

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, PETITIONER,
VS. THE HONORABLE SANDIGANBAYAN (THIRD DIVISION),
AEROCOM INVESTORS AND MANAGERS, INC., POLYGON INVESTORS
AND MANAGERS, I...**

G.R. No. 103797. August 30, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a Petition for Certiorari with Urgent Prayer for Preliminary Mandatory Injunction, on the ground of grave abuse of discretion amounting to excess of jurisdiction caused by the Sandiganbayan's issuance of three Resolutions dated December 10, 1991, January 27, 1992 and January 29, 1992, in Civil Case No. 0114, entitled "Philippine Communications Satellite Corporation (PHILCOMSAT) and Philippine Overseas Telecommunications Corporation (POTC), Plaintiffs versus Presidential Commission on Good Government (PCGG), Defendant."

The Presidential Commission on Good Government (PCGG), in a letter-order dated March 14, 1986, sequestered the shares of stock in POTC and PHILCOMSAT owned by Jose L. Africa and Roberto S. Benedicto, two of several known close associates of then President Marcos. The letter-order requested Carlos M. Farrales, of New Manila, Quezon City, to do the following:

(S)equester and immediately take over the following establishments, as well as all assets, funds, and records thereof, to wit:

1. PHILIPPINE OVERSEAS COMMUNICATION, INC. (PHILCOMSAT/POTC) including SUBMARINE CABLE NETWORK at Currimao, Ilocos Norte and the PHILIPPINE EARTH STATION at Pinugay, Tanay;
2. EASTERN TELECOMMUNICATIONS, INCORPORATED including TROPOSCATTER SYSTEM at Sto. Tomas, Baguio and MICROWAVE SYSTEM at San Fernando, Pampanga;
3. PHILIPPINE LONG DISTANCE TELEPHONE COMPANY;
4. DOMESTIC SATELLITE at the Domsat Station;

and all other subsidiary organizations emanating therefrom.

In this connection, you are hereby named Officer-in-Charge of all the above-named companies. As such, you are requested to immediately freeze all the withdrawals, transfers, and/or remittances from the funds of the above-enumerated companies under any type of deposit accounts, trust accounts or placements, with the exception of those which are necessary for maintaining the ordinary course of business.[1]

Accordingly, writs of sequestration were issued by the PCGG over POTC and PHILCOMSAT. On March 29, 1991, POTC and PHILCOMSAT filed before the Sandiganbayan Civil Case No. 0114, for certiorari and injunction, seeking to nullify the writs of sequestration and to enjoin PCGG and its officers, agents and nominees

from interfering with the management and operation of said corporations. Plaintiffs hinged their petition on the argument that since the PCGG had failed to institute the corresponding judicial action required under Article XVIII, Section 26, second paragraph of the 1987 Philippine Constitution,[2] the assailed writs of sequestration issued against them had long ceased to be effective.

The PCGG opposed the petition, arguing that the sequestration was in full force and effect, belying the plaintiff-corporations' contention that the PCGG had failed to file the mandated judicial action. On the contrary, the PCGG alleged, there was pending before the Sandiganbayan Civil Case No. 0009, filed on July 22, 1987 – well within the period allowed by the cited constitutional provision. One of the named defendants therein was Jose L. Africa, allegedly a stockholder with controlling interest in POTC and PHILCOMSAT. The plaintiff-corporations, however, were not named party-defendants in Civil Case No. 0009. Nevertheless, the PCGG contended that the filing of the case against Jose L. Africa, despite the fact that the plaintiff-corporations were not impleaded as party-defendants, satisfied the Constitutional provision requiring judicial action against these sequestered corporations.

On August 8, 1991, POTC and PHILCOMSAT filed a motion for summary judgment, submitting for resolution the sole issue of whether or not Civil Case No. 0009 pending before the Sandiganbayan is the judicial action contemplated and required under Section 26, Article XVIII of the 1987 Constitution, considering that said corporations were not impleaded as defendants in the said case.

The Sandiganbayan found for the plaintiffs POTC and PHILCOMSAT, ruling that the PCGG failed to institute any judicial action directly against the plaintiff-corporations. While Jose L. Africa was a stockholder of said corporations, the latter have a legal personality distinct and separate from their stockholders. Thus, a suit against any of their stockholders is not ipso facto a suit against the corporations themselves.

