

CESAR E. A. VIRATA, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN AND THE REPUBLIC OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 114331. May 27, 1997

Ponente: TORRES, JR., J.

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TORRES, JR., J.:

In times past, when due process was more of a myth - empty accusations have had its day. In a more enlightened age, a sage was heard to say - "Strike me if you must, but hear me first!" We have come a long way, indeed, for in our time one who is required to answer for an alleged wrong must at least know what is it all about.

This is the case before Us.

In this case, petitioner Cesar E. A. Virata (Virata, for brevity) is one of the defendants in Civil Case No. 0035, entitled Republic of the Philippines versus Benjamin (Kokoy) Romualdez, et. al.. The case, which was filed by the Presidential Commission on Good Government in behalf of the Republic of the Philippines (Republic, for brevity) against fifty three persons (53)[1] including Virata, involves the recovery of ill-gotten wealth amassed by the defendants during the twenty year reign of former President Ferdinand Marcos.

The complaint against the defendants was amended three times. The last amended complaint filed with the Sandiganbayan, hereafter known as the expanded Second Amended Complaint, states, inter alia, the following relevant allegations against petitioner Virata:

V. SPECIFIC AVERMENTS OF DEFENDANTS' ILLEGAL ACTS

14. Defendants Benjamin (Kokoy) Romualdez and Juliette Gomez Romualdez, acting by themselves and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, and taking undue advantage of their relationship, influence and connection with the latter Defendant spouses, engaged in devises, schemes and stratagems to unjustly enrich themselves at the expense of plaintiff and the Filipino people, among others:

(b) gave MERALCO undue advantage (i) by effecting the increase of power rates with automatic authority to tack into the consumers' electric bills the so-called purchase and currency adjustment, and (ii) with the active collaboration of Defendant Cesar E. A. Virata, by reducing the electric franchise tax from 5% to 2% of gross receipts and the tariff duty on fuel oil imports by public utilities from 20% to 10%, resulting in substantial savings for MERALCO but without any significant benefit to the consumers of electric power and loss of millions of pesos in much needed revenues to the government;

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(g) secured, in a veiled attempt to justify MERALCO's anomalous acquisition of the electric cooperatives, with the active collaborations of Defendants Cesar E. A. Virata, Juanito R. Remulla, Isidro Rodriguez, Jose C. Hernandez, Pedro Dumol, Ricardo C. Galing, Francisco C. Gatmaitan, Mario D. Camacho and the rest of the

Defendants, the approval by Defendant Ferdinand E. Marcos and his cabinet of the so-called “Three-Year Program for the Extension of MERALCO’s Services to Areas Within the 60-Kilometer Radius of Manila,” which required government capital investment amounting to millions of pesos;

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(m) manipulated, with the support, assistance and collaboration of Philguarantee officials led by Chairman Cesar E. A. Virata and the senior managers of FMMC/PNI Holdings Incorporated led by Jose S. Sandejas, Jr., Jose M. Mantecon and Kurt S. Bachman, Jr., among others, the formation of Erectors Holdings, Inc. without infusing additional capital solely for the purpose of making it assume the obligation of Erectors Incorporated with Philguarantee in the amount of P527,387,440.71 with insufficient securities/collaterals just to enable Erectors Inc. to appear viable and to borrow more capitals, so much so that its obligation with Philguarantee has reached a total of more than P2 Billion as of June 30, 1987.

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17. The following Defendants acted as dummies, nominees and/or agents by allowing themselves (i) to be used as instruments in accumulating ill-gotten wealth through government concessions, orders and/or policies prejudicial to plaintiff, or (ii) to be incorporators, directors or members of corporations beneficially held and/or controlled by Defendants Ferdinand E. Marcos, Imelda R. Marcos, Benjamin (Kokoy) T. Romualdez and Julliette Gomez Romualdez in order (to) conceal and prevent recovery of assets illegally obtained: xxx Cesar E. A. Virata xxx.

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18. The acts of Defendants, singly or collectively, and/or in unlawful concert with one another, constitute gross abuse of official position and authority, flagrant breach of public trust and fiduciary obligations, acquisition of unexplained wealth, brazen abuse of right and power, unjust enrichment, violation of the Constitution and laws of the Republic of the Philippines, to the grave and irreparable damage of Plaintiff and the Filipino people.”[2]

Asserting that the foregoing allegations are vague and are not averred with sufficient definiteness as to enable him to effectively prepare his responsive pleading, petitioner Virata filed a motion for a bill of particulars on January 31, 1992.

