

**REPUBLIC OF THE PHILIPPINES, AND BOARD OF INVESTMENTS,
PETITIONERS, VS. COURT OF FIRST INSTANCE OF LANA DEL
NORTE, BRANCH II, HONORABLE TEODULO C. TANDAYAG,
PRESIDING JUDGE, AN...**

G.R. No. L-33949. October 23, 1973

Ponente: BARREDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/0a066d9b40c9/>

BARREDO, J.:

Petition of the Republic of the Philippines (Republic, for short) and the Board of Investments (BOI) for certiorari and prohibition, with preliminary injunction, docketed as G. R. No. L-33949, against the order of respondent court denying their motion to dismiss the complaint against them in said court's Civil Case No. 1701, notwithstanding their having invoked therein the grounds of improper venue and non-suability of the State, because the said complaint of private respondent Iligan Integrated Steel Mills, Inc. (IISMI) seeks specific performance by the Republic of certain contracts it has with said respondent and the Export Import Bank of Washington, D.C. as well as the approval of the BOI of said respondent's applications for registration of its blast furnace and B.O.F. for hot metal making facilities and also the giving by the BOI to said respondent of protective tariff privileges; petition also for certiorari and prohibition, with preliminary injunction docketed as G. R. No. L-33986, of the Central Bank of the Philippines (Central Bank) against the order and writ of preliminary injunction issued by the same respondent court ordering the removal of private respondent IISMI from said petitioner's watchlist of debtors of government financial institutions and further enjoining petitioner Central Bank to allow said respondent to import raw materials by utilizing its (respondent's) own resources, without additional DBP or other government financing institution exposure, and also to approve the no-dollar processing agreement between said respondent and Atlas Worldwide Corporation; and another petition, likewise for certiorari and prohibition, docketed as G. R. No. L-34188, of the Development Bank of the Philippines (DBP) against the order and writ of preliminary injunction issued by the same respondent court enjoining the extrajudicial foreclosure initiated by said petitioner of various mortgages in its favor of private respondent IISMI.

On August 25, 1971, shortly after the petition in G. R. No. L-33949 was filed, the Court required respondents to answer the petition, and after respondent IISMI filed its answer, the case was set for hearing on October 15, 1971. Before this last date, however, the petitions in G. R. Nos. L-33986 and L-34188 were filed, and as these last two petitions were also given due course, and respondents were required to answer them, and inasmuch as all three petitions deal practically with the same subject-matter, the Court ordered the consolidation of the three cases and set them all for a joint hearing.

After several postponements, the first joint hearing was held on January 27, 1972, after which the parties were given time to file their respective memoranda. On February 14, 1972, however, acting on the "Manifestation with Petition for Preliminary Injunction" filed by the Republic and BOI on February 11, 1972, the Court resolved to issue in G. R. No. L-33949 a restraining order enjoining the respondent court not to hold any further proceeding in its aforementioned Civil Case No. 1701 insofar as said petitioners Republic and BOI are concerned until further

orders.

In the meanwhile, under date of September 20, 1971, respondent IISMI filed a motion alleging that:

"5. IISMI's importation of raw materials is urgently required. With it, approximately 2,000 employees will be gainfully employed instead of lost to other employments after great expense incurred in their technical training. A shortage of steel products in the local market will be avoided. The other industrial and steel companies who buy IISMI's steel products as their own raw materials for manufacture will not have to import the same from abroad, incurring greater dollar outlay. IISMI will not be in a position to fulfill its existing orders to export products worth \$3.6 million and to sell finished products in the domestic market totalling P2 million plus P146 million until December of this year (Exhs. U and V). Productive use will be made of a steel mill complex with total assets amounting to approximately P820 million, which otherwise will be idle." (Par. 5, p. 2, Motion of Sept. 20/71 in Vol. III, G. R. No. L-33986.)

and praying, *inter alia*:

"(1) that an order be issued directing the petitioner Central Bank to obey the writ of preliminary injunction issued by the lower court and therefore give due course to IISMI's applications for letters of credit to cover its importation of raw materials;" (Pp. 2-3, *id.*)

By the resolution of October 8, 1971, petitioner Central Bank was required to comment on the above motion, which it did on October 14, 1971. On October 29, 1971, IISMI filed a reply to said comment, to which Central Bank made a rejoinder on November 12, 1971, followed by a surrejoinder of IISMI on December 9, 1971. Under date of April 6, 1972, petitioner DBP asked for earliest resolution of its petition. After careful consideration of all these pleadings and upon mature deliberation, the Court issued on April 25, 1972, the following resolution:

"Acting on the motion dated September 20, 1971 of private respondents Iligan Integrated Steel Mills, Inc. (IISMI, for short) in G. R. Nos. L-33949, *Republic v. Court etc., et al.*, and L-33986, *Central Bank v. Hon. Teodulo C. Tandayag, etc., et al.*, praying that the Court direct the petitioner Central Bank 'to obey the writ of preliminary injunction issued by the lower court and therefore give due course to Iligan Integrated Steel Mills, Inc.'s applications for letters of credit to cover its importation of raw materials,' and without in any way intending to pass definitely on any of the issues raised by the parties, the Court considered: (1) that respondent court appears, *prima facie*, to have acted within its jurisdiction in acting on IISMI's petition for injunction against petitioner Central Bank, considering that in effect, the enforcement of Monetary Board Resolution No. 466 of January 19, 1971 and the Memoranda, Exhibits O and O-2, both dated March 23, 1971, and other memoranda watchlisting IISMI can result in preventing it from importing the raw materials it needs for the operation of its mills, before it is finally decided by the court whether or not the issuance of such resolution, memoranda and watchlisting constitutes a breach of the terms and conditions of the tripartite agreement of January 22, 1964 among the herein petitioner, Republic of the Philippines, respondent Iligan Integrated Mills, Inc. and the Export and Import Bank of Washington, D.C., and it is admitted by the Central Bank that such 'importations are x x x continuing acts up to Iligan City'; hence, although the actuations of the Central Bank complained of are being mainly performed in Manila, they in fact constitute negative acts impeding importations of said respondent which are 'continuing acts up to Iligan City' within the jurisdictional territory of respondent judge (applying in principle the rulings of this Court in *Director v. Algaen*, 33 SCRA 868 as well as *Gonzales v. Secretary*, 18 SCRA 296, cited therein); albeit, to be sure, this question of jurisdiction in the sense that the Central Bank has its office in Manila and, therefore, outside of Lanao del Norte, the seat of respondent court, is not raised in Central Bank's Comment of October 14, 1971, but the Court has to rule on it preliminarily and without prejudice to finally passing on it later, since it is obvious that if the respondent court had no jurisdiction to issue the writ of preliminary injunction in question, there is no legal basis for its enforcement either by order of this Court or of the respondent judge; (2) that going over the allegations of the parties in all their pertinent pleadings filed so far with this Court, it appears that there seems to be sufficient basis for the contention of respondent-movant IISMI that the actions taken by the Central Bank in regard to the