Consequently, the Sandiganbayan issued a Resolution in Civil Case No. 0114, promulgated on December 4, 1991, disposing as follows:

The writs of sequestration over the herein plaintiff-corporations were issued on March 14, 1986 and April 11, 1986, or before the ratification of the Constitution on February 2, 1987. The record does not show, however, that a judicial action has been filed against the plaintiff-corporations from the date of their sequestration up to August 2, 1987 or six months after the ratification of the Constitution. On the other hand, what appears in the record is the Certification of the Acting Clerk of Court of this Court, Atty. Luisabel Alfonso-Cortez, that no case has been filed against the plaintiff-corporations as of August 5, 1991 (Annex "A", Motion). (Underscoring ours)

It is our view, therefore, and We so hold that for the failure of defendant PCGG to file the corresponding judicial action against plaintiff-corporations, PHILCOMSAT and POTC, within the period mandated in Section 26 of Article XVIII of the 1987 Constitution, the writs of sequestration issued against them are deemed automatically lifted.

WHEREFORE, the Motion for Summary Judgment is hereby granted. As prayed for, summary judgment is hereby rendered as follows:

- 1) The sequestration of herein plaintiff-corporations, Philcomsat and POTC, is hereby declared lifted;
- 2) Defendant PCGG, its Commissioners, other officers, employees, agents, representatives, nominees and designees, are hereby ENJOINED from preventing disbursements by the plaintiff-corporations, and from doing any other act that would in any way interfere with, hinder or hamper the management and operation of plaintiff-corporations; and
- 3) Declaring as null and void all acts of sequestration against plaintiff-corporations as of August 2, 1987.

Without pronouncement as to costs.[3]

In the meantime, prior to the above-quoted Resolution of the Sandiganbayan, an “Urgent Motion to Intervene” in Civil Case No. 0114 and another “Urgent Motion to Permit Intervenor to Receive their Dividends from the POTC,” both dated October 30, 1991, were filed by Aerocom Investors and Managers, Inc. (AEROCOM) and Polygon Investors and Managers, Inc. (POLYGON). Intervenor AEROCOM and POLYGON alleged in their twin motions that they are the registered owners of 1,668 and 963 unencumbered shares of stock in POTC, respectively; that the POTC had declared the distribution of cash dividends of P7,700.00 per share on June 14, 1988 and P14,970.00 per share on October 1, 1989; and that the PCGG refused to countersign the checks issued by POTC covering the dividends in favor of AEROCOM and POLYGON. The intervenors further alleged that this belated objection of the PCGG is patently oppressive, more so after considering that: (1) the PCGG allowed the intervenors to receive their dividends in the previous years, particularly those distributed on March 4, June 3 and October 9, 1986, as well as on December 3, 1987; and (2) the PCGG had left to the discretion of the Sandiganbayan the matter of payment of the 1989 dividends.

The PCGG opposed the intervenors’ Motions stressing that the same should have been filed in Civil Case No. 009 and not in Civil Case No. 0114 since the issues raised in the said motions are the same as those involved in Civil Case No. 009.

On December 10, 1991, the Sandiganbayan issued the first assailed Resolution granting both motions of the intervenors, for the following reasons:

- (1) AEROCOM and POLYGON have an interest in the matter under litigation in Civil Case No. 0114, or in the success of either parties, being the registered owners of 1,668 and 963 shares of stock, respectively, in POTC;
- (2) The writ of sequestration over POTC had already been previously lifted in the Resolution promulgated on December 4, 1991;
- (3) The Motion for Intervention was seasonably filed before the Sandiganbayan rendered judgment in Civil Case No. 0114 by way of the Resolution aforementioned;
- (4) The intervenors’ shares of stock in POTC were never sequestered, thus they have a right to be paid their respective dividends for the years 1988 and 1989; and the PCGG has no authority to withhold the release thereof; and
- (5) Further delay would unduly deprive the intervenors AEROCOM and POLYGON of the dividends they are legally entitled to, and the PCGG’s stubborn refusal to have the funds released by the depository bank is unreasonably discriminating against the intervenors.

Consequently, the Sandiganbayan disposed, to wit:

WHEREFORE, premises considered, the “Urgent Motion to Intervene” and “Urgent Motion to Permit Intervenor to Receive their Dividends from the Philippine Overseas Telecommunications Corporation” filed by Aerocom Investors and Managers, Inc. and Polygon Investors and Managers, Inc. are hereby GRANTED.