In a Resolution promulgated on 4 August 1992, the Sandiganbayan partially granted the said motion by requiring the Republic to submit a bill of particulars concerning the charges against petitioner Virata stated only in paragraph 17 (acting as dummy, nominee and/or agent) and paragraph 18 (gross abuse of authority and violation of laws and the Constitution) of the expanded Second Amended Complaint. However, as to the other charges, namely: 1) Virata’s alleged active collaboration in the reduction of electric franchise tax and the tariff duty on fuel oil imports, as stated in paragraph 14 b (ii), 2) his active collaboration in securing the approval by Ferdinand Marcos of the “Three Year Program for the Extension of MERALCO’s Services to Areas within the 60 Kilometer Radius of Manila,” mentioned in paragraph 14 g, and 3) his support, assistance and collaboration in the formation of Erectors Holdings Incorporated as reflected in paragraph 14 m of the expanded Second Amended Complaint, the Sandiganbayan declared that these accusations are clear and specific enough to allow Virata to submit an intelligent responsive pleading, hence, the motion for a bill of particulars respecting the foregoing three charges was denied.

In view of the Sandiganbayan’s order of August 4, 1992 requiring the Republic to amplify the charges in paragraphs 17 and 18 of the expanded Second Amended Complaint, the Republic through the Office of the Solicitor General submitted the bill of particulars dated October 22, 1992, hereafter called as the Limited Bill of Particulars, which was signed by a certain Ramon A. Felipe IV, who was designated in the bill of particulars as

“private counsel”, the relevant portion of which provides that:

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1. Defendant Virata, while being one of the members of the Central Bank’s Monetary Board, approved Resolution No. 2320 dated December 14, 1973, allowing the Benpres Corporation, Meralco Securities Corporation (MSC) and Manila Electric Company (MERALCO) to refinance/restructure their outstanding loan obligations, a ‘sweetheart’ or ‘behest’ accommodation which enabled Meralco Foundation, Inc. to acquire ownership and control of Manila Electric Company. Meralco Foundation, Inc. was then controlled by the Marcos-Romualdez Group with Benjamin (Kokoy) Romualdez being the beneficial owner and, thereby, expanding the said group’s accumulation of ill-gotten wealth.

2. On July 11, 1978 defendant Virata representing the Republic of the Philippines as Finance Minister, executed an Agreement with the Manila Electric Company (MERALCO) whereby the government agreed to buy the parcels of land, improvements and facilities known as Gardner Station Unit No. 1, Gardner Station Unit No. 2, Snyder Station Unit No. 1, Snyder Station Unit No. 2 and Malaya Station Unit No. 1 for One Billion One Hundred Million Pesos (P1,100,000,000.00), a transaction which was so disadvantageous to the government and most favorable to MERALCO which gained a total of P206.2 million. As a result of this transaction, MERALCO is relieved of its heavy burden in servicing its foreign loans which were assumed by the government. Furthermore, the agreement clearly showed the ‘sweetheart’ deal and favors being given by the government to MERALCO which was then owned/and or controlled by Benjamin Romualdez representing the Marcos-Romualdez group, when it provided that the ‘sale is subject to the reservation of rights, leases and easements in favor of Philippine Petroleum Corp., First Philippine Industrial Corp. (formerly MERALCO Securities Industrial Corp.) and Pilipinas Shell Petroleum Corp. insofar as the same are presently in force and applicable.’ This enabled the Marcos-Romualdez Group to further accumulate and expand the ill-gotten wealth and plunder the nation.

