

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HONORABLE SANDIGANBAYAN, VICTOR AFRICA, LOURDES AFRICA, NATHALIE AFRICA, JOSE ENRIQUE AFRICA, PAUL DELFIN AFRICA, ROSARIO ARELLANO, ...**

*G.R. No. 106244. January 22, 1997*

Ponente: BELLOSILLO, J.

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**BELLOSILLO, J.:**

GOVERNMENT calls upon us to issue a writ of certiorari declaring null and void the 26 November 1991 and 20 May 1992 Resolutions of respondent Sandiganbayan which granted the Motion for Declaration of Non-Sequestration or Invalidity of Sequestration over the shares of stock of private respondents Messrs. Victor Africa, et al., in Eastern Telecommunications Philippines, Inc. (ETPI), and which subsequently denied reconsideration thereof thereby lifting the writ of sequestration over the subject shares.

These facts are not disputed: On 22 July 1987 the Republic of the Philippines through the Presidential Commission on Good Government (PCGG) and the Office of the Solicitor General filed before respondent Sandiganbayan a complaint for reconveyance, reversion, accounting, restitution and damages against Messrs. Jose L. Africa, Manuel H. Nieto, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Roberto S. Benedicto, Juan Ponce Enrile and Potenciano Ilusorio before the Sandiganbayan. The complaint, docketed as Civil Case No. 0009, alleged that defendants illegally manipulated, under the guise of expanding the operations of Philippine Communications Satellite Corporation (PHILCOMSAT), the purchase of major shareholdings of Cable and Wireless Limited, a London-based telecommunications company, in ETPI which shareholdings defendants Roberto S. Benedicto, Jose L. Africa and Manuel H. Nieto Jr., by themselves and through corporations organized by them, namely, Polygon Investors and Managers, Inc., Aerocom Investors and Managers, Inc., and Universal Molasses Corporation, beneficially held for themselves and for defendants Ferdinand E. Marcos and Imelda R. Marcos. [2]

Private respondents Victor Africa, Lourdes Africa, Nathalie Africa, Jose Enrique Africa, Paul Delfin Africa, Rosario Arellano, Racquel Dinglasan, Victoria N. Legarda, Angela N. Lobregat, Manuel V. Nieto, Ramon Nieto, Benito Nieto, Carlos Nieto, Ma. Rita N. Delos Reyes, Evelyn Romero, Rosario Songco, Carmen N. Tuazon and Rafael V. Valdez, who are registered stockholders of ETPI, were not impleaded in Civil Case No. 0009. Nonetheless, they were denied the dividends appertaining to their shares. Thus on at least two (2) different occasions, i.e., on 8 November 1988 and 31 January 1991, they had to file motions for leave of court to intervene in Civil Case No. 0009 to be able to receive their cash dividends, which motions were both granted.[3] On 4 October 1991 they filed a Motion for Declaration of Non-Sequestration or Invalidity of Sequestration.

Private respondents anchor their Motion for Declaration of Non-Sequestration or Invalidity of Sequestration on the absence of a valid sequestration over their shares of stock, and on the automatic lifting of the writ of sequestration, granting that their shares were validly sequestered, pursuant to the second and third paragraphs of

Sec. 26, Art. XVIII, 1987 Constitution, which provide —

A sequestration or freeze order shall be issued only upon showing of a prima facie case. The order and the list of the sequestered 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 proceeding shall be filed within six months from the issuance thereof.

The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided.

In a Resolution dated 26 November 1991, the Sandiganbayan granted the Motion for Declaration of Non-Sequestration or Invalidity of Sequestration filed by private respondents on the ground that since no judicial proceeding was ever commenced against them within the constitutionally-mandated six-month period, the writ of sequestration issued over their shares of stock is deemed to have been automatically lifted. In a Resolution dated 20 May 1992, which was promulgated 8 June 1992, the motion for reconsideration was denied for lack of merit.