Accordingly, this Court hereby directs the immediate payment to intervenors Aerocom and Polygon of their dividends from the Philippine Overseas Telecommunications Corporation on their 1,668 and 963 POTC shares, respectively. Said payment would cover dividends for the years 1988 and 1989 in the amount of P7,700 and P14,970 per share, respectively, together with the interests due thereon from their due dates up to the dates of actual payment. For this purpose, the Presidential Commission on Good Government (PCGG), its representatives or agents is hereby mandated to immediately lift any restriction on the issuance, release and/or payment to herein

movants-intervenors of any and all checks, vouchers, and the like appertaining to the aforesaid cash dividends. Furthermore, PCGG is ordered to report to this Court in writing, compliance with the foregoing directive, within fifteen (15) days from receipt hereof.

SO ORDERED.[4]

The PCGG filed a Motion for Reconsideration arguing that the filing of Civil Case No. 0009 seeking, among others, to recover the ill-gotten wealth of the beneficial owners of POTC, AEROCOM and POLYGON was, in effect, faithful compliance with the pertinent constitutional requirement. Although the said corporations were not impleaded as defendants therein, the Sandiganbayan should have allowed the PCGG to pierce the veil of corporate fiction of these corporations and to present evidence to prove that these dummy corporations were machinations by which the named defendants in Civil Case No. 0009, such as Jose L. Africa, acquired their ill-gotten wealth. Furthermore, the PCGG contended that the matter of who is rightfully entitled to the dividends declared by these corporations can only be resolved together with the issues pending before the Sandiganbayan in Civil Case No. 0009. Accordingly, the PCGG had the authority to withhold the release of the disputed dividends until final resolution of Civil Case No. 0009.

For their part, intervenors AEROCOM and POLYGON filed an Ex-Parte Motion for Clarification asking the Sandiganbayan to reaffirm the immediate effectivity of the Resolution dated December 10, 1991 and also to direct the Traders Royal Bank to honor and pay immediately the amounts stated in Check Nos. 382450 and 382451 without need of PCGG approval. The intervenors also moved to strike out PCGG's Motion for Reconsideration on the ground that it was filed out of time and, therefore, was merely pro forma and dilatory.

On January 27, 1992, the Sandiganbayan issued the second assailed Resolution denying both the PCGG's Motion for Reconsideration and the intervenors' clarificatory motion. The Sandiganbayan reaffirmed its earlier Resolution dated December 10, 1991, to wit:

At the outset, it bears repeating that the arguments presented by defendant PCGG in support of the subject motion have all been squarely met and disposed of by this Court in Our previous Resolutions. PCGG adamantly insists that the filing of Civil Case No. 0009 which is purportedly a suit against the so-called beneficial owners of POTC, Aerocom, and Polygon, is compliance with Sec. 26, Art. XVIII of the 1987 Constitution, thereby maintaining the efficacy of the writ of sequestration it issued against POTC. We cannot sustain such a view. These corporations, to wit: POTC, Aerocom and Polygon were never impleaded in such civil case. The fact that defendant PCGG raises the argument that the beneficial owners of these corporations were impleaded as parties-defendants in said case could only be interpreted as a tacit admission of its patent failure to file the corresponding judicial action against them pursuant to the constitutional mandate. As such, the writ of sequestration it issued over POTC should be deemed to have been automatically lifted. Moreover, to paraphrase the words of the Supreme Court in *Republic of the Philippines vs. Sandiganbayan, et al.* (August 12, 1991, G.R. No. 92376), whether or not the impleaded defendants in Civil Case No. 0009 are indeed the beneficial owners of POTC, Aerocom, and Polygon is a matter which defendant PCGG merely assumes and still has to prove in said case. All told, defendant PCGG fails to convince Us that the automatic lifting of the writ of sequestration over POTC is not founded on solid factual and legal grounds.

With respect to the propriety of applying the doctrine of piercing the veil of corporate identity, We reiterate Our earlier holding that the application of said principle would only come into play once the Court has already acquired jurisdiction over the corporation. Since this Court has not acquired jurisdiction over POTC in Civil Case No. 0009, precisely because it was not impleaded therein as a party defendant, said contention cannot be upheld.