requests of respondent-movant for authority to import raw material without Development Bank of the Philippines' guaranty and for the Central Bank to give due course to the application of respondent-movant for approval of its processing agreement with Atlas Worldwide Corporation S.A. cannot be deemed compliance with but, on the contrary, fall short of the apparent intent and purpose of the impugned writ of preliminary injunction, inasmuch as the increase in the arrearages of IISMI in both its obligations to the Development Bank of the Philippines and the Exim Bank and/or to the guarantor Republic of the Philippines can hardly be considered as 'additional exposure on the part of the defendant Development Bank of the Philippines and other government lending institutions' within the contemplation of the respondent court's order of August 11, 1971 directing the issuance of the said writ, and, on the other hand, the risk of any foreign exchange remittance abroad, by way of damages arising from the feared contingency that IISMI might fail to comply with its processing agreement with Atlas Worldwide, is merely speculative and contrary to the normal presumptions in the ordinary course of business, involving as it does the assumption that IISMI will likely incur in breach; as, indeed, nowhere in the extant communications of the petitioner Development Bank of the Philippines (in G. R. No. L-34188) does said Bank state that there will be 'additional exposure' on its part, if the importations in question are allowed; (3) that, without advancing, despite the above prima facie observations, that IISMI is definitely entitled to the reliefs prayed for in its action in the court below, a matter which the Court will resolve when it presently decides the herein three related cases G. R. Nos. L-33949, Republic v. Court, L-33986, Central Bank v. Hon. Teodulo C. Tandayag, and L-34188, Development Bank v. Hon. Teodulo C. Tandayag, on their merits, the Court is impressed that the enforcement of the impugned writ is in the best interest of all concerned since it can serve as an interim arrangement whereby great losses to all the parties may be avoided, not to speak of the relief it can produce upon the continued unemployment of the over a thousand workers of IISMI and the adverse over-all effect upon the steel industry and the national economy of the complete stoppage of the operations of IISMI, whereas, on the other hand, the ways to make IISMI ultimately liable, should such be the final judgment in these cases, and to the enforcement of such liability, do not appear to be impossible, specially if IISMI is allowed to operate in the meanwhile; accordingly, it is to be expected that the Central Bank will no longer allege excuses not actually founded on the conditions thereof; and (4) that, even if it appears to the Court, as already discussed, that the actions of the Central Bank are not in conformity with the writ issued by the trial court, there is, however, the procedural point that its enforcement is within the ambit of the authority of the trial court rather than that of this Court, precisely because no restraining order has been issued by this Court against it, and, therefore, it is best that said enforcement be left in the first instance with the said court; in view whereof, the Court RESOLVED to REFER respondent-movant's motion of September 20, 1971 to the respondent judge for his appropriate action in the light of the above considerations of this resolution. Fernando, and Antonio, JJ., took no part."

On May 19, 1972, Central Bank moved for reconsideration of the foregoing resolution followed by another motion of the Solicitor General, who had just entered his appearance for said petitioner, requesting that a hearing be held on said motion for reconsideration. On June 6, 1972, the Court denied the motion for reconsideration as well as the motion for hearing in the following resolution:

"Acting on the motion for reconsideration filed by petitioner Central Bank of the Philippines in G. R. No. L-33986, Central Bank of the Philippines vs. Hon. Teodulo C. Tandayag, etc., et al. (consolidated with G. R. Nos. L-33949 and L-34188), and it being the sense of the Court's resolution of April 25, 1972, subject of the said motion for reconsideration, merely to lay down the proper procedure for the consideration and resolution of the motion of respondent Iligan Integrated Steel Mills, Inc. dated September 20, 1971, without actually resolving any of the issues involved in the three consolidated cases, G. R. Nos. L-33986, 33949, and 34188, except some of them in a prima facie manner, in order to enable the respondent court to act on said motion after a full hearing of all the evidence and arguments of the parties, reserving to this Court ultimately, in the appropriate case, the final resolution of all issues that the parties may wish to raise after respondent court had acted, including but not limited to those on which the Court has made prima facie observations in its resolution of April 25, 1972, the Court Resolved to DENY, the instant motion for reconsideration, without prejudice that

in the meanwhile, pending action by respondent court on the motion of IISMI already referred to, to said respondent IISMI submitting, as it is hereby REQUIRED TO SUBMIT to this Court, within ten (10) days from notice hereof, a simplified statement of the sales and exportations it has made after using the raw materials it has purchased with the proceeds of all the advances made by petitioner Development Bank of the Philippines, including but not limited to the sales made to its sister companies and/or subsidiaries, indicating how payments have been made or are going to be made thereon by the corresponding purchasers, both local and foreign, considering that in referring to an interim arrangement in the resolution now sought to be reconsidered, the Court did not have in mind to suggest that respondent may be allowed to import raw materials under the terms of the respondent court's writ of preliminary injunction without being assured that (1) all proceeds from the sales and exportations to be made possible by the importations of raw materials contemplated in said writ, shall be used, after proper deduction of operating expenses, for the servicing of the outstanding accounts of said respondent with the petitioners Development Bank and Republic of the Philippines and (2) the proceeds of the processing agreement with Atlas Worldwide Corporation S.A., should such agreement ever materialize by virtue of the impugned writ of preliminary mandatory injunction, shall likewise be duly accounted for to this Court and used for the same purposes hereinabove set forth; and in consequence, to DENY also the motion of the Solicitor General asking that the Central Bank's motion for reconsideration be set for hearing."

Now, it appears that without awaiting the Court's action on Central Bank's above motion for reconsideration of May 19, 1972, on June 3, 1972, respondent court acted on IISMI's motion of September 20, 1971, which the Court had referred to it by the resolution of April 25, 1972, by issuing an order, the dispositive portion of which reads:

"WHEREFORE, the Court grants the motion dated September 20, 1971 of plaintiff filed with the Supreme Court in GR No. L-33986 and referred by the latter to this Court for appropriate action in the light of the considerations stated in its resolution of April 25, 1972, and orders defendant Central Bank, thru the Monetary Board, as implementing order, to obey the writ of preliminary injunction issued by this Court on August 14, 1971, by desisting from continuing to enforce Monetary Board Resolution No. 466 and Memoranda to Authorized Agent Banks, Exhs. O to O-2, and other memoranda and resolutions watchlisting IISMI, to approve all pending applications of plaintiff for letters of credit to cover its importations of raw materials without Development Bank of the Philippines guaranty, and allowing the implementation of the processing agreement between plaintiff and Atlas Worldwide Corporation S.A. (Exh. W), without the conditions and limitations stated in Central Bank Deputy Governor Amado Briñas' letter of September 16, 1971 to the Security Bank and Trust Company, the Central Bank Deputy Governor's letter dated September 20, 1971 to the Bank of America, the Central Bank Deputy Governor's letter to Security Bank and Trust Company of September 30, 1971, the Monetary Board Resolution No. 1729 dated October 12, 1971, mentioned in the Central Bank Comment (on IISMI's motion dated September 20, 1971) dated October 14, 1971 and Central Bank Rejoinder dated November 11, 1971 filed in the Supreme Court and offered in this Court as Exhs. C and E, Manifestation, within Ten (10) days from receipt hereof." (Annex A of Central Bank's Motion of July 11, 1972 in Vol. VI, G. R. No. L-33986.)