The Government through the PCGG is now before us on certiorari claiming grave abuse of discretion amounting to lack or in excess of jurisdiction on the part of respondent Sandiganbayan in granting private respondents' Motion for Declaration of Non-Sequestration or Invalidity of Sequestration. In the main, the Government submits that "although private respondents have neither been formally impleaded as parties nor have duly been served with summons in Civil Case No. 0009, there being a finding that the subject shares were being held merely on behalf of the already impleaded defendants in Civil Case No. 0009, there is no doubt that there is a judicial action involving private respondents." [4] We are not persuaded.

It is elementary that before a person can be deprived of his right or property he should first be informed of the claim against him and the theory on which such claim is premised. He should be given an opportunity to defend himself and protect his interest. Impleading him as a defendant in a complaint is just too basic to be disregarded. For, how can he be expected to be informed of such claim, defend himself against it, protect his interest and prepare for trial if he is not even impleaded as a defendant in a case involving his right or property?

In the instant case, private respondents have in the past years been deprived of their dividends which have now accrued and accumulated, without affording them an opportunity to protect and defend their interests. Their shares of stock in ETPI have been challenged by the Government without the latter instituting an action to recover the same, and only on the mere allegation in a collateral proceeding, belatedly made, that they are also part of ill-gotten wealth. The Government is thus seeking to recover the shares of stock of private respondents through an action where the named defendants are different from private respondents herein.

The procedure is highly irregular and seriously flawed. If the Government is really interested in claiming the shares of stock of private respondents the proper procedure is to implead them in a complaint for the recovery of those shares. Unfortunately, it has allowed the period to lapse without impleading them. If the defendants in Civil Case No. 0009, who have been particularly identified as having manipulated the transfer of shares of stock in ETPI to their names allegedly under unconscionable terms and conditions, were impleaded to be able to defend themselves and their interests, with more reason should private respondents herein, who have not even been shown to have participated in the illicit transactions, be impleaded and given a chance to be heard. For, the sanctified principle that no person shall be deprived of life, liberty or property without due process of law requires that at the outset a person should first be named and included in a suit before his very existence is disregarded and his freedom and property taken away from him. Actions must be brought against the persons who are to be bound by the judgment obtained therein. [5]

We are not unaware of the various PCGG sequestration cases decided by this Court on 23 January 1995 where it

was held that "corporations or business enterprises alleged to be repositories of 'ill-gotten' wealth (need not) be actually and formally impleaded in the actions for the recovery thereof, in order to maintain in effect existing sequestration thereof." [6] But those cases should be distinguished from the instant case. In those 21 cases the companies as well as properties which former President and Mrs. Ferdinand Marcos, their relatives, friends and business associates allegedly used as depositaries or as instruments to illegally amass wealth, or which supposedly constituted fruits of ill-gotten wealth, were sequestered. Complaints were thereafter filed by the PCGG against individual persons believed to be the owners or holders of the shares of stock of the aforesaid companies. The companies were not themselves impleaded as defendants but merely enumerated in lists annexed to the complaints against the named individuals.

The defendants therein banked on the omissions and sought the lifting of the orders of sequestration on the ground that no proper judicial action had been filed within the time and in the manner required by the Constitution against the corporations with which they were associated. They argued that upon the expiration of the reglementary period the sequestration of the corporations should be deemed automatically lifted. Under the facts especially attendant in those cases we said it should not be so. There we held that the Constitution did not describe nor specify the kind and character of the judicial action or proceeding to be instituted but only required that the action or proceeding involved the matter of sequestration, freezing or provisional takeover of specific properties, having for its object the demonstration by competent evidence that the property sequestered, frozen or taken over was indeed "ill-gotten wealth" over which the government had a legitimate claim for recovery and other reliefs. The supposed omission was rationalized thus —

A. Error Immaterial to Requirement to File Actions or Proceedings within Constitutional Time Limits —

Such a procedural defect, however, conceding its existence for the nonce, does not contradict or adversely affect the actuality that judicial actions or proceedings had been brought within the time limits laid down by the Constitution " for" them, i.e., with regard or in relation to, in connection with, or involving or concerning the sequestration or seizure by the PCGG of the assets or properties in question.

