael A. Sison was not informed of the pendency of this case as his address could not be found. He was not named a party to the Petition.

<sup>45</sup> Id. at 20–21.



First, petitioner claims that public respondent Office of the Ombudsman should not have given weight to the statement in the Committee on Behest Loans' Fortnightly Report that the loans to ALFA Integrated Textile were not behest loans. Instead, it points to the Committee's March 15, 1993 letter to President Ramos, where it stated that ALFA Integrated Textile's loan accounts had "positive findings[.]"<sup>46</sup> To petitioner, public respondent Office of the Ombudsman should have independently ascertained whether there was a violation of the law instead of relying on the Committee's findings.<sup>47</sup>

Second, petitioner claims that the Committee on Behest Loans' actual finding in its Terminal Report was that the loans to ALFA Integrated Textile were all behest loans, which were manifestly and grossly disadvantageous to the government.<sup>48</sup> It claims that the Committee found that ALFA Integrated Textile obtained its loans after it had incurred heavy losses, with a negative net worth, a collateral ratio in excess of the level set by the Committee, and a negative debt-equity ratio for 1980, 1981, and 1983.<sup>49</sup> Moreover, it asserts that the additional collaterals did not legitimize the loans since public respondent Office of the Ombudsman based its findings on evidence presented by private respondent Lee, an officer of ALFA Integrated Textile who, petitioner adds, only presented the mortgages, not the transfer certificates of title on which they were annotated.<sup>50</sup>

Third, petitioner argues that there was sufficient ground to find probable cause for a violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act. It asserts that the Committee on Behest Loans' findings are entitled to great weight and respect as the "body specifically with its own specific field of expertise and charged precisely to investigate behest loans."<sup>51</sup>

Fourth, petitioner argues that ALFA Integrated Textile's sale of its assets to Cape Industries, Inc. was made with manifest partiality in favor of Cape Industries, Inc. and Cojuangco,<sup>52</sup> and that the repayment schedule in the sale did not benefit the government.<sup>53</sup>

In its October 10, 2011 Resolution,<sup>54</sup> this Court ordered respondents to comment on the Petition.

---

<sup>46</sup> Id. at 21.

<sup>47</sup> Id. at 20-21.

<sup>48</sup> Id. at 23.

<sup>49</sup> Id. at 24-25.

<sup>50</sup> Id. at 26-27.

<sup>51</sup> Id. at 28-29.

<sup>52</sup> Id. at 31.

<sup>53</sup> Id. at 32-33.

<sup>54</sup> Id. at 209-210.

Public respondent Office of the Ombudsman filed its Comment on February 1, 2012.<sup>55</sup> Private respondents Lee, Teng, Lacdao, and Marcelo filed their Joint Comment on December 20, 2011,<sup>56</sup> while public respondents Zalamea and Reyes filed theirs on January 11, 2012<sup>57</sup> and January 20, 2012,<sup>58</sup> respectively.

In its Comment, public respondent Office of the Ombudsman claims that petitioner failed to convincingly show that there was probable cause to warrant the filing of an information in court, because the evidence it presented was insufficient.<sup>59</sup> It points out that it has the discretion to determine whether a criminal case should be filed based on the attendant facts.<sup>60</sup>

In their Joint Comment, private respondents Lee, Teng, Lacdao, and Marcelo argue that public respondent Office of the Ombudsman's finding on the lack of probable cause was entitled to great respect, as it was based on a properly conducted investigation and receipt of evidence from all parties.<sup>61</sup> Petitioner allegedly failed to present substantial and convincing evidence to prove its charges against them.<sup>62</sup>

In his Comment, public respondent Zalamea adopts by way of reference all of public respondent Office of the Ombudsman's findings on the status of the loans extended to ALFA Integrated Textile,<sup>63</sup> similarly arguing that it did not commit grave abuse of discretion.<sup>64</sup>

In her Comment, public respondent Reyes argues that petitioner has not shown that public respondent Office of the Ombudsman committed grave abuse of discretion, maintaining that it has broad powers to determine whether probable cause exists.<sup>65</sup>

This Court required public respondents Edralin and Manalo to show cause why they should not have been held in contempt for failing to file their comments.<sup>66</sup> Public respondent Edralin later manifested<sup>67</sup> that he would be adopting his co-respondents' Comments.

