

**JAIME CALPO, TIRSO ANTIPORDA, JR., JULIET C. BERTUBEN, IDE TILLAH, JUAN J. CARLOS, EMMANUEL CRUZ, RICARDO R. DE LA CRUZ, AND PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, PETITION...**

*G.R. No. 111857. December 06, 1996*

Ponente: VITUG J.

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**VITUG J.:**

In the instant special civil action for certiorari, with an urgent application for a temporary restraining order or a writ of preliminary injunction, seeking the annulment of the Sandiganbayan resolution,[1] dated 28 September 1993, which denied their motion to suspend the proceedings thereat, petitioners pray for the dismissal of S. B. Case No. 0150,[2] or, in the alternative, the suspension of further proceedings therein until after a final resolution by this Court in G.R. No. 104850[3] and G.R. No 96073[4] would have been made.

We narrate the factual antecedents.

During April and May of 1986 (particularly on 08 and 22 of April and 16 of May 1986), writs of sequestration were issued by the Presidential Commission on Good Government ("PCGG") over the shares of stock held various corporations[5] in San Miguel Corporation ("SMC"), upon PCGG's prima facie determination that the shares were "ill-gotten." These corporations promptly went to the Sandiganbayan and, collectively, filed a petition for certiorari, prohibition, and mandamus, entitled "Primavera Farms, Inc., et al. vs. PCGG, et al." (docketed S.B. Case No. 0110), asking that the writs of sequestration be filed on the thesis that the writs were deemed automatically lifted when no judicial action was filed by the Commission within six (6) months from the effectivity of the Constitution pursuant to Section 26, Article XVIII, thereof. Acting favorably on the plea, the Sandiganbayan, in its resolution, promulgated on 08 April 1992, declared the writs of sequestration to have been so automatically lifted as of 02 August 1987.[6]

Forthwith, the PCGG lodged a petition for certiorari and mandamus, with an application for temporary restraining order, with this Court, entitled "PCGG vs. Agricultural Consultancy Services, Inc., et al." (docketed G.R. No 104850), assailing the 8th April 1992 resolution.

In the Court's resolution of 20 July 1993, G.R. No. 104850 was consolidated with other similar petitions; to wit: G.R. Numbered 96073, 103879, 104065, 104167, 104168, 104679, 104850, 105206, 105711-12, 106176, 106765, 107233, 107908, 105205, 109314 and 104883. Following the restraining order on the 43 corporations in G.R. No. 104850 from voting the claimed shares, only herein private respondent Estelito Mendoza of the Cojuangco group (which formerly held three seats in the SMC Board in 1990-1991) remained in the SMC Board for the 1992-1993 term. In the 1993-1994 stockholders' meeting of SMC, the corporations were again enjoined from voting their shares. The PCGG, in fine, voted the sequestered shares. None of the nominees from the Cojuangco group (herein respondents Estelito Mendoza, Enrique Cojuangco, Manuel Cojuangco, Marcos Cojuangco, Gabriel Villareal and Douglas Lu Ym, who, respectively, landed on the 16th to the 21st places) were elected to the SMC Board of

Directors.

Private respondents thereupon filed a petition for quo warranto (docketed S.B. Case No. 0150) before the Sandiganbayan, entitled "Enrique Cojuangco, et al. vs. Jaime Calpo, et al.," contending that the PCGG nominees were not qualified to be nominated directors since none of them owned at least 5,000 shares of the San Miguel Corporation in their respective names conformably with the by-laws of the corporation and that the PCGG, in any event, was without authority to exercise the right to vote the questioned shares. The PCGG filed its answer with the Sandiganbayan posting, among other things, that the petition was improper because the issue of the right to vote the disputed shares was still pending before this Court in G.R. No. 104850 and that, therefore, the proper remedy was for the Cojuangco group to intervene therein. Respondents replied that intervention on their part in G.R. No. 104850 would not only further becloud the issues might also unduly delay the resolution thereof.

Respondents proceeded to present their evidence. PCGG filed a motion to suspend the proceedings before the Sandiganbayan pending the resolution by this Court of G.R. 104850, 96073 and other consolidated cases. The Sandiganbayan, in its now assailed 28 September 1993 resolution, denied PCGG's motion to suspend proceedings; it held:

"Judging from the manifestation of the parties in respect to G.R. Nos. 104850, 96073 and other consolidated cases, it would seem that these cases before the Supreme Court are not related to the herein case for quo warranto. The issues therein appearing to be independent from the issued in this case, the herein case for quo warranto may consequently proceed."[7]

Hence, the present recourse.

During the pendency of the present petition and before the 1994-1995 meeting of stockholders, the Court, again resolved to order the private corporations, Agricultural Consultancy Services, Inc., et al., to cease and desist from exercising their claimed right to vote the subject shares at the stockholders' meeting of the San Miguel Corporation scheduled on 19 April 1994 or at any subsequent date to which it might be postponed or transferred.

It is the main submission of petitioners in this case for review that the Sandiganbayan should have outrightly dismissed the petition for quo warranto or, at the very least, should have ordered the suspension of the proceedings before it so as not to render moot the cases pending before this Court in G.R. No. 104850 and No. 96073 and other cases which involve issues intimately related to S.B. Case No. 0150.