Other considerations bearing upon the matter should also be taken into account.

B. Impleading Unnecessary in Cases for Recovery of Shares of Stock or Bank Deposits —

As regards actions in which the complaints seek recovery of defendants' shares of stock in existing corporations (e.g., San Miguel Corporation, Benguet Corporation, Meralco, etc.) because (they were) allegedly purchased with misappropriated public funds, in breach of fiduciary duty, or otherwise illicit or anomalous conditions, the impleading of said firms would clearly appear to be unnecessary. If warranted by the evidence, judgments may be handed down against the corresponding defendants divesting them of ownership of their stock, the acquisition thereof being illegal and consequently burdened with a constructive trust, and imposing on them the obligation of surrendering them to the Government.

Quite the same thing may be said of illegally obtained funds deposited in banks. The impleading of the banks would also appear unnecessary. Indeed, there would exist no cause of action against them. Judgment may properly be rendered on the basis of competent evidence, that said funds are ill-gotten wealth over which the defendants have no right, and should consequently be surrendered to their rightful owner, the Government. The judgment would constitute sufficient warrant for the bank to make the corresponding transfer of the funds.

C. Impleading Unnecessary Re Firms Which Are the Res of the Actions —

And as to corporations organized with ill-gotten wealth, but are not guilty of misappropriation, fraud or other illicit conduct — in other words, the companies themselves are the object or thing involved in the action, the res thereof — there is no need to implead them either. Indeed, their impleading is not proper on the strength alone of having been formed with ill-gotten funds, absent any other particular wrongdoing on their part. The

judgment may simply be directed against the shares of stock shown to have been issued in consideration of ill-gotten wealth.

Such showing of having been formed with, or having received ill-gotten funds, however strong or convincing, does not, without more, warrant identifying the corporations in question with the persons who formed or made use of them to give the color or appearance of lawful, innocent acquisition to illegally amassed wealth — at the least, not so as (to) place on the Government the onus of impleading the former together with the latter in actions to recover such wealth. Distinguished, in terms of juridical personality and legal culpability from their erring members or stockholders, said corporations are not themselves guilty of the sins of the latter, of the embezzlement, asportation, etc., that gave rise to the Government's cause of action for recovery; their creation or organization was merely the result of their members' (or stockholders') manipulations and maneuvers to conceal the illegal origins of the assets or monies invested therein. In this light, they are simply the res in the actions for the recovery of illegally acquired wealth, and there is, in principle, no cause of action against them and no ground to implead them as defendants in said actions.

The Government is, thus, not to be faulted for not making such corporations defendants in the actions referred to. It is even conceivable that had this been attempted, motions to dismiss would have lain to frustrate such attempts.[7]

Private respondents in the instant case, as already stated, are not even sued nor impleaded as defendants in Civil Case No. 0009 before public respondent Sandiganbayan. Neither are they mentioned in the complaint of the Government. Their names only surfaced when they were forced to intervene in the case since all the cash dividends declared by the Board of Directors of ETPI were being turned over to the PCGG including the cash dividends due them. Thus, each time a cash dividend was declared they had to file a motion to intervene in Civil Case No. 0009 to be able to petition respondent court to order the PCGG to release to them their respective dividends. Accordingly, private respondents had to file in Civil Case No. 0009 a Motion for Declaration of Non-Sequestration or Invalidity of Sequestration, which respondent court granted.

Clearly, there is a material variance between the factual circumstances in the 21 sequestration cases on one hand, and those in the instant case on the other. In the former, court actions were instituted against natural persons suspected to be "dummies" whose shares of stock in different corporations the Government has been trying to recover. In the case before us, no court action has ever been instituted against private respondents. In the former, the corporations which were supposedly used as depositories or as instruments to illegally amass wealth, or which allegedly constituted fruits of ill-gotten wealth, were named in lists annexed to the complaints filed against the natural persons who were suspected of being dummies. In the latter case, there was not even a mention of private respondents' names in the complaints filed by the Government. In the former, the Government was actually after the shares of stock of the defendant-stockholders of the corporations who supposedly misappropriated public funds or who entered into illicit or anomalous transactions prejudicial to the government, not the corporations themselves. Thus it was held that the omission to implead the corporations was not fatal. In the latter, it appears that the Government is after the shares of stock in the name of private respondents. Consequently, the failure to implead them is a serious procedural flaw. Indeed, the firms in the various PCGG sequestration cases and private respondents in the present case stand on different grounds.