---

<sup>55</sup> Id. at 284–307.

<sup>56</sup> Id. at 211–228.

<sup>57</sup> Id. at 235–241.

<sup>58</sup> Id. at 263–283.

<sup>59</sup> Id. at 297–298.

<sup>60</sup> Id. at 298.

<sup>61</sup> Id. at 223.

<sup>62</sup> Id. at 224.

<sup>63</sup> Id. at 236–239.

<sup>64</sup> Id. at 239.

<sup>65</sup> Id. at 278.

<sup>66</sup> Id. at 412–413.

<sup>67</sup> Id. at 426–433.

ℓ

On January 20, 2014,<sup>68</sup> this Court ordered petitioner to file its consolidated reply, which it did on May 2, 2014.<sup>69</sup>

In its Reply, petitioner insists that it has proved all the elements for violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act, and as such, there was probable cause to charge private respondents and public respondents Zalamea, Reyes, de Ocampo, Edralin, and Manalo.<sup>70</sup>

The sole issue for this Court's resolution is whether or not public respondent Office of the Ombudsman committed grave abuse of discretion in not finding probable cause to charge private respondents Ramon C. Lee, Johnny Teng, Antonio Dm. Lacdao, and Cesar R. Marcelo, officers of ALFA Integrated Textile Mills, Inc., as well as Cesar Zalamea, Alicia Ll. Reyes, J.V. de Ocampo, Joseph Ll. Edralin, and Rodolfo Manalo, officers of the Development Bank of the Philippines, with violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act.

It is established that this Court generally does not interfere when the Office of the Ombudsman has made its finding on the existence of probable cause.<sup>71</sup> This exercise is an executive function, and is in accordance with its constitutionally-granted investigatory and prosecutorial powers.<sup>72</sup> In *Presidential Ad Hoc Committee on Behest Loans v. Tabasondra*:<sup>73</sup>

The Ombudsman has the power to investigate and prosecute any act or omission of a public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient. In fact, the Ombudsman has the power to dismiss a complaint without going through a preliminary investigation, since he is the proper adjudicator of the question as to the existence of a case warranting the filing of information in court. The Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not. This is basically his prerogative.

In recognition of this power, the Court has been consistent not to interfere with the Ombudsman's exercise of his investigatory and prosecutory powers.

Various cases held that it is beyond the ambit of this Court to review the exercise of discretion of the Office of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the

---

<sup>68</sup> Id. at 435–436.

<sup>69</sup> Id. at 449–471.

<sup>70</sup> Id. at 453.

<sup>71</sup> *Presidential Commission on Good Government v. Office of the Ombudsman*, G.R. No. 187794, November 28, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64814>> [Per J. Leonen, Third Division].

<sup>72</sup> Id.

<sup>73</sup> 579 Phil. 312 (2008) [Per J. Chico-Nazario, Third Division].



public service.

The rationale underlying the Court's ruling has been explained in numerous cases. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the 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 would 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 complainant. In order to insulate the Office of the Ombudsman from outside pressure and improper influence, the Constitution as well as Republic Act No. 6770 saw fit to endow that office with a wide latitude of investigatory and prosecutory powers, virtually free from legislative, executive or judicial intervention. If the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings unless they are tainted with grave abuse of discretion.<sup>74</sup> (Citations omitted)

For this Court to review the Office of the Ombudsman's exercise of its investigative and prosecutorial powers in criminal cases, there must be a clear showing of grave abuse of discretion. In *Casing v. Ombudsman*.<sup>75</sup>

The Constitution and R.A. No. 6770 endowed the Office of the Ombudsman with wide latitude, in the exercise of its investigatory and prosecutory powers, to pass upon criminal complaints involving public officials and employees. Specifically, the determination of whether probable cause exists is a function that belongs to the Office of the Ombudsman. Whether a criminal case, given its attendant facts and circumstances, should be filed or not is basically its call.

As a general rule, the Court does not interfere with the Office of the Ombudsman's exercise of its investigative and prosecutorial powers, and respects the initiative and independence inherent in the Office of the Ombudsman which, "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service." While the Ombudsman's findings as to whether probable cause exists are generally not reviewable by this Court, where there is an allegation of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny under the Court's own constitutional power and duty "to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner — which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty

---

<sup>74</sup> Id. at 324–325.