Central Bank moved on June 21, 1972 for clarification of this order and for further extension of the time to comply with the writ of preliminary injunction dated August 14, 1971, and on June 27, 1972, the Solicitor General filed a supplemental motion to the same effect. On July 1, 1972, respondent court denied said motions in an order, the dispositive part of which is as follows:

"WHEREFORE, based on the foregoing clarifications and considerations, the Court, in enforcing the writ of preliminary injunction of August 14, 1971, and in clarifying and amplifying its implementing order of June 3, 1972, hereby orders defendant, Central Bank, thru its Governor and Members of the Monetary Board to obey the writ of preliminary injunction issued by this Court on August 14, 1971, by desisting from continuing to enforce Monetary Board Resolution No. 466 and Memorandum to Authorized Agent Banks, Exhs. O to O-2, and other memoranda and resolutions watchlisting IISMI including the Memorandum to Authorized Agent

Banks issued by the Governor of the Central Bank dated July 16, 1971, Exh. 1, and not to limit the amount of the importation of plaintiff for the purchase of raw materials and spare parts and manufacturing supplies necessary for the continuous operation of its mills at Iligan City, and, accordingly, to inform agent banks thru circulars and other means of the lifting of the watchlisting of IISMI and the revocation or non-enforcement of Monetary Board Resolution No. 466, Memoranda to Authorized Agent Banks, Exhs. O to O-2 and other memoranda and resolutions watchlisting IISMI including the Memorandum Circular to Authorized Agent Banks dated July 16, 1971 issued by the Governor of the Central Bank, Exh. 1, within two days from receipt of this order; to approve all pending applications of plaintiff for letters of credit to cover its importation of raw materials and spare parts without Development Bank of the Philippines guaranty and guaranty from other government lending institutions filed and pending approval before the defendant, Central Bank, thru the Governor and Members of the Monetary Board before the lifting of the watchlisting of IISMI within two days from receipt of this order; to order defendant, Central Bank, thru its Governor and Members of the Monetary Board, to inform agent banks by means of circulars or thru other means that plaintiff is hereby allowed to open letters of credit for the importation of raw materials and spare parts and manufacturing supplies in accordance with Memorandum Circular No. 289 issued by the Central Bank of the Philippines dated February 21, 1970, particularly in accordance with Section 5 of said circular, Exhs. H and H-1, without necessity of reference to or prior approval by the Central Bank and ordering defendant Central Bank, thru the Members of the Monetary Board, to approve and implement the processing agreement between plaintiff and Atlas Worldwide Corporation S.A., Exh. W, without the conditions and limitations stated in Central Bank Deputy Governor's letter of September 16, 1971, to the Security Bank and Trust Company, Central Bank Deputy Governor's letter dated September 20, 1971, to the Bank of America, the Central Bank Deputy Governor's letter to the Security Bank and Trust Company of September 30, 1971 and Monetary Board Resolution No. 1729 dated October 12, 1971, as amended by the resolution of the Monetary Board dated June 23, 1972, Exhs. 2, 2-A, mentioned in the Central Bank Comment (on IISMI's motion dated September 20, 1971) dated October 14, 1971 and Central Bank rejoinder dated November 11, 1971, filed in the Supreme Court and offered in this Court as Exhs. C and E. and in the Central Bank's Supplemental Motion, within two days from receipt of this order." (Annex B, pp. 11-13 of the same motion of July 11, 1972.)

As to be expected, on July 11, 1972, Central Bank assailed the above orders of respondent court in a motion filed with this Court praying:

"IN VIEW OF THE FOREGOING, petitioner prays that this Honorable Court:

1)

Issue ex-parte the writ of preliminary injunction originally prayed for in the above-entitled case, including restraining the enforcement of the Order of respondent court dated July 1, 1972; and

2)

Urgently, decide the above-entitled petition for certiorari and prohibition on the merits and set aside and declare null and void all the proceedings heretofore taken before respondent court, including the Order dated July 1, 1972.

Petitioner further prays for such other relief as may be just and equitable under the premises."

Upon being required by the Court, IISMI answered this motion on July 17, 1972. Hearing on this motion of Central Bank was originally set for July 17, 1972 but it was postponed to July 20, 1972. After the hearing, the following resolution was promulgated:

"L-33986 (Central Bank of the Philippines vs. Hon. Teodulo C. Tandayag, etc., et al.); L-34188 (The

Development Bank of the Philippines vs. The Hon. Teodulo C. Tandayag, etc., et al.); and L-33949 (The Republic of the Philippines and the Board of Investments vs. Court of First Instance of Lanao del Norte, etc., et al.).-At the hearing on the motion for the issuance of a writ of preliminary injunction in these cases this morning, Solicitor General Estelito P. Mendoza assisted by Asst. Solicitor General Jaime M. Lantin, Attys. Filoteo Evangelista and Manuel G. Abello, appeared and argued for and in behalf of the petitioner in these joint cases. Attys. Dominador Aytona and Manuel O. Chan, assisted by Attys. Roberto V. San Jose, Jose P. Santillan and Norberto J. Quisumbing appeared and argued for and in behalf of the respondents. Both parties were GRANTED twenty (20) days from today to submit, simultaneously, their respective memoranda in amplification of oral argument. The Court further Resolved to require: (a) DBP Chairman Leonides Virata, Governor Gregorio Licaros of the Central Bank and Secretary of Finance Cesar Virata, who were personally present, at the hearing, to SUBMIT within twenty (20) days from today, a joint memorandum; and (b) respondent Iligan Integrated Steel Mills, Inc. to SUBMIT within ten (10) days from today additional data and information indicated in item No. 1 of letter (c) of the resolution of this Court of July 18, 1972, such as: (1) statement of cost of goods manufactured and sold for the period of July 1, 1969 to May 31, 1972, segregating and showing details on quantity and value of raw materials guaranteed by DBP and of those purchased by IISMI out of its own funds; (2) statement of income and expenses for same period above; (3) Cash Flow for the same period; (4) Balance Sheet as of May 31, 1972; (5) Statement of Inventories existing as of May 31, 1972, showing detailed composition, quantity and value of raw materials inventory, goods in process and finished goods; (6) copy of agreement, if any, between Ferro and IISMI regarding the sale of IISMI products and/or a summary statement of the terms and conditions of sale, including terms of payment, pricing and other relevant conditions; (7) summary list of other purchasers of IISMI products, the statement of terms of sale including term and method of payment and pricing; and (8) a sworn statement as to whether or not IISMI, or any of its shareholders, or their relatives by consanguinity or affinity, have any interest in any of the companies which have purchased or imported products of IISMI.

The Court further Resolved to require the IISMI to SUBMIT within the period above stated a list of all the stockholders and directors of the IISMI and the FERRO from 1969 to the present with their corresponding holdings.

The Court hereby CLARIFIES, also, the resolution of July 18, 1972, item No. 1 of letter (c) as requiring the Iligan Integrated Steel Mills, Inc. to submit to this Court in these cases the foregoing additional data and information herein required, in addition to furnishing the petitioner therewith."

And so, on August 17, 1972, the motion was deemed submitted for resolution, as may be gleaned from the following resolution:

"L-33986 (Central Bank of the Philippines vs. Hon. Teodulo C. Tandayag, etc., et al.); L-33949 (Republic of the Philippines, et al. vs. Court of First Instance of Lanao del Norte, Branch II, et al.); and L-34188 (Development Bank of the Philippines vs. Hon. Teodulo C. Tandayag, etc., et al.). - Considering the pleadings filed in these cases, The Court Resolved to NOTE: (a) the memorandum of the petitioner in L-33986, dated August 8, 1972, in support of its urgent motion for the issuance of a writ of preliminary injunction, dated July 11, 1972; (b) the memorandum of the Solicitor General, dated August 8, 1972, for petitioners in these cases; (c) the compliance of the Secretary of Finance Cesar Virata, Chairman Leonides Virata of the Development Bank of the Philippines and Governor Gregorio Licaros of the Central Bank, with the resolution of July 20, 1972, by submitting their respective memoranda; (d) the memorandum of respondent Iligan Integrated Steel Mills, Incorporated, dated August 9, 1972, filed in connection with the urgent motion of the Central Bank, dated July 11, 1972; and (e) the manifesto of the Concerned Citizens' Movement in Iligan City headed by President Angelo M. Manalo, requesting this Court to decide these cases at the earliest possible time or to allow Iligan Integrated Steel Mills, Incorporated, to continue its operation pending the promulgation of the decision of this Court."