Thus, since only Jose L. Africa, Manuel H. Nieto Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos Jr., Roberto S. Benedicto, Juan Ponce Enrile, and Potenciano Ilusorio were impleaded as defendants in Civil Case No. 0009 while private respondents were not, only the shares of stock registered in the names of defendants should be in issue. Those registered in the names of others, e.g., those of private respondents, should be spared unless it can be shown in a proper proceeding that they are likewise ill-gotten wealth or fruits of ill-gotten wealth. In this regard, if only to uphold the rule of law, the minimum requirement is to implead the

registered owners of those shares in a formal complaint to recover them.

In the same sequestration cases, we also ruled that for lack of proof, even of the specie prima facie, the writ of sequestration should be lifted —

This Court is not unmindful of the fact that its Resolution of July 26, 1991, on the petitioner's motion for reconsideration in G.R. No. 92755 (PCGG v. Interco) appears to sustain the proposition that actual impleading in the recovery action of a corporation under sequestration for being a repository of illegally-acquired wealth, is necessary and requisite for such proposed or pending seizure to come under the protective umbrella of the Constitution. But Interco is to be differentiated from the cases now under review in that the former, as already elsewhere herein made clear, there was a lack of proof, even of the prima facie kind, that Eduardo Cojuangco, Jr., owned any stock in Interco, the evidence on record being in fact that said corporation had been organized as a family corporation of the Luys.

So too, this Court's judgment in the so-called "PJI Case" (Republic of the Philippines [PCGG] v. Sandiganbayan and Rosario Olivares) may not be regarded as on all fours with the cases under consideration. The PJI Case involved the shares of stock in the name of eight (8) natural persons which had never been sequestered at all.

What happened was that the PCGG simply arrogated unto itself the right to vote those unsequestered shares on the bare claim that the eight (8) registered owners thereof were "dummies" of Benjamin Romualdez, the real owner of the shares; and all that the PCGG had done as predicate for that act of appropriation of the stock, was to include all the shares of PJI in a list (Annex A) appended to its complaint in Sandiganbayan Case No. 0035, describing them as among the properties illegally acquired by Romualdez. Unfortunately, as in Interco, the PCGG failed to substantiate by competent evidence its theory of clandestine ownership of Romualdez; and since moreover, there had been no sequestration of the alleged dummies' shares of stock, it was undoubtedly correct for the Sandiganbayan to grant the latter's motion for them to be recognized and declared as the true owners of the stock in question, which judgment this Court absolutely pronounced to be free from grave abuse of discretion.[8]

The Solicitor General explained the Interco ruling in the instant petition,[9] as well as in eight (8)[10] out of the twenty-one (21) petitions this Court resolved on 23 January 1995 thuswise —

The reason for the correctness of the (Interco) exception is obviously the doctrine of "piercing the veil of corporate fiction." Stated simply, this doctrine states that in an action against a person, whether natural or a corporation, that wholly owns or controls another corporation and uses this wholly owned or controlled corporation to evade his or its obligation or liability x x x x to hide the ill-gotten wealth of any or all of the persons impleaded therein, a judgment against any or all of the impleaded defendants may be enforced against any or all of the said corporations even if these corporations have not been formally impleaded as defendants in the case.