Finally, defendant PCGG alleges that the motion filed by intervenors Aerocom and Polygon should have been

treated as an incident in Civil Case No. 0009. We do not think so. By reason of the fact that POTC is not even a party in Civil Case No. 0009, herein intervenors do not have any interest in the subject matter of litigation therein as required by Sec. 2, Rule 12 of the Revised Rules of Court. Contrast this with the situation in the present case wherein intervenors Aerocom and Polygon are shareholders of plaintiff POTC and as such, have sufficient interest to intervene, as in fact said intervention has been allowed by this Court in the Resolution sought to be reconsidered. Suffice it to state that the propriety of Aerocom and Polygon's intervention in the above-entitled case has not been successfully challenged.

WHEREFORE, for the aforestated reasons, the "Urgent Motion (a) to strike out Motion for Reconsideration for being filed out of time; pro-forma and purely dilatory of frivolous, (b) for Immediate Execution of the December 10, 1991 Resolution" filed by intervenors Aerocom Investors and Managers, Inc. and Polygon Investors and Managers, Inc. is hereby DENIED for lack of merit.

On the other hand, the "Motion for Reconsideration" filed by defendant Presidential Commission on Good Government (PCGG) is likewise hereby DENIED for lack of merit. Accordingly, the Resolution of this Court dated December 10, 1991 is affirmed.

SO ORDERED.[5]

On January 29, 1992, the Sandiganbayan issued the third assailed Resolution, to wit:

Acting on the "Ex-Parte Motion for Clarification" filed by intervenors Aerocom Managers and Investors, Inc. and Polygon Managers and Investors, Inc. on December 16, 1991 and considering our Resolutions of December 10, 1991 and January 27, 1992, We find the same to be impressed with merit. Accordingly, Traders Royal Bank is hereby directed to immediately honor and pay Check Nos. 382450 and 382451 issued by Philippine Overseas Telecommunications Corporation (POTC) in favor of Aerocom Managers and Investors, Inc. and Polygon Managers and Investors, Inc., representing dividend payments to the latter for the years 1988 and 1989, as previously indicated in the aforementioned Resolution of December 10, 1991.

SO ORDERED.[6]

Hence, the instant petition for ifiled by the PCGG assailing the three (3) Sandiganbayan Resolutions, ascribing to the said court grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the same, contending that these Resolutions are not only conflicting, but also without basis. The PCGG further stressed that the implementation of these Resolutions will dissipate beyond retrieval ill-gotten wealth which the State, through the PCGG, has been trying to recover from the Marcos family, their cronies, dummies, relatives and other nominees. In this particular instance, the amount involved is not a measly sum as the State stands to lose a total of P59,644,770.00.

On the first Resolution dated December 10, 1991, the PCGG claims that the same was issued with grave abuse of discretion because the Sandiganbayan granted the Motion to Intervene as well as the relief sought by the intervenors even before they could file their complaint-in-intervention, thus depriving the PCGG opportunity to file its answer thereto.

We do not agree. The intervenors' "Urgent Motion to Intervene" was not for the purpose of filing a complaint against any of the principal parties in Civil Case No. 0114, but only to ask the Sandiganbayan for leave to file the "Urgent Motion to Permit the Intervenors to Receive their Dividends from POTC," while the main case was pending. By the time the Sandiganbayan resolved the intervenors' Motions, it had already rendered judgment declaring the writ of sequestration lifted and of no effect. Thus, there was no more obstacle to the intervenors'

receipt of the dividends from POTC. Intervenor AEROCOM and POLYGON had no cause or intention to file a complaint-in-intervention so there was no need or reason for the PCGG to answer.

Be that as it may, the PCGG was not totally deprived of the opportunity to oppose the intervenors' Motions. The records reveal that the Motions were filed on October 30, 1991 and a hearing thereof was held on November 4, 1991. The PCGG failed to appear at the scheduled hearing, prompting a certain Atty. Gregorio Ejercito, Jr. to enter a special appearance and to request that the PCGG be given five (5) days within which to file its opposition to the intervenors' Motions. Accordingly, the Sandiganbayan issued an Order granting the PCGG five (5) days, or until November 9, 1991 to file its opposition.[7] And yet, it took the PCGG eighteen (18) more days after the lapse of the five-day period granted by the Sandiganbayan to file a motion for leave to admit its opposition to the intervenors' Motions.[8]

If the PCGG now feels that it was denied its day in court, it has only itself to blame. Not only did the PCGG fail to appear during the scheduled hearing, but its opposition to the intervenors' Motions was also filed way beyond the period given by the Sandiganbayan. Be that as it may, the Sandiganbayan was lenient enough to admit the belated opposition.