Before the Court could act, however, under date of December 4, 1972, all the petitioners in all these three cases

filed the following self-explanatory motion:

"COME NOW petitioners Republic of the Philippines, Board of Investments, Central Bank of the Philippines and Development Bank of the Philippines, by the undersigned counsel, and to this Honorable Court respectfully state:

- That pursuant to the Letter of Instruction No. 11 of September 29, 1972, of the President of the Philippines, Judges of the Court of First Instance tendered their resignations as Judges of their respective districts. Judge Teodulo Tandayag submitted his resignation as Judge of the Court of First Instance of Lanao del Norte, Branch II;

- That on October 27, 1972, the President of the Philippines accepted the resignation of Judge Teodulo Tandayag as Judge of the Court of First Instance of Lanao del Norte, Branch II. True copy of the letter of the President to Judge Tandayag is attached hereto as Annex "A";

- That on October 31, 1972, the Honorable Secretary of Justice issued Administrative Order No. 381, authorizing the Honorable Judge Eduardo Tutaan of the Court of First Instance of Lanao del Norte, Branch IV, in addition to his regular duties, to take cognizance of all kinds of cases pertaining to Branch II of the same court, vacated by former Judge Teodulo Tandayag. True copy of the Administrative Order No. 381 is attached hereto as Annex "B";

- That on November 20, 1972, November 21, 1972 and November 22, 1972, the Development Bank of the Philippines, the Central Bank of the Philippines, and the Republic of the Philippines and the Board of Investments, respectively, wrote the Honorable Judge Eduardo Tutaan of the Court of First Instance of Lanao del Norte, calling his attention to the fact that among the cases assigned to Branch II is Civil Case No. 1701, Iligan Integrated Steel Mills, Inc., plaintiff, versus, Development Bank of the Philippines, Central Bank of the Philippines, and Republic of the Philippines and Board of Investments, defendants, and requesting information whether or not his Honor is adopting or maintaining the following orders and writs issued by former Judge Teodulo Tandayag of Branch II against the said defendants for their guidance in G. R. Nos, L-34188, 33986 and 33949 of this Honorable Supreme Court:

Development Bank of the Philippines

(a) Order of August 11, 1971

(b) Writ of Preliminary Injunction of August 14, 1971

Central Bank of the Philippines

(a) Order of August 11, 1971

(b) Writ of Preliminary Injunction of August 14, 1971

(c) Order dated June 3, 1972

(d) Order dated July 1, 1972

Republic of the Philippines and Board of Investments

(a) Order of July 23, 1971

(b) Writ of Restraining Order of January 15, 1972

(c) Order of February 12, 1972

True copies of the letters of November 20, 1972, November 21, 1972 and November 22, 1972 are attached hereto as Annexes "C", "D" and "E";

- That in the letters of November 24, 1972, the Honorable Judge Eduardo Tutaan of the Court of First Instance of Lanao del Norte replied, informing that presently he is not in a position to state whether or not he is adopting and/or maintaining the orders of July 23, 1971, August 11, 1971, September 20, 1971, February 12, 1972, June 3, 1972 and July 1, 1972, and the writs of August 14, 1971 and January 15, 1972 issued in Civil Case No. 1701 by former Judge Tandayag against the defendants, but that he is ready to study, re-examine and review the said orders and writs. The Honorable Judge Tutaan further informed that pursuant to Administrative Order No. 381, dated October 31, 1972, of the Secretary of Justice, he took cognizance of the cases pertaining to Branch II of the Court last November 13, 1972. True copies of the letters of November 24, 1972 are attached hereto as Annexes "F", "G" and "H";

- That in the appeals of the Development Bank of the Philippines in G.R. L-34188, the Central Bank of the Philippines in G.R. L-33986, and the Republic of the Philippines and Board of Investments in G.R. L-33949, to this Honorable Supreme Court, former Judge Teodulo Tandayag of Branch II of the Court of First Instance of Lanao del Norte has been impleaded as one of the party respondents;

- That under Section 18, Rule 3 of the Rules of Court, when an officer is a party to an action and during its pendency resigns or otherwise ceases to hold office, the action may be continued and maintained against his successor if within thirty (30) days after the successor takes office it is shown to the Court that the latter adopts or maintains the action of his predecessor;

- That in view of the foregoing considerations, the Honorable Judge Eduardo Tutaan of the Court of First Instance of Lanao del Norte should perhaps be accorded the opportunity to re-examine and review the questioned orders and writs issued by former Judge Teodulo Tandayag in Civil Case No. 1701, to wit:

Development Bank of the Philippines

G.R. L-34188

(a) Order of August 11, 1971

(b)

Writ of Preliminary Injunction of August 14, 1971

(c) Order of September 20, 1971

Central Bank of the Philippines

G.R. L-33986

(a) Order of August 11, 1971

(b) Writ of Preliminary Injunction of August 14, 1971

(c) Order of June 3, 1972

(d) Order of July 1, 1972

Republic of the Philippines and Board of

Investments - G.R. L-33949

(a) Order of July 23, 1971

(b) Writ of Restraining Order of January 15, 1972

(c)

Order of February 12, 1972 (The Order of February 12, 1972 in Civil Case No. 1701 required Republic to answer IISMI's Supplemental Complaint. However in view of the Temporary Restraining Order of the Supreme Court of February 14, 1972 in G.R. L-33949 restraining Judge Tandayag from further proceeding with Civil Case No. 1701, said Order was not enforced. The Order of February 12, 1972 was not included in Republic Manifestation with Petition for Preliminary Injunction filed with the Supreme Court on February 11, 1972 since copy thereof was only served on February 29, 1972.)

- That in this motion the Development Bank of the Philippines, the Central Bank of the Philippines, and the Republic of the Philippines and Board of Investments seek the leave of this Honorable Supreme Court considering that G.R. Nos. L-34188, 33986 and 33949 are still pending before it.

WHEREFORE, it is respectfully prayed of this Honorable Court that the petitioners be given leave to raise anew before the Honorable Judge Eduardo Tutaan of Branch II and Branch IV of the Court of First Instance of Lanao del Norte the questioned orders and writs of former Judge Teodulo Tandayag in Civil Case No. 1701, Iligan Integrated Steel Mills, versus, Development Bank of the Philippines, Central Bank of the Philippines, Republic of the Philippines and Board of Investments."

IISMI filed its comment on the foregoing motion on January 26, 1973, contending that section 18 of Rule 3 does not apply to the situation obtaining in these cases arising from the resignation of Judge Tandayag and his replacement by Judge Tutaan.

Without resolving petitioners' motion, and acting sua sponte, on April 10, 1973, the Court resolved:

"G. R. No. L-33949 (Republic of the Philippines, et al. vs. Court of First Instance of Lanao del Norte); L-33986 (Central Bank of the Philippines vs. Hon. Teodulo C. Tandayag, et al.); and L-34188 (Development Bank of the Philippines vs. Hon. Teodulo C. Tandayag, etc., et al.) - More or less reliable information having come to the Court that private respondent Iligan Integrated Steel Mills, Inc. has been taken over by the Government, the Court resolved, before acting further in these cases, to REQUIRE the parties to state to the Court, within ten (10) days from notice hereof, such details and circumstances related to the said takeover as would enable the Court to determine whether or not these cases have already become moot and academic."