But even if we disregard the corporate fiction of ETPI, still private respondents cannot be divested of their shares of stock unless in a proper forum they have been shown to have committed some wrongdoing in acquiring them. A corporation is a collection of individuals and the idea of its being a legal entity apart from its members is a mere fiction of, law introduced for convenience in conducting business. When this fiction is used to justify wrong, protect fraud, or defend crime, the law will disregard the existence of the corporation as a distinct legal entity and view the latter merely as an association of persons. Accordingly, the equitable owners of the corporation shall be personally liable and the acts of the real parties will be dealt with as though no corporation had been formed. In the instant case, only the named defendants in Civil Case No. 0009 are being accused of wrongdoing in acquiring their shares of stock in ETPI. Thus only their identified shares of stock in ETPI should be subject to the claims of the Government.

On the other hand, private respondents who were not charged nor impleaded as defendants are innocent until found guilty by a court of competent jurisdiction. They should be spared until found liable. Consequently, even if the corporate veil of ETPI is pierced, they can never be divested of their shares of stock until shown to have engaged in illicit activities in acquiring those shares. At the very least, they have to be impleaded in a complaint for recovery thereof. For, how can their shares of stock be considered ill-gotten and consequently the writ of sequestration of the said shares upheld when not a single case has been filed against private respondents for the purpose? How can the supposed prima facie case determined by the PCGG to be existing be substantiated? To deny them their right to such shares on the much belated allegation — and merely on the basis thereof — that they fronted for former President and Mrs. Ferdinand Marcos and their cronies would simply be to unduly perpetuate the assault on the rudimentary rules of fair play.

In *Republic v. Sandiganbayan*[11] we said that "[w]e need only to recall at this juncture that, as in '*INTERCO*,' evidence of the PCGG is nil to even come up with a prima facie case against *SIPALAY* (and *ALLIED*). This similitude is the decisive factor that draws the instant case away from the '*Final Dispositions*' made by this Court in the 1995 *Republic v. Sandiganbayan* case, thus making *INTERCO*, as supported by the *Aetna* and *Seno* cases, the controlling precedent." [12] In the case at hand, how can the PCGG establish its supposed prima facie finding against private respondents when it has not even filed a case against them?

The Concurring Opinion with Qualifications of Mme. Justice Melencio-Herrera in *Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government*[13] cannot escape our thoughts —

I consider it imperative that sequestration measures be buttressed by judicial proceedings the soonest possible in order to settle the matter of ownership of sequestered shares and to determine whether or not they are legally owned by the stockholders of record or are "ill-gotten wealth" subject to forfeiture in favor of the State. Sequestration alone, being actually an ancillary remedy to a principal action, should not be made the basis for the exercise of acts of dominion for an indefinite period of time.

Sequestration is an extraordinary, harsh, and even severe remedy. It should be confined to its lawful parameters and exercised, with due regard, in the words of its enabling laws, to the requirements of fairness, due process, and Justice.

Also worth mentioning is the Dissent in those oft-repeated PCGG sequestration cases where in strong and eloquent language it was said —

While government efforts to recover illegally amassed wealth should have the support from all its branches, eagerness and zeal should not be allowed to run berserk, overriding in the process the very principles that it is sworn to uphold. In our legal system, the ends do not justify the means. Wrongs are never corrected by committing other wrongs, and as above discussed, the recovery of ill-gotten wealth does not and should never justify unreasonable intrusions into constitutionally forbidden grounds.[14]

As we held in *Republic v. Sandiganbayan*, [15] sequestration, etc., in order to be valid must have factual basis and must accord due process to the parties thereby affected — that said remedies are not meant to create a permanent situation as regards the property subject thereof, or divest ownership or rights, that they are in fact merely provisional and temporary and subsist only until ownership is finally judicially determined.

Thus, we add, sequestration — if it is to adhere to constitutional due process — cannot be allowed to hang interminably and forever!

WHEREFORE, premises considered, the instant petition for certiorari is **DISMISSED**.  
**SO ORDERED**.

Padilla, (Chairman), and Kapunan, JJ., concur.

Vitug, J., see dissenting opinion.

Hermosisima, Jr., J., took no part being a signatory to resolution appealed from.

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[1] Originally a Dissenting Opinion.

[2] Reply, p. 10.