It is true that S.B. Case No. 0150 (quo warranto case), the subject of the present petition, can trace its roots in G.R. No. 104850 inasmuch as it is from the latter case where the sequestration of the corporate shares in SMC emanated. But that is just about all. The issue involved in S.B. Case No. 0150, i.e., whether or not PCGG nominees are qualified nominees to the SMC Board, is not foreclosed necessarily by the resolution of the issues in G.R. No. 104850. The crucial question in "The PCGG Sequestration Cases,"[8] capsulized by the Court in its resolution of 23 January 1995, is this:

"DOES INCLUSION IN THE COMPLAINTS FILED BY THE PCGG BEFORE THE SANDIGANBAYAN OF SPECIFIC ALLEGATIONS OF CORPORATIONS BEING 'DUMMIES' OR UNDER THE CONTROL OF ONE OR ANOTHER OF THE DEFENDANTS NAMED THEREIN AND USED AS INSTRUMENTS FOR ACQUISITION, OR AS BEING DEPOSITORIES OR PRODUCTS, OF ILL-GOTTEN WEALTH; OR THE ANNEXING TO SAID COMPLAINTS OF A LIST OF SAID FIRMS, BUT WITHOUT ACTUALLY IMPLEADING THEM AS DEFENDANTS, SATISFY THE CONSTITUTIONAL REQUIREMENT THAT IN ORDER TO MAINTAIN A SEIZURE EFFECTED IN ACCORDANCE WITH EXECUTIVE ORDER NO. 1, s. 1986, THE CORRESPONDING 'JUDICIAL ACTION OR PROCEEDING' SHOULD BE FILED WITHIN THE SIX-MONTH PERIOD PRESCRIBED IN SECTION 26, ARTICLE XVIII, OF THE (1987) CONSTITUTION?"[9]

In response, the Court has said:

"XVII. Final Dispositions

"It is thus both needful and timely to pronounce that:

"1) Section 26, Article XVIII of the Constitution does not by its terms or any fair interpretation thereof, require that corporations or business enterprises alleged to be repositories of 'ill-gotten wealth,' as the term is used in said provision, be actually and formally impleaded in the actions for the recovery thereof, in order to maintain in effect existing sequestrations thereof;

"2) complaints for the recovery of ill-gotten wealth which merely identify and/or allege said corporations or enterprises to be the instruments, repositories or the fruits of ill-gotten wealth, without more, come within the meaning of the phrase 'corresponding judicial action or proceeding' contemplated by the constitutional provision referred to; the more so, that normally, said corporations, as distinguished from their stockholders or members, are not generally suable for the latter's illegal or criminal actuations in the acquisition of the assets invested by them in the former;

"3) even assuming the impleading of said corporations to be necessary and proper so that judgment may comprehensively and effectively be rendered in the actions, amendments of the complaints to implead them as defendants may, under existing rules of procedure, be done at any time during the pendency of the actions thereby initiated, and even during the pendency of an appeal to the Supreme Court -- a procedure that, in any case, is not inconsistent with or proscribed by the constitutional time limits to the filing of the corresponding complaints 'for' " i.e., with regard or in relation to, in respect of, or in connection with, or concerning - orders or sequestration, freezing, or provisional takeover." [10]

Neither the qualifications of the PCGG nominees to sit in the SMC Board of Directors nor the right of the PCGG to vote the sequestered corporate shares have been mentioned, even in passing, by the Court. In fact, the promulgation of the Court's resolution in the PCGG sequestration cases should now pave the way for the cognizance by the Sandiganbayan of the quo warranto proceedings.

While, normally, the Sandiganbayan has no jurisdiction over petitions for quo warranto, it may, however, do so as an exception as when the case involves, arises from, or is related to, PCGG cases over alleged "ill-gotten wealth." [11]

WHEREFORE, the petition is DISMISSED.

### **SO ORDERED.**

Bellosillo, Melo, Puno, Kapunan, Mendoza, Francisco, Panganiban, and Torres, Jr., JJ., concur.

Narvasa C.J. I share the visuals of Justices Regalado & Davide, Jr.

Padilla, See Separate Opinion.

Regalado, I dissent, considering the pendency of G.R. No. 104850 with related cases, and my view that the Sandiganbayan has no jurisdiction over quo warranto cases.

Davide, Jr., I reiterate my dissent in G.R. No. 120640 and my ponencia in Garcia vs. Sandiganbayan (237 SCRA 552).

Romero No part. Husband was PCGG Commissioner when basic case was pending.

Hermosisima, Jr., No part - Ponente of the SB resolution herein questioned by the PCGG.

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[1] Penned by then Sandiganbayan Justice, now Supreme Court Justice, Regino Hermosisima, Jr., with the concurrence of Justices Cipriano A. Del Rosario and Sabino R. De Leon, Jr.