<sup>75</sup> 687 Phil. 468 (2012) [Per J. Brion, Second Division].

enjoined or to act at all in contemplation of law — in order to exceptionally warrant judicial intervention.<sup>76</sup> (Citations omitted)

Otherwise, this Court does not generally interfere with the Office of the Ombudsman's findings.<sup>77</sup> “[D]isagreement with [its] findings is not enough to constitute grave abuse of discretion.”<sup>78</sup> There must be a showing that it conducted the preliminary investigation “in such a way that amounted to a virtual refusal to perform a duty under the law.”<sup>79</sup>

Here, petitioner was unable to prove that public respondent Office of the Ombudsman committed grave abuse of discretion in not finding probable cause against the other respondents. It did not even point to any specific act or omission on the part of public respondent Office of the Ombudsman that would show capricious or whimsical exercise of judgment amounting to lack or excess of jurisdiction.

Petitioner insists that the Committee on Behest Loans' findings should have been given great weight:

Moreover, sight must not be lost of the fact that the complaint was based on the findings of the Ad Hoc Committee, a body specifically with its own specific field of expertise and charged precisely to investigate behest loans. Despite the statement oft-cited by the respondents herein, the conclusive findings of this special body are therefore entitled to great weight and respect.<sup>80</sup>

Indeed, the expertise of the Committee on Behest Loans should be respected, as it is in the position to determine whether standard banking practices had been followed in loan transactions. In *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*:<sup>81</sup>

It behooves the Ombudsman, while he asks the Court to respect his findings, to also accord a proper modicum of respect towards the expertise of the Committee, which was formed precisely to determine the existence of behest loans. Considering the membership of the Committee — representatives from the Department of Finance, the Philippine National Bank, the Asset Privatization Trust, the Philippine Export and Foreign Loan Guarantee Corporation and even DBP itself — its recommendation should be given great weight. No doubt, the members of the Committee are experts in the field of banking. On account of their special knowledge and expertise, they are in a better position to determine whether standard banking practices are followed in the approval of a loan or what would

---

<sup>76</sup> Id. at 475–476.

<sup>77</sup> *Reyes v. Office of the Ombudsman*, 810 Phil. 106, 114 (2017) [Per J. Leonen, Second Division].

<sup>78</sup> Id. at 115.

<sup>79</sup> Id.

<sup>80</sup> *Rollo*, pp. 28–29.

<sup>81</sup> 603 Phil. 18 (2009) [Per J. Carpio Morales, Second Division].

ℓ

generally constitute as adequate security for a given loan. Absent a substantial showing that their findings were made from an erroneous estimation of the evidence presented, they are conclusive and, in the interest of stability of the governmental structure, should not be disturbed.<sup>82</sup> (Citations omitted)

However, as both petitioner and public respondent Office of the Ombudsman have observed, the Committee on Behest Loans made seemingly contradictory findings on the nature of the loans obtained by ALFA Integrated Textile from Development Bank. While its Fortnightly Report declared that “the committee did not find any characteristics to classify ALFA [Integrated Textile]’s loans as behest[,]”<sup>83</sup> it later stated in its Terminal Report several alleged factors that would show that the loans were behest.<sup>84</sup>

Petitioner did not satisfactorily explain why the Committee contradicted itself or, at the very least, reconciled these contradictions. It merely brushed aside the finding it disagreed with, undermining its own argument on the weight that ought to be accorded to the Committee’s findings:

It should be underscored, however, that the foregoing declaration made by the PAHFFC is not controlling considering that in the same PAHFFC’s letter dated March 15, 1993 to then President Fidel V. Ramos, it unequivocally stated that ALFA’s loan account possesses “POSITIVE FINDINGS”, which said letter defined to “mean that at least two or more characteristics of a behest loan are present in the loan account.”

....

. . . More importantly, the PAHFFC itself did not in any way – which should properly be the case, in light of the limited and restrictive function of the PAHFFC – preempt any action that may be taken by other appropriate government agencies, such as herein complainant PCGG. . . .

....