[3] Amended Motion for leave of Court to Enter a Special Intervention so as to Receive their Cash Dividende dated 8 November 1988, Rollo, pp. 230-236; Formal Motion for Leave to Intervene dated 28 December 1990, Rollo, pp. 241-245.

[4] Petition, p. 9; Rollo, p. 33.

[5] *Salmon v. Tan Cuelco*, 36 Phil. 556 (1917).

[6] *Republic v. Sandiganbayan* (Maria Clara Lobregat, et al.), G.R. No. 96073; *Republic v. Sandiganbayan* (Phillipine Village Hotel, Inc.), G.R. No. 104065; *Republic v. Sandiganbayan* (Marsteel Consolidated, Inc., et al.), G.R. No. 104167; *Republic v. Sandiganbayan* (Silahis International Hotel, Inc., et al.), G.R. No. 104168; *Republic v. Sandiganbayan* (Marcelo Fiberglass Corp.), G.R. No. 104679; *Presidential Commission on Good Government v. Sandiganbayan* (Agricultural Consultancy Services, Inc., et al.), G.R. No. 104850; *Presidential Commission on Good Government v. Sandiganbayan* (Polygon Investors and Managers, Inc.), G.R. No. 104883; *Republic v. Sandiganbayan* (Fe Roa Gimenez, et al.), G.R. No. 105170; *Republic v. Sandiganbayan* (Ternate Development Corp., et al.), G.R. No. 105205; *Republic v. Sandiganbayan* (Rodolfo Cuenca, et al.), G.R. No. 105206; *Presidential Commission on Good Government v. Traders' Holdings & Marketing, Inc., et al.*, G.R. Nos. 105711-12; *Presidential Commission on Good Government v. Sandiganbayan* (Trans Middle East [Phils.] Equities; Inc.), G.R. No. 105808; *Presidential Commission on Good Government v. Sandiganbayan* (Palm Avenue Realty & Development Corp., et al.), G.R. No. 105809; *Presidential Commission on Good Government v. Sandiganbayan* (Philippine Communications Satellite Corp., et al.), G.R. No. 105850; *Republic v. Sandiganbayan* (Hi-Tri Development Corp., et al.), G.R. No. 106716; *Presidential Commission on Good Government v. Sandiganbayan* (Kalawakan resorts, et al.), G.R. No. 106765; *Republic v. Sandiganbayan* (Luis Yulo, et al.), G.R. No. 107233; *Rebecca E. Panlilio, et al v. Sandiganbayan*, G.R. No. 107908; *Republic v. Sandiganbayan* (Peter A. Sadibo, et al.), G.R. No. 109314; *Trans Middle East [Phils.] Equities v. Board of Directors of Philippine Commercial International Bank, et al.*, G.R. No. 109592, 240 SCRA 376, 474.

[7] *Id.*, pp. 468-470.

[8] *Id.*, pp. 473-474.

[9] Petition, pp. 12-13; Rollo, pp. 36-37.

[10] *Republic v. Sandiganbayan*, (Marsteel Corp., et al.), G.R. No. 104167; *Republic v. Sandiganbayan* (Marcelo Fiber Glass Corp.), G.R. No. 104679; *Presidential Commission on Good Government v. Sandiganbayan* (Polygon Investors and Managers, Inc.), G.R. No. 104883; *Republic v. Sandiganbayan* (Fe Roa Gimenez, et al.), G.R. No. 105170; *Republic v. Sandiganbayan* (Rodolfo Cuenca, et al.), G.R. No. 105206; *Trader's Holdings & Marketing, Inc. v. Presidential Commission on Good Government. Et al.*, G.R. Nos. 105711-12; *Presidential Commission on Good Government v. Sandiganbayan* (Philippine Communications Satellite Corp., et al.), G.R. No. 105850; and *Republic v. Sandiganbayan* (Luis Yulo, et al.), G.R. No. 107233.

[11] G.R. Nos. 112708-09, 29 March 1996.

[12] Id., p. 55.

[13] G.R. No. 75885, 27 May 1987, 150 SCRA 181, 253.