In their compliance with this resolution, petitioners limit themselves to a recital of the contents of the Letter of Instruction No. 27, ordering the takeover by the Secretary of National Defense of "the management, control and operation of respondent IISMI for the duration of the present national emergency or until otherwise ordered by the President or by his duly designated representative" and also the taking by said Secretary of "all steps, means and measures necessary and essential for the resumption of operations of (its) entire steel plant", plus the two memoranda of October 14, 1972 and October 16, 1972 issued by the same Secretary pursuant to said Letter of Instruction No. 27 and the following pertinent statements:

"5. That functioning as the Board of Directors of the Iligan Integrated Steel Mills, Inc., the Presidential Steel Committee has appointed the following officers:

Eduardo J. Rodriguez - President

Rafael Zagala

- Treasurer

Francisco Tamondong - Asst. Treasurer

Lilia R. Bautista - Corporate Secretary

Danilo L. Protacio - Asst. Corporate Secretary

- That on April 12, 1973, Mr. Eduardo J. Rodriguez, submitted to the Presidential Steel Committee a 'Report on IISMI's Operations from October 15, 1972 to April 14, 1973'. In the Report, he underscored significant

progress made under the new management during the first six months of government take-over. Some of the salient features of the report are the following:

- Production cost of IISMI's steel mills have been reduced by about P33 million per annum and the production rates for all facilities have been increased substantially;
- IISMI has been selling most of its products directly to end users thus reducing marketing and interest expenses by around P40 million yearly;
- Expenses for moving and storing raw materials and finished products have been reduced by P6 million per year;
- IISMI has been able to finance its current operating requirements and to generate some funds to pay for a portion of the old management's past due obligations;
- With the assistance of DBP, a P100 million Syndicate Credit Agreement has been signed with a consortium of local banks to finance importations of raw materials.

True copy of said Report of President Rodriguez is attached hereto as Annex "D".

while IISMI's compliance states:

"Case not moot

and academic

- As shown by the underscored portions of the Letters of Instructions of the President of the Philippines and corresponding memoranda on the purported authorities by which the government effected its take-over of IISMI on October 14, 1972, the take-over is limited in duration and in scope.

(a)

The take-over is limited in duration - it is merely temporary to last only "for the duration of the present national emergency or until otherwise ordered by (the President) or by my duly designated representative".

(b)

The take-over is also limited in scope - its stated express purpose being "the resumption of the operation of the entire plant" of IISMI to the end that "the much needed supply of steel products" will not gravely be disrupted, "steel sheets and tinplates (being) critically essential for infra-structure projects, housing and many other activities, and the manufacture of foods and other products which are necessary for the daily existence of our people".

- Being limited in duration or merely temporary to last only for the duration of the present national emergency, the issues of these cases in court therefore remain unaffected by the take-over in the manner that provisional remedies such as attachment, preliminary injunction and receivership do not affect the merits of the controversy. The merits of the controversy principally arising from the specific performance of the tripartite agreements entered into by and among the Export-Import Bank of Washington, an agency of the United States of America, the Republic of the Philippines and the Iligan Integrated Steel Mills Inc. and the review on certiorari and prohibition of incidental orders issued by the lower court in connection with that main controversy, are unresolved by the instant government take-over nor even by the Letters of Instructions of the President of the Philippines and corresponding memoranda under whose purported authorities said take-over was effected.

The justiciable controversy not being affected or resolved, the cases have not become moot and academic. Thus, upon the termination of the present national emergency or earlier termination of the takeover by the President or his duly authorized representative, -

(a)

The Supreme Court will still have to decide whether or not the lower court erred in denying the motion to dismiss the complaint for improper venue and non-suability of the state (G.R. No. L-33949); whether or not the lower court committed grave abuse of discretion in issuing the injunctive writ of August 14, 1971, enjoining DBP foreclosure, ouster of private investors of IISMI from control or management, and takeover of IISMI or any of its properties, plants and mills (G.R. No. L-34188); and whether or not the lower court committed grave abuse of discretion in issuing the said injunctive writ of August 14, 1971, enjoining the CB from continuing to enforce its resolutions and circulars watchlisting IISMI and ordering it to allow IISMI to import raw materials through letters of credit or through other means without additional exposure on the part of the DBP and other government lending institutions and to give due course to IISMI's application for approval of its processing agreement with Atlas Worldwide Corporation, S.A. (G.R. No. L-33986); and

(b)

The lower court in Civil Case No. 1701 will still have to decide on the merits whether or not to enjoin "the defendants, their officers, representatives, agents and assigns, perpetually and permanently from proceeding with the foreclosure of the mortgages referred to in the DBP's notice of foreclosure dated May 17, 1971, and enjoin(ing) perpetually and permanently the defendant Government and all its officers, agents and instrumentalities from taking any step with the view of ousting the private investors in IISMI from control or management of IISMI, or to take over IISMI or any of its properties, plants and mills, with costs"; whether or not "the defendant Government and its instrumentalities, including the DBP, Central Bank, and the BOI, be ordered to comply with their commitments and incentives promised to IISMI under the aforesaid agreements, laws, and circulars; declaring Central Bank Circular No. 466 and all memoranda issued pursuant thereto (specifically Annexes O, O-1, and O-2) as null, void, and without legal effect"; and whether or not "the defendants be sentenced to pay the plaintiff such damages as may be proven during the trial."

- Being limited in scope and purpose, i.e., the resumption of the operations of the steel mills to avoid disruption of supply of steel products critically essential for the infra-structure projects of the government, the takeover leaves to respondent IISMI the residual power, thru its board of directors and officers duly constituted in accordance with its Articles of Incorporation and By-Laws, at least to protect its rights and those of its stockholders and to prosecute actions in court to protect said rights which in this particular case includes the right to defend against a foreclosure commenced by the Development Bank of the Philippines and a take-over by the government for alleged violations of the tripartite agreements, under which the government and/or its instrumentalities sought to acquire majority ownership and control of IISMI.

For this added reason, the cases have not become moot and academic. The judgments that the courts will render in such suits can still be enforced as they are not in any way directed against the martial law take-over for the purpose of resuming operations of the steel mills to avoid disruption of the supply of steel products essential for the infrastructure projects of the government, under which the government and/or its instrumentalities do not acquire majority ownership and control of IISMI.

Suspension of proceedings

The essence of the tripartite agreement among the Government, EXIMBANK and IISMI and other agreements between the Government and private investors (Exhibits B, C, D, E, G, H, I, J, N, & R) is that the project would be privately managed with full government support and assistance. The private sector would never have invested

in the integrated steel mill project without this assurance.

IISMI and the private investors therein resorted to judicial remedies for the enforcement of their rights under these agreements with the Government. To hold that the court cases have become moot and academic simply because of IISMI's martial law take-over by the Government, which is temporary, would necessarily result in depriving IISMI and its stockholders of their day in court. This would be the most unimaginable injustice in the history of Philippine jurisprudence.

However, private respondent IISMI will yield to suspension of the proceedings of the above-entitled cases if the Supreme Court should believe that said cases are no longer urgent in view of the martial law take-over of the steel mills.

Indeed, the Development Bank of the Philippines may not proceed with the foreclosure of mortgages in view of the martial law take-over and of the injunctive writ of August 14, 1971.

Since the government has taken over the operation of the steel mills and imports raw materials - it seems - without encountering difficulties at the Central Bank, then private respondent IISMI has no urgent need of the enforcement of the writ of preliminary injunction against the watch-list circulars of the Central Bank until the steel mills are returned to it upon the termination of the present national emergency or earlier termination of the take-over by the President or his duly authorized representative, and if the Central Bank should then still insist on its watchlisting circulars and memoranda. Until then, private respondent IISMI will not really require a writ of injunction against the same.

Reservation:

The agreement of private respondent IISMI to a suspension of proceedings should however not be construed as an acceptance of the validity of the instant government martial law take-over.

Just to mention one ground, the United State Supreme Court in the Youngstown Sheet and Tube Company case on June 2, 1952 overruled the contention that the President's seizure order of some steel mills was within his power and duty as commander-in-chief.

However, private respondent IISMI elects to meanwhile exhaust administrative remedies against the instant martial law take-over of its mills."