. . . The provisions of Memorandum Order No. 61 which guided the PAHFFC serve as guidelines for the existence of behest loans. However, the ultimate legal basis for prosecution of the subject actions is Republic Act No. 3019 and other laws. Thus, what is ultimately to be ascertained is whether there was a violation of any law by the respondents for which they can be charged. And as the complainant (herein petitioner), as representative of the Republic, found that there exists a cause to prosecute the respondents for violation of R.A. 3019, it consequently did not hesitate to institute the present complaint.<sup>85</sup> (Citation omitted)

---

<sup>82</sup> Id. at 36.

<sup>83</sup> *Rollo*, p. 56.

<sup>84</sup> Id. at 24.

<sup>85</sup> Id. at 21–23.

*P*

On the other hand, in its Resolution and Order, public respondent Office of the Ombudsman evaluated the findings made by the Committee on Behest Loans on the other evidence presented during the investigation. While it took into account the Committee's declaration in its Fortnightly Report, it did not merely rely on this statement to conclude that probable cause does not exist.

A review of this case shows no compelling reason why this Court should interfere with public respondent Office of the Ombudsman's findings.

*In Presidential Commission on Good Government v. Ombudsman:*<sup>86</sup>

*Presidential Commission on Good Government* stated that for a charge to be valid under Section 3(e) of Republic Act No. 3019, it must be shown that the accused "acted with manifest partiality, evident bad faith, or inexcusable negligence." On the other hand, for liability to attach under Section 3(g), it must be shown that the accused "entered into a grossly disadvantageous contract on behalf of the government."

....

Section 3, paragraphs (e) and (g) of Republic Act No. 3019 should not be interpreted in such a way that they will prevent Development Bank, through its managers, to take reasonable risks in relation to its business. Profit, which will redound to the benefit of the public interests owning Development Bank, will not be realized if our laws are read constraining the exercise of sound business discretion.

Thus, Section 3(e) requires "manifest partiality, evident bad faith or gross inexcusable negligence" and the element of arbitrariness and malice in taking risks must be palpable. Likewise, there must be a showing of "undue injury" to the government. Section 3(g), on the other hand, requires a showing of a "contract or transaction manifestly and grossly disadvantageous to the [government]."

Definitely, this means that it must not only be proven that Development Bank suffered business losses but that these losses, in the ordinary course of business and with the exercise of sound judgment, were inevitably unavoidable.<sup>87</sup> (Citations omitted)

As public respondent Office of the Ombudsman had determined, petitioner did not sufficiently prove that public respondents—Development Bank officers acted with manifest partiality, evident bad faith, or inexcusable negligence when the bank extended the loans to ALFA Integrated Textile.

---

<sup>86</sup> G.R. No. 187794, November 28, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64814>> [Per J. Leonen, Third Division].

<sup>87</sup> Id.



Neither did petitioner prove that these loans were grossly disadvantageous to the government.

Petitioner roots its contentions in allegations that: (1) the loans to ALFA Integrated Textile were secured by inadequate collaterals; (2) these loans were extended despite ALFA Integrated Textile's continuous losses; and (3) the use of the loan proceeds to pay off existing obligations rather than investing denied Development Bank the opportunity to recoup its exposure.<sup>88</sup> However, public respondent Office of the Ombudsman found that there were sufficient collaterals securing ALFA Integrated Textile's fourth to sixth loans:

It appears that for the P25 Million loan (fourth loan), additional collaterals were given consisting of chattel mortgages on machinery and equipment covered by Trust Receipts Agreement for the sum of P45,470,700.00. According to Private Respondent Lee, there is no truth then to the averment of the complainant that the same collaterals were used to secure the said P25 Million loan. The \$2,666,667 loan obtained on 14 May 1981 (fifth loan) was applied for and released to ALFA when ALFA was already managed by the DBP-controlled Board. Apparently, though, additional security had been given by ALFA in the form of real estate mortgage on land and on buildings and other improvements, and chattel mortgage on machinery and equipment, valued at an aggregate sum of P418,290,800.00. The P137 Million loan obtained from DBP on 6 July 1981 which was funded out of the Central Bank's Industrial Rehabilitation Fund (sixth loan) was likewise applied for and released to ALFA at the time ALFA was completely in the hands of the DBP, and the proceeds of the same disbursed by the DBP-controlled Board. However, Private Respondent Lee was still required to (a) constitute a first mortgage on ALFA's 126,483 sq.m. land in Calamba, Laguna on 6 July 1981 including the buildings, machinery and equipment found thereat; (b) to assume joint and several obligation[s] with ALFA for the repayment of the obligation; and (c) to assign to DBP ALFA's export sales proceeds in an amount sufficient to cover the yearly amortization on the loans approved by the DBP. And as a condition for the P137 Million loan, ALFA had to execute a Voting Trust Agreement (VTA) dated March 11, 1981 granting the DBP full and complete control over ALFA. Once in full control, the DBP-controlled Board of ALFA constituted additional mortgages over several other valuable assets of ALFA, which mortgages should have no longer been necessary as the constitution of the same was not agreed upon nor necessary under the terms of the VTA. A P50 Million guarantee line obtained on 22 June 1982 was also extended by the DBP to ALFA.<sup>89</sup> (Citations omitted)

Furthermore, public respondent Office of the Ombudsman found that the rehabilitation plan public respondent Zalamea had recommended would not be disadvantageous to the government since its terms and conditions

---

<sup>88</sup> *Rollo*, p. 23.

<sup>89</sup> *Id.* at 73-75.

were not contrary to law and actually benefited the government.<sup>90</sup> All the decisions made by the bank officials were based on recommendations of its different departments.<sup>91</sup>


Thus, the records of this case support public respondent Office of the Ombudsman's finding that Development Bank exercised sound business judgment and acted under existing banking regulations<sup>92</sup> in its loans to ALFA Integrated Textile. Petitioner failed to show how the risk Development Bank had taken in extending the loans to ALFA Integrated Textile was arbitrary or malicious. Likewise, it was unable to prove the element of undue injury; that is, the losses that would have been unavoidable in the ordinary course of business, as contemplated by *Presidential Commission on Good Government*.<sup>93</sup>

On the asset sale to Cape Industries, Inc., public respondent Office of the Ombudsman found that Development Bank included a repayment schedule of ALFA Integrated Textile's loans from Development Bank and other obligations.<sup>94</sup> In contrast, petitioner was unable to prove how the sale, by itself, was a contract grossly disadvantageous to the government.

As petitioner was unable to substantially prove its allegations, this Court rules that public respondent Office of the Ombudsman did not gravely abuse its discretion in finding that there was no probable cause to charge private respondents with violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act. This Court will not overturn its findings when they are supported by substantial evidence.<sup>95</sup>

**WHEREFORE**, the Petition for Certiorari is **DISMISSED**. The Office of the Ombudsman's July 31, 2006 Resolution and January 21, 2011 Order in OMB-C-C-03-0271-D are **AFFIRMED**.

**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

---

<sup>90</sup> Id. at 77.

<sup>91</sup> Id. at 79.

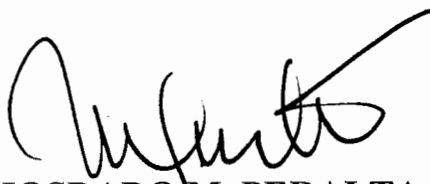
<sup>92</sup> Id.

<sup>93</sup> G.R. No. 187794, November 28, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64814>> [Per J. Leonen, Third Division].

<sup>94</sup> *Rollo*, p. 79.

<sup>95</sup> *Vergara v. Ombudsman*, 600 Phil. 26, 43 (2009) [Per J. Carpio, En Banc].

WE CONCUR:



**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson

*Meyer*  
**ANDRES B. REYES, JR.**  
Associate Justice

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

**ATTESTATION**

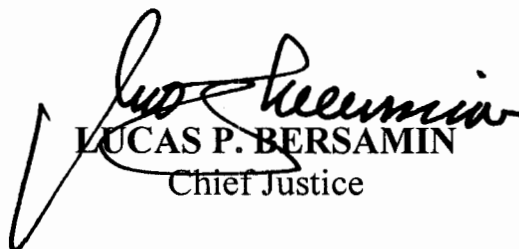
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**LUCAS P. BERSAMIN**  
Chief Justice