[14] See Dissenting Opinion of Mr. Justice Teodoro Padilla, Note 6, p. 481.

[15] G.R. No. 89425, 25 February 1992, 206 SCRA 506, 518.

### **CONCURRING OPINION**

#### **PADILLA, J.:**

I concur, for the reasons stated in my dissenting opinion in *Republic of the Philippines v. Sandiganbayan, et al.* G R. No 96073, 23 January 1995, 240 SCRA 476.

It is my view that in all actions for recovery of so-called illegally acquired wealth during the Marcos era, all persons, whether natural or juridical, who stand to lose in favor of the government under a judgment in such actions should be impleaded as defendants to afford them an opportunity to be heard and defend themselves in the action. Consequently, where shares of stock in a corporation, registered in the name of a particular stockholder or stockholders have been sequestered by the PCGG but no judicial action or proceeding has been initiated by the government against the stockholder or stockholders of record, within the period prescribed by Sec 26, Article XVIII of the Constitution, then the sequestration of the subject shares of stock is deemed automatically lifted by operation of the Constitution.

### **DISSENTING OPINION**

#### **VITUG, J.:**

The real point of controversy is whether or not respondent Sandiganbayan gravely abused its discretion in declaring the orders/writ of sequestration issued by the PCGG over the ETPI shares of private respondents to have been AUTOMATICALLY LIFTED due to PCGG's failure to file the corresponding judicial action against them within the period prescribed by Section 26, Article XVIII, of the Constitution.

In the various PCGG sequestration cases, promulgated on 23 January 1995,[1] this Court has responded in the affirmative to the crucial question of whether or not the inclusion in the complaints filed by the PCGG before the Sandiganbayan of specific allegations of corporations being "dummies" or under the control of the defendants named therein and used as instruments for acquisitional or as being depositaries, of ill-gotten wealth, or the annexing to said complaints of a list of said firms, but without actually so impleading them as defendants, would satisfy the constitutional requirement. This Court has said that there is no particular description or specification of the kind and character of the judicial action or proceeding contemplated, let alone an explicit requirement of the impleading of the corporations sequestered, or of the ostensible owners of property suspected to be ill-gotten. The only modifying or qualifying requirement in the constitution is held to be that the action or proceeding should be filed with regard or in relation to, in respect of, or in connection with, or concerning orders of sequestration.

The majority view would stress that there is a material difference between the factual circumstances, on the one hand; in the 21 sequestration cases[2] and, on the other hand, in the case at bench. The majority points out that in the PCGG sequestration cases, judicial actions have been initiated against individuals suspected to be "dummies" whose shares of stock in various corporations the Government has sought to recover, while in the instant case, no such judicial action is claimed to have been instituted against private respondents.

I, most regretfully, find myself unable to join my respected colleagues in giving too much significance to the

supposed factual variance. I fail to see why there should be one rule for corporate entities and a contrary rule for the individual stockholders. There is here, in any case, Civil Case No. 0009 of the Sandiganbayan in which herein private respondents have intervened[3] and whose interventions have been allowed. Civil Case No. 0009, instituted by the Republic, is for the reversion, reconveyance and accounting of all ill-gotten ETPI shares. ETPI is included in the list (of firms owning ill-gotten shares) appended to the complaint in the civil case in which corporation private respondents are said to be holding ETPI shares on behalf of the named defendants in Civil Case No. 0009 namely Jose Africa, Manuel Nieto, Jr., Roberto Benedicto, Ferdinand Marcos, et al. The intervention has resulted in bringing private respondents into the court action and having thus submitted themselves to the jurisdiction of the court, they must now lay their claims before that court for adjudication and determination[4] Most importantly, the omission to initially implead private respondents in the complaint should be treated as a technical, not a fatal, defect that is correctable under applicable adjective rules. Thus, in Its 23rd January 1995 decision in the PCGG sequestration cases, the Court has ruled:

"Even in those cases where it might reasonably be argued that the failure of the Government to implead the sequestered corporations as defendants is indeed a procedural aberration, as where said firms were allegedly used, and actively cooperated with the defendants, as instruments or conduits for conversion of public funds or property or illicit or fraudulent obtention of favored Government contracts, etc., slight reflection would nevertheless lead to the conclusion that the defect is not fatal, but one correctable under applicable adjective rules — e.g., Section 10, Rule 5 of the Rules of Court [specifying the remedy of amendment during trial to authorize or to conform to the evidence]; Section 1, Rule 20 [governing amendments before trial], in relation to the rule respecting the omission of so-called necessary or indispensable parties, set out — in Section 11, Rule 3 of the Rules of Court. It is relevant in this context to advert to the old familiar doctrines that the omission to implead such parties 'is a mere technical defect which can be cured at any stage of the proceedings even after judgment'; and that, particularly in the case of indispensable parties, since their presence and participation is essential to the very life of the action, for without them no judgment may be rendered, amendments of the complaint in order to implead them should be freely allowed, even on appeal, in fact even after rendition of judgment by this Court, where it appears that the complaint otherwise indicates their identity and character as such indispensable parties." [5]

Verily, the PCGG should be given an opportunity to adduce its evidence to show, among other things, that it has a prima facie determination for its sequestration order and that it can provide sufficient factual basis for the continued sequestration of ETPI shares held by private respondents. The Sandiganbayan may, in time, be called upon to adjudicate the claims of all contending parties. While the above matters and, eventually, the issue of ownership over the sequestered shares remain unresolved, the lifting of sequestration over the ETPI shares in the names of private respondents would appear to be precipitate.

In PCGG vs. International Copra Export Corporation,[6] it might be pointed out, this Court had first remanded the case (G.R. No. 86989) to the Sandiganbayan for the reception of evidence but the PCGG, despite the opportunity, failed to present any proof to justify a further sequestration of therein respondent corporations. On the contrary the respondents were there able to show that International Copra Export Corporation was organized as early as 1961, that Interco Manufacturing Corporation was established in 1976, and that the two corporations were and remained to be family corporations of the Luy family.[7]

Given all the foregoing I am constrained to vote for setting aside the resolutions, dated 26 November 1991 and 08 June 1992, of respondent Sandiganbayan and directing the latter in Civil Case No. 0009 to have the issue of whether or not private respondents are the legitimate and bona fide owners of the sequestered shares of stocks, as well as all other incidental and related questions such as whether or not there is prima facie factual basis for the sequestration of private respondents' ETPI shares, properly adjudicated.

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**[1] 240 SCRA 376.**

[2] Republic of the Philippines vs. Sandiganbayan, 240 SCRA 376.

[3] Amended Motion for leave of Court to Enter a Special Intervention so as to receive their Cash Dividends dated 8 November 1988, Rollo, pp. 230-236; Formal Motion for Leave to Intervene dated 28 December 1990, Rollo, pp. 241-245.

[4] It could be worthy to recall the old case of *Ventosa vs. fernan* (10 SCRA 59), sequestration being akin to the provisional remedy of preliminary attachment, or receivership (“As thus described, sequestration, freezing and provisional takeover are akin to the provisional remedy of preliminary attachment, receivership”. [*Baseco Shipyard & Engineering Co., Inc. vs. Presidential Commission on Good Government*, 150 SCRA 181]), where the Court said:

“Having thus submitted himself to the jurisdiction of the respondent court by his intervention, petitioner necessarily became a party to civil case No. 4994. He must lay his cards before the said court, for adjudication and determination. x x x. The procedure in the presentation of claims against a receivership is either by motion or petition in the same proceeding, or by way of intervention x x x. But whichever procedure is followed, all parties in interest must be notified of each claim, which shall be determined not in a summary manner, but after regular hearing”.

[5] At pp. 470-471.

[6] G.R. No. 92755, 26 July 1991; see also *Republic vs. Sandiganbayan, Sipalay Trading, etc.*, G.R. No. 112708-09, 29 March 1996

[7] At p. 5.

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