On May 30, 1973, petitioners filed their "Manifestation and Reply to Comment" of IISMI, pertinent portions of which read thus:

"IISMI Misrepresentation of Facts and Other Inappropriate Acts

- After the Government took over management and control of IISMI and other Jacinto companies pursuant to Letters of Instruction Nos. 27 and 35, a study was undertaken of the actual financial condition of IISMI. In this context, the U.P. Business Research Foundation, Inc. which was retained for this purpose, was requested to evaluate and consider the representations previously made by IISMI before this Court as to its financial condition, its receivables, the causes of the huge losses it had incurred, its relation to FERRO Products, Inc., etc. A report on this matter has been submitted which shows, among other things, that IISMI had misrepresented material facts before this Court. A copy of the report is herewith enclosed as Annex "A";

- Some of the salient points demonstrated in the report are the following:

- IISMI could have lost at most P38,027,000.00 due to the floating rate because importations before February 1970 were sold at pre-devaluation prices even after devaluation, but no such loss can, or should be claimed after June 1970. After this date, IISMI had, or should have already adjusted its prices to post-devaluation

levels. Besides, even considering the total amount of P51,999,000.00 allegedly lost by IISMI from 1970 up to 1972, still this amount is insignificant compared to the more than P407 million due from IISMI to the DBP and the National Government;

- IISMI's trade policies were intended to shift profits otherwise due IISMI to the Jacinto-controlled corporations particularly FERRO Products, Inc. (FPI), its marketing arm and biggest single buyer, by:

1)

Adopting a self-defeating pricing scheme whereby it increased its post-devaluation selling price of goods to FERRO by only 25%, despite the 50% increase in the cost of raw materials caused by the floating rate. On the other hand, FERRO resold the same goods at a mark-up of 30%, enough to cover the 25% increase in the cost of goods, leaving a 5% additional gross profit for itself;

2)

Extending extraordinarily long credit terms of 90-180 days to FERRO without considering its own obligations and accumulating delinquencies;

3)

Failing to collect trade receivables from FERRO which amounted to more than P85 million as of June 30, 1972, accumulated during a 4-year period;

4)

Failing to collect from other Jacinto-controlled corporations, which, together with the FERRO account, totalled P89,220,147.00 as of June 30, 1972;

5)

Allocating and disbursing during a 3-year period more than P8 million for domestic selling expenses alone as compared to FERRO's P3,022,000.00 representing total selling expenses. IISMI's huge selling expenses were unwarranted because it sold the bulk of its produce, or a total of 80% thereof, to only one customer, namely, FERRO.

- IISMI resources were actually diverted to Jacinto-controlled corporations and to members of the Jacinto family, amounting to P95,913,668.72 as of June 30, 1972 by various means, namely:

1)

Interest-free loans or direct advances to Jacinto-controlled corporations amounting to P5,957,636.11, as of June 11, 1972;

2)

Unliquidated travel and representation allowances to employees and officers, including members of the Jacinto family amounting to P1.236 million as of June 30, 1972;

3)

Payments by IISMI of obligations of some Jacinto-controlled corporations, including interests on loans obtained by them to pay for subscription to IISMI shares, all totalling P9,129,189.68;

4)

IISMI borrowings at 12% interest per annum from some Jacinto-controlled corporations, instead of collecting the receivables (trade and non-trade) long overdue from its own creditors, particularly FERRO to whom the lender IISMI-affiliates are heavily indebted;

5)

Uncollected sales to Jacinto-controlled corporations which as of June 30, 1972, amounted to P89,220,147.00, representing 99% of IISMI's total trade receivables.

- Payments were charged to IISMI but actually received, not by IISMI but by Jacinto-controlled corporations and members of the Jacinto family, totalling P25,961,191.67;

- IISMI actually imported for two Jacinto-controlled corporations raw materials by availing of DBP guaranties in the amount of P4,272,842.76, knowing that these guaranties were for IISMI's exclusive use and benefit;

- The massive misuse and diversion of funds by IISMI shown above were camouflaged by outrageous "window-dressing" of the financial statements and records of IISMI and those of the Jacinto-controlled corporations including the financial statements submitted to this Honorable Court which were not spared, thus:

1)

To underplay profits of both companies, by understating sales of IISMI to FERRO and correspondingly understating purchases of FERRO from IISMI. This wise, losses would not be attributed to operations, but rather to outside forces such as the floating rate;

2)

To show a favorable cash position, by including the amount of P15 million as part of its cash balance as of May 31, 1972 allegedly as payment from FERRO Products. However, it appears that P2 million was supposedly paid out of "Cash on Hand" of FERRO, and P13 million in checks drawn on the Security Bank and Trust Company and the Pacific Banking Corporation. The Check Register revealed that the SBTC checks were actually issued after June 27, 1972, while the PBC checks were issued after June 22, 1972. (The Balance Sheet (tentative) embodying this data was submitted to this Court by IISMI on June 23, 1972. IISMI was later required to submit additional information, which it did on July 31, 1972.) The intent to deceive this Court is made more apparent when considered in the light of the other facts: (1) that the checks were not deposited by IISMI; (2) that the checks were voided by tearing off their lower right-hand portions bearing the signatures; (3) that the checks were later on replaced, but with checks which were undated. SBTC Check No. 381487 for P2 million was returned and still unreplaced, as of this date, for insufficient funds;

3)

To show a favorable asset position, by including goods allegedly returned by FERRO in the amount of

P21,035,075.86, which appear however to have already been mortgaged by the latter to the Security Bank and Trust Co. Also, the "Inventories" account of IISMI revealed an overstatement of P9.8 million;

4)

To show a low accounts receivable-trade from FERRO Products, a Jacinto-controlled corporation, and of other Jacinto-controlled corporations, by recognizing "offsets" against legitimate payable to IISMI. To prove the lack of basis for such "offsets", the independent auditors of IISMI later reversed and cancelled such entries in the financial statements, thereby reinstating the obligations due to IISMI from FERRO and other Jacinto-controlled corporations, but which reversals, cancellations, or corrections were never relayed to this Honorable Court.

- Petitioners now bring the facts and findings in the aforementioned report before this Court: (a) To rebut and controvert representations previously made by respondent IISMI; (b) To show that if this Court must go into the substantive merits of all the issues, it would have to evaluate and consider a mass of facts which if disputed is perhaps better done by a trial court;

- The facts could not have been brought before the Court by the petitioners when these cases were heard. Not having access to respondent IISMI's records which apparently were on occasions adjusted, petitioners had to argue on the basis largely of respondents' own representations;

On arguments raised in IISMI counsel's Comment

- Contrary to the comment of respondent IISMI, remand of the cases at bar to the lower court will serve a useful purpose. Among others, the procedure will allow a ventilation in the lower court of all facts relevant to the issue raised, such as those pertaining to causes of the huge financial loss incurred by IISMI. As a trial court, the lower court is best suited to receive the parties' evidence on this matter. It cannot be gainsaid that further clarification of this all important matter will help in the just and speedy disposition of the cases at bar;"

X X X X X X

"11. Lastly, it cannot be denied that this Honorable Court has complete control over its proceedings. There is no insurmountable legal obstacle which would prevent the remand of these cases to the court a quo if the said procedure would serve the higher interest of justice.

This Court, through the revered and eminent Mr. Justice Abad Santos, found occasion in the case of C. Viuda de Ordoveza vs. Raymundo, 63 Phil. 275, to lay down, for recognition in this jurisdiction, the sound rule in the administration of justice holding that "it is always in the power of the court (Supreme Court) to suspend its own rules or to except a particular case from its operation, whenever the purpose of justice require it." Under this authority, this Court is enabled to cope with all situations without concerning itself about procedural niceties that do not square with the need to do justice, x x x.