Contrary to what the PCGG would like this Court to believe, the PCGG was given ample time and opportunity to oppose the intervenors' Motions. Thus, the Sandiganbayan issued the first assailed Resolution on December 10, 1991 granting both Motions, only after both parties have been heard, hence, no grave abuse of discretion amounting to lack or excess of jurisdiction was committed by the Sandiganbayan.[9]

The second assailed Resolution dated January 27, 1992, denied the PCGG's Motion for Reconsideration of the Resolution dated December 10, 1991.

We find the denial of the PCGG's Motion for Reconsideration proper and well-supported by the facts. The only issue raised in the Motions filed by the intervenors was whether or not AEROCOM and POLYGON are entitled to the dividends declared for distribution by the POTC. A review of the pleadings as well as the documentary evidence would readily show that, indeed, the intervenors are entitled thereto.

There is no doubt that AEROCOM and POLYGON are registered owners of shares of stock of POTC and as such, they received the dividends declared in 1986 and 1987 without objection from the PCGG. The records also reveal that they have never been sequestered nor have there been any case filed against them by the PCGG. POTC was not impleaded as a party-defendant in Civil Case No. 0009 and the writ of sequestration over the said corporation had long been lifted by the Sandiganbayan. There is nothing, therefore, that disqualifies or prevents the intervenors from receiving the questioned dividends.

In fact, the PCGG subsequently did not raise any objection to the distribution of dividends in the succeeding years. In a letter dated January 16, 1992 addressed to the POTC, the then PCGG Chairman, David Castro, wrote:

"As it was in the case of dividend payments out of the dividend declaration of September 28, 1989, we are leaving to the discretion of the Court (Sandiganbayan) the matter of the release of dividend checks for cash dividends declared last November 15, 1991." [10] (Underscoring ours)

Such being the case, there is no reason for the PCGG now to oppose the release of the 1988 and 1989 declared dividends to the intervenor-corporations. The PCGG's selective opposition is not only discriminatory because all the other stockholders have received their dividends, but it is also oppressive because, after all, the PCGG had already submitted to the discretion of the Sandiganbayan the release of the dividend checks. Clearly, the issue of the questioned dividends has become moot and academic and the PCGG is estopped from asserting the authority to withhold the release of dividends to POTC stockholders, the intervenors included.

Finally, on the third assailed Resolution dated January 29, 1992, this Court finds no error in the Sandiganbayan's directive to the Trader's Royal Bank to immediately honor and pay Check Nos. 382450 and 382451 issued by the POTC in favor of the intervenor-corporations.

The records show that since the promulgation of the said Resolution on December 10, 1991, fifty (50) days had elapsed before the Sandiganbayan implemented said Resolution and it was only on January 30, 1992 when the intervenor-corporations deposited the said checks. Hence, there was no grave abuse of discretion on the part of the Sandiganbayan when it issued the third assailed Resolution directing the Traders Royal Bank to honor and pay the subject dividend checks in favor of the intervenor-corporations.

WHEREFORE, in view of all the foregoing, the instant petition is hereby DISMISSED for lack of merit.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur.

Panganiban, J., no part being a former counsel of a party.

De Leon, Jr., J., no part.

[1] Rollo, p. 69.

[2] A sequestration or freeze order shall be issued only upon showing of a prima facie case. The order and the list of the sequestration or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceedings shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.

[3] Rollo, pp. 66-68; Associate Justice Sabino R. de Leon, Jr., ponente; Associate Justices Conrado M. Molina and Augusto M. Amores, concurring.

[4] Rollo, pp. 20-21; Justice Augusto M. Amores, ponente; Justices Conrado M. Molina and Sabino R. de Leon, Jr., concurring.

[5] Rollo, pp. 26-28.

[6] Rollo, p. 29.

[7] Order dated November 4, 1991; Records, p. 190.

[8] PCGG's Opposition to Motion for Intervention; Records, p. 205.

[9] *Cuision v. CA*, 289 SCRA 159 (1998); *Esguerra v. CA*, 267 SCRA 380 (1997).

[10] Rollo, p. 54.

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