[2] "Enrique M. Cojuangco, Manuel M. Cojuangco, Marcos O. Cojuangco, Estelito P. Mendoza, Gabriel L. Villareal and Douglas Lu Ym vs. Jaime Calpo, Tirso Antiporda, Jr., Juliet C. Bertuben, Ide Tillah, Juan J. Carlos, Emmanuel Cruz, Ricardo R. de la Cruz and Presidential Commission on Good Government (PCGG)."

[3] "Presidential Commission on Good Government (PCGG) vs. Sandiganbayan (Third Division), Agricultural Consultancy Services Inc., Archipelago Realty Corporation, Balete Ranch, Inc., Black Stallion Ranch, Inc., Kalawakan Resorts, Inc., Kaunlaran Agricultural Corp., et al."

[4] "Republic of the Philippines vs. Sandiganbayan (First Division), Maria Clara Lobregat, Bienvenido Marquez, Celestino Sabate, Jose R. Eleazar, Jr., Domingo Espina, Jose Gomez, Manuel del Rosario, Jose Martinez, Jr., Jose Reynaldo Morente, Eladio Chatto, and Philippine Coconut Producers Federation, Inc."

[5] (1) Agricultural Consultancy Services, Inc.

(2) Archipelago Realty Corp.

(3) Balete Ranch, Inc.

(4) Black Stallion Ranch, Inc.

(5) Christensen Plantation Company

(6) Cocoa Investors, inc.

(7) Discovery Realty Corp.

(8) Dream Pastures, Inc.

(9) Echo Ranch, Inc.

(10) Far East Ranch, Inc.

(11) First United Transport, Inc.

(12) Habagat Realty Development, Inc.

(13) Kalawakan Resorts, Inc.

(14) Kaunlaran Agricultural Corp.

(15) Labayug Air Terminals, Inc.

(16) Landair International Marketing Corp.

(17) LHL Cattle Corp.

(18) Meadow Lark Plantation, Inc.

(19) Metroplex Commodities, Inc.

(20) Misty Mountains Agricultural Corp.

(21) Northern Carriers Corp.

(22) Northeast Contract Traders, Inc.

(23) Ocean Side Maritime Ent., Inc.

(24) Oro Verde Services

- (25) Pastoral Farms, Inc.
- (26) PCY Oil Manufacturing Corp.
- (27) Philippine Technologies, Inc.
- (28) Primavera Farms, Inc.
- (29) Punong-Bayan Housing Dev't. Corp.
- (30) Pura Electric Company, Inc.
- (31) Radio Audience Developers Integrated Organization, Inc.
- (32) Radio Pilipino Corp.
- (33) Rancho Grande, Inc.
- (34) Reddee Developers Inc.
- (35) San Esteban Development Corp.
- (36) Southern Luzon Oil Mills, Inc.
- (37) Silver Leaf Plantation, Inc.
- (38) Southern Star Cattle Corp.
- (39) Spade One Resorts Corp.
- (40) Unexplored Land Developers, Inc.
- (41) Verdant Plantations, Inc.
- (42) Vesta Agricultural Corp.
- (43) Wings Resorts Corp.

Annex "C", of the Petition in G.R. No. 111857, Rollo, p. 51.

[6] "UPON THE foregoing premises, the instant motion is hereby GRANTED. Accordingly, the writs of sequestration on the shares of stock of the herein petitioners in the San Miguel Corporation are hereby declared to have been automatically lifted as of August 2, 1987; and the respondent PCGG is hereby enjoined to desist from interfering with the petitioners' exercise of their rights in respect of their shareholdings in the aforesaid corporation." (Rollo, p. 50).

[7] Rollo, p. 41.

[8] G.R. Nos. 96073, 104065, 104167, 104168, 104679, 104850, 104883, 105170, 105205, 105206, 105711-12, 105808, 105809, 105850, 106176, 106765, 107233, 107908, 109314, 109592, (240 SCRA 376).

[9] At p. 462.

[10] At. p. 474.

[11] *Cojuangco vs. Sandiganbayan*, G.R. No. 120640, 08 August 1996; see also *PCGG vs. Peña, et al.*, 159 SCRA 564.

#### SEPARATE OPINION

PADILLA, J.:

Under the Peña doctrine,[1] declaring a most comprehensive jurisdiction for the Sandiganbayan in cases involving recovery of so-called "ill-gotten wealth", it appears that the Sandiganbayan may entertain quo warranto complaints, I deem it necessary however to reiterate my dissenting opinion in Republic v. Sandiganbayan, 240 SCRA 476. Since, in my view, the PCGG writs of sequestration involved in many of the so-called "sequestration cases" were a long time ago automatically LIFTED by operation of the second paragraph, Section 26, Art. XVIII of the Constitution, which provides that "

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

the PCGG nominees in the board of directors of said "sequestered corporations" have long ceased to have the right to sit on the board of directors of said corporations. The exception would, of course, be those corporation and entities which have been expressly impleaded as defendants in judicial actions filed in the Sandiganbayan within the periods following the issuance of writs of sequestration as provided in the first paragraph of Section 26, Art. XVIII of the Constitution. These do not, however, include corporations or entities which have been merely "annexed" in complaints for recovery of "ill-gotten wealth."

[1] PCGG v. Peña , et al., 159 SCRA 564.

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