(Estrada v. Sto. Domingo,

L-30570, July 29, 1969,

28 SCRA 890, 933)

As above stated, remand of these cases will give the new judge an opportunity to re-examine the questioned orders and writs of his predecessor. The procedure will likewise shed light on the validity of IISMI's claim that the huge losses it had incurred were unavoidable. This fact is important in viewing the intricate issues involved herein in their proper perspective."

On the other hand, after filing on June 15, 1973 a motion for leave to file a rejoinder to the foregoing

"Manifestation and Reply to Comment", which was granted, IISMI subsequently filed on July 30, 1973, the following "Manifestation and Omnibus Motion":

"Respondent Iligan Integrated Steel Mills, Inc. (IISMI), through its counsel of record, respectfully alleges:

- As reply to respondent IISMI's comment on petitioners' motion to remand the above-entitled certiorari cases back to the lower court, petitioners alleged that they have further evidence to offer on the causes of the alleged huge financial loss incurred by respondent IISMI. (pp. 8-9, petitioners' manifestation and reply to comment) Petitioners further alleged that they could not have brought to the attention of the Court their new and further facts when the cases were heard, 'not having access to respondent IISMI's records' (p. 8, manifestation and reply to comment). Petitioners came by their further or new evidence 'after the government took over management and control of IISMI and other Jacinto companies pursuant to Letters of Instruction Nos. 27 and 35' (p. 2, manifestation and reply to comment). The report of the UP-IISMI Study Group submitted as Annex A of petitioners' Manifestation and Reply to Comment in its preliminary statement said that an examination was made of 'the available records of IISMI, and to the extent relevant, those of other Jacinto owned and/or controlled companies' which were seized by the government after declaration of martial law.

The new and further evidence are inadmissible. First, they were seized without judicial warrant. Second, the takeover of the mills during the emergency under the Presidential Letters of Instructions assuming them valid did not authorize seizure and use of evidence. (Please see study on admissibility of illegally obtained evidence annexed hereto).

- Martial law and the situation brought about by it render the defense of respondent IISMI in these certiorari cases, and the proper prosecution of the case for specific performance in the lower court, impossible. The parties with knowledge of the facts of the case are out of the country and dare not return. Their employees in the country have been dispersed. The records of respondent IISMI and the Jacinto Corporations have been seized. In view thereof, it has now become impossible for private respondent to make a Reply to the Petitioners' Manifestation and Reply dated May 17, 1973, leave to file which on or before July 27, 1973, had been granted by this Honorable Court in its resolution of June 20, 1973.

- The government having taken over the mills ostensibly "for the duration of the emergency", all legal proceedings should meanwhile be abated.

WHEREFORE, the undersigned counsel respectfully pray for leave to withdraw from representation in these cases; and, as their last acts of representation, reiterate their prayer for the suspension of proceedings of the cases until after martial law is lifted, the IISMI mills restored to it, and all seized records returned; and, pray for the striking out of petitioners' Manifestation and Reply to Comment dated May 17, 1973, with its annexed UP-IISMI study report."

as to which, the "Cross Manifestation" of petitioners of August 7, 1973, reads as follows:

"COME NOW petitioners Republic of the Philippines, Board of Investments, Central Bank of the Philippines and Development Bank of the Philippines, by the undersigned counsel, and to this Honorable Court respectfully state:

- Respondent IISMI's assertion that the Government is precluded from proving mismanagement on the basis of its own records now in the latter custody is without any merit. The constitutional prohibition against unreasonable search and seizure cannot support this stance. The Government took over the management of IISMI pursuant to Letter of Instruction No. 27 in lawful exercise of martial law powers by the President. As an indispensable incident of this take over, the Government has to take custody of IISMI's records. It is to be underscored that IISMI has not squarely assailed the legality of its Government take over.

Moreover, the Constitutional prohibition against unreasonable search and seizure cannot apply to the cases at

bar which are certiorari petitions and do not involve criminal proceedings. The records in question are not being utilized as evidence to secure the criminal conviction of any person. If they are to be used at all, it is only to establish the defense of mismanagement to defeat IISMI's claim. In other words, said records are not being wielded as a sword but only a shield.

- Respondent IISMI also states that it is not in a position to contest the Government's claim of fraud and mismanagement in its corporate affairs because its records are presently not in its possession. This is not a meritorious claim. The subject records can always be made available to IISMI subject to the usual security measures to safeguard their integrity. IISMI has never requested from the government that it be allowed to use said records so that it may properly respond to the representations of the government to this Court in connection with these cases. It cannot therefore claim lack of access to its records.

- Respondent IISMI cannot also contend that disposition of these cases should be deferred because its officials with knowledge of the case are out of the country and dare not return. IISMI cannot seek sanctuary behind general claims. It does not specify who are its officials out of the country without whom it could not prosecute its case. More important, it is not claimed that there is a legal impediment to the return of these officials to the Philippines. If they dare not return here, it can only be because they are unwilling to defend themselves. Certainly, our wheels of justice should not stop running to await the return of persons who have voluntarily left the country and have refused to return here perhaps to precisely avoid the processes of our courts.

- Respondent IISMI cannot also claim that it can not go to trial in the lower court because its employees have already scattered as a result of martial law and the government take over of its mills. Again the claim is all too conveniently nebulous. IISMI does not state who are these seemingly indispensable employees. Nor is there any clarification as to whether or not these employees cannot really be located. Somehow, these employees are still in the Philippines and hence their availability cannot be an impossibility.

Indeed, these excuses only underscore the immediate need in disposing of the cases at bar, whether in this forum or in the lower court. The longer these cases tarry, the greater the danger that witnesses may no longer be available, records have to be reconstructed, etc.

- Petitioners submit to the Court the propriety of whether or not the present counsel of IISMI should be allowed to withdraw. It is interesting to note however that the reasons relied upon by IISMI counsel have long existed. It is only after petitioners have confronted IISMI with concrete assertions of misrepresentations that counsel for respondent IISMI seek withdrawal from these cases. Be that as it may, their withdrawal should not provide IISMI with another lame excuse to seek delay in the disposition of the cases at bar. The stability of the economy itself is at stake in these cases. We cannot temporize with the fate of our economy.

IN VIEW WHEREOF, it is respectfully prayed of this Honorable Court that IISMI's prayer of deferment of the cases at bar as well as to strike out petitioners' Manifestation and Reply to Comment dated May 17, 1973 be denied for lack of merit. Petitioners also reiterate their prayer in their Manifestation and Motion dated July 10, 1973 to resolve these cases and/or the pending incidents at the earliest time possible."

In view of all the foregoing and after a comprehensive review of the records of all these three cases, (made up of seven (7) volumes in G. R. No. 33986, four (4) volumes in G. R. No. L-33949 and three (3) volumes in G. R. No. L-34188, each volume averaging about ten (10) inches in thickness and containing a total of over one hundred annexes) the Court finds no other alternative but to terminate the present proceedings in this Court, so as to give way to further proceedings in the court below, wherein all pertinent issues arising from the developments which have taken place since August 17, 1972 may be appropriately and fully threshed out, considering that the factual matters involved therein would require the formal and proper presentation of varied and voluminous evidence which the Court is not adequately equipped to receive.

Needless to say, the Court's resolutions of April 25, 1972 and June 6, 1972, aforequoted, were predicated on the

facts and circumstances, as the same appeared then to the Court, viewed in the light of the issues lengthily discussed by all the parties in their pleadings, with corresponding annexes, and at the hearings, and, of course, on the Court's overall view of the public interest, together with the apparent equities to all the parties, herein involved. Withal, the parties have yet to be heard by the trial court regarding the merits of their respective claims, and as matters stood in the record before Us at the time of said resolutions, the allegations of petitioners charging private investors with shady or questionable manipulations were more or less generalized and inconcrete, and in some ways seemingly untenable, what with the presence of government representatives in the board of directors of IISMI and the Budget Commissioner being the Comptroller thereof, and there is no intimation whatsoever that these officials were either negligent or in connivance with them. We therefore held that until a full-blown inquiry could be undertaken, it was best to provide for the continued operation of the project in question, while We took what We considered appropriate measures to insure maximum feasible protection against any possible dissipation of respondent's income or the diversion thereof in a manner prejudicial to the government and for the benefit of said private investors. Thus, in the resolution of June 6, 1972, We did not only require IISMI to submit "a simplified statement of the sales and exportations it has made after using the raw materials it has purchased with the proceeds of all the advances made by petitioner Development Bank of the Philippines, including but not limited to the sales made to its sister companies and/or subsidiaries, indicating how payments have been made or are going to be made thereon by the corresponding purchasers, both local and foreign," but also made sure that "(1) all proceeds from the sales and exportations to be made possible by the importations of raw materials contemplated in said writ (in question), shall be used, after proper deduction of operating expenses, for the servicing of the outstanding accounts of said respondent with the petitioners Development Bank and Republic of the Philippines and (2) the proceeds of the processing agreement with Atlas Worldwide Corporation S.A., should such agreement ever materialize by virtue of the impugned writ of preliminary mandatory injunction, shall likewise be duly accounted for to this Court and used for the same purposes hereinabove set forth". Actually, We had in mind then "that the enforcement of the impugned writ is in the best interest of all concerned since it can serve as an interim arrangement whereby great losses to all the parties may be avoided, not to speak of the relief it can produce upon the continued unemployment of the over a thousand workers of IISMI and the adverse over-all effect upon the steel industry and the national economy of the complete stoppage of the operations of IISMI, whereas, on the other hand, the ways to make IISMI ultimately liable, should such be the final judgment in these cases, and to the enforcement of such liability, do not appear to be impossible, specially if IISMI is allowed to operate in the meanwhile".

From the latest pleadings of petitioners, however, supported, as they are, by official reports which are more specific and factual, the situation relative to the equities in these cases appears to Us to have changed considerably. And in the face of this circumstance, counsel for IISMI have not been able to present sufficiently documented denials and rebuttals of the new allegations of petitioners, albeit they excuse themselves by alleging that they have lost contact with their clients, the principal private investors who used to be in control of respondent corporation. It is claimed that said private investors have gone abroad to places unknown to said counsel, for which reason, precisely, the latter are even asking for leave to be allowed to withdraw their representation. Under the circumstances, and considering that to await the uncertain return of the private investors would jeopardize the efforts of the government to make the national project herein involved, as conceived in the triangular agreement among the Republic, the Exim Bank and IISMI itself, namely, the establishment of an integrated steel complex to meet the requirements of the industry and economy of the whole country, totally operative without further loss of time, the Court is of the considered opinion that all the matters here in dispute should be referred to the respondent court for further proceedings and appropriate resolution. Indeed, having in view the nature and volume of the evidence which the parties would have to present in connection with the factual issues raised by petitioners regarding what they claim to have discovered or unearthed after the Secretary of

National Defense took over the "management, control and operation" of IISMI, may be justly and comprehensively resolved only after such evidence have been received by the trial court, rather than this Court, since it has the ready adequate machinery for the purpose. And with such additional evidence, the trial court would naturally be in a better position than before to rule on the injunctions which have given rise to these proceedings.

It should be plainly understood, however, that the action We are taking is not premised on Section 18 of Rule 3, cited by petitioners. In fact, in Our view, it is of no moment whether or not Judge Tandayag is still in the lower court. In other words, it is the change of circumstances of the cases themselves rather than the replacement of the presiding judge of the court a quo that warrants further proceedings therein. Accordingly, We do not consider it opportune at this time to rule on the issue joined in by the parties regarding the applicability hereto of the cited provision of the rules. Suffice it to state here, in that respect, that the "officer of the Philippines" contemplated in said provision does not include a judge who is sued in connection with his actuation in the exercise of his judicial functions, if only because the nature of such act is such that any action impugning it is not abated by his cessation from office. A judicial act is unlike the adoption and implementation or enforcement by an administrative officer of a policy dictated by discretion given him by law. (See authorities cited in *I Moran*, Rules of Court, p. 212, 1970 ed.) Besides, a judge who is thus sued, although named as a defendant or respondent in the pleadings, is no more than a nominal party therein. (*Pinza vs. Aldovino*, G. R. No. L-25226, Sept. 27, 1968, 25 SCRA 220) Under Section 5 of Rule 65, he is not a real party in interest, whereas what Section 18 of Rule 3 refers to is an officer whose official interest in the action is such that the suit cannot be maintained against his successor. Special civil actions against judges do not have that character, for, in essence, these remedies do not differ from ordinary appeals, which obviously are not dismissed merely because the trial judge has died, resigned, retired or has been transferred or removed from office. Indeed, to apply the rule to judges of inferior courts would make the determination by the superior courts of the cases questioning their actuations largely dependent, not on the correctness or incorrectness of the rulings of the judge concerned but on whether or not they would continue in office, thereby throwing overboard the whole system of procedure designed to insure that all courts and judges must act in accordance with law.

Anent the prayer of all the counsel of IISMI to be given leave to withdraw their representation of said respondent, it is important to note that said request is not accompanied by proof of their client's consent to such withdrawal.[1] Ordinarily, under Section 26 of Rule 138, such consent is required. And even in the instances where the same section dispenses with the client's consent, it is generally the rule that the client should be notified of the petition of counsel. But it is not inconceivable that under peculiar circumstances, the court may be justified in relieving a lawyer from continuing his appearance in an action or proceeding, without hearing the client, as, for instance, when a situation develops, like in the cases at bar, where the client stops having any contact with the lawyer, who is thereby left without the usual means which are indispensable in the successful or, at least, proper defense of the client's cause, such as, actual knowledge of relevant facts, the identity of usable witnesses, pertinent documents and other evidence, not to speak of the money needed for even the minimum of litigation expenses and the possible advances of attorney's fees. Understandably, no responsible lawyer can be expected to do justice to any cause under such conditions, and, it would be an unjust imposition to compel him to continue his services in relation thereto. While perhaps the absence of legal counsel may create an apparent denial of the party's inherent right to legal assistance, in these particular cases, it can rightly be said that in a large sense and for obvious reasons, movant counsels' clients have it in their power to remedy the situation.

WHEREFORE, the Court resolved to terminate by this resolution, the proceedings in this Court in all these three cases, and the trial court is hereby ordered to resume proceedings in its Civil Case No. 1701, by receiving further evidence which the parties may desire to present relative to all the issues they have so far raised either here or in

that court in connection with the causes of action alleged in respondent IISMI's complaint, and, thereafter, to resolve all the incidents related to the writ of preliminary injunction said court has issued and every other incident in the said case and/or render final judgment in the main case on the merits.

The Court further resolved to grant the prayer of Attorneys Dominador Aytona, Manuel O. Chan, Jose P. Santillan, Norberto J. Quisumbing, Manuel V. San Jose and Roberto V. San Jose for leave to withdraw their appearance for respondent IISMI. Said attorneys are directed to notify their clients of this resolution by registered mail to be sent to them at their addresses last known to counsel and to furnish the Court proof of such notice within ten (10) days from receipt by said counsel of the corresponding registry return cards.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, and Esguerra, JJ., concur.

Teehankee, J., concurs in the result.

[1] The Court takes judicial notice of the fact that IISMI is presently controlled, including its board of directors, by the government, hence, the consent referred to must be that of those in control of the corporation before the government took over.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.