3. At the meeting of the Board of Directors of the Philippine Export and Foreign Loan Guarantee Corp. held on September 16, 1983 defendant Virata acting as Chairman, together with the other members of the board, approved the request of Erectors, Inc., a Benjamin Romualdez owned and/or controlled corporation, for a guarantee to cover 100 % of its proposed behest loan of US \$33.5 Million under the Central Bank Consolidated Foreign Borrowing Program with the Philippine National Bank, Development Bank of the Philippines, Interbank, Philippine Commercial International Bank and Associated Bank as conduit banks, to refinance Erectors, Inc.’s short term loans guaranteed by Philguarantee, which at present forms part of the government’s huge foreign debt. Such act of defendant Virata was a flagrant breach of public trust as well as a violation of his duty to protect the financial condition and economy of the country against, among others, abuses and corruption.”[3]

On 3 December 1992, a motion to strike out the Limited Bill of Particulars and to defer the filing of the answer was filed by Virata on the grounds that the Limited Bill of Particulars avers for the first time new actionable wrongs allegedly committed by him in various official capacities and that the allegations therein do not indicate that Virata acted as dummy, nominee or agent but rather as a government officer, acting as such in his own name. This motion was not acted upon by the Sandiganbayan.

Way back on September 1, 1992, Virata, who was dissatisfied with the Sandiganbayan Resolution of August 4, 1992, filed a petition for certiorari (G.R. No. 106527) with this Court questioning the Sandiganbayan’s denial of his motion for a bill of particulars as regards the first three charges stated in paragraph 14 b(ii), paragraph 14g and paragraph 14m of the expanded Second Amended Complaint. The petition was granted by this Court in our decision promulgated on April 6, 1993. Accordingly, the Sandiganbayan Resolution of August 4, 1992 to the extent that it denied the motion for a bill of particulars with respect to the first three (3) charges was set aside and the Republic was required by this Court to submit to Virata a bill of particulars containing the facts prayed for by

the latter insofar as to these first three (3) ‘actionable wrongs’ are concerned.[4]

On August 20, 1993, the Office of the Solicitor General (OSG) filed a manifestation and motion dated August 18, 1993 alleging, inter alia, that the OSG and PCGG agreed that the required bill of particulars would be filed by the PCGG since the latter is the investigating body which has the complete records of the case, hence, in a better position to supply the required pleading. The Sandiganbayan took note of this manifestation in a Resolution dated August 26, 1993. On the basis of this arrangement, the PCGG submitted the bill of particulars dated November 3, 1993, which was apparently signed by a certain Reynaldo G. Ros, who was named in the bill of particulars as “deputized prosecutor” of the PCGG. This bill of particulars, which incorporates by reference the Limited Bill of Particulars of October 22, 1992, states, inter alia:

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1. On the ‘Specific Averments of Defendant’s Illegal Acts a (i)’ [paragraph 14 b (ii) of the expanded Second Amended Complaint]

Immediately after defendants Ferdinand E. Marcos and Benjamin ‘Kokoy’ Romualdez took complete control of Meralco and its subsidiaries, defendant Ferdinand E. Marcos issued Presidential Decree No. 551 on September 11, 1974 which effected the reduction of electric franchise tax being paid by Meralco from 5% to 2% as well as lowered tariff duty of fuel oil imports from 20% to 10% and allowed Meralco to retain 3% reduction in franchise tax rates thereby allowing it to save as much as P258 million as of December 31, 1992.

Defendant Cesar Virata then Minister of Finance, supported PD 551 and in fact issued the guidelines on its implementation which were heavily relied upon by the Board of Energy in its questioned ruling dated 25 November 1982 by allowing Meralco to continue charging higher electric consumption rates despite their savings from the aforesaid reduction of franchise tax without any significant benefit to the consumers of electric power and resulting in the loss of millions of pesos in much needed revenues to the government.

2. On the ‘Specific Averments of Defendant’s Illegal Acts a (ii)’ [par. 14g of the expanded Second Amended Complaint]

Defendant Cesar E.A. Virata, then Prime Minister [sic], caused the issuance of a confidential memorandum dated October 12, 1982 to then President Ferdinand E. Marcos informing the latter of the recommendation of the cabinet of the so called Three Year Program for the Extension of Meralco Services of Areas within the 60 Kilometer Radius of Manila in order to justify Meralco’s anomalous acquisition of electric cooperatives and which later required the Monetary Board and Philguarantee then headed by defendant Virata to recommend the restructuring of Meralco’s foreign and local obligation which led to the extending of loan accommodations by the Development Bank of the Philippines and Philippine National Bank in favor of Meralco.

3. On the ‘Specific Averments of Defendant’s Illegal Acts a (iii)’ [par. 14m of the expanded Second Amended Complaint]

Defendant Cesar Virata, as Chairman of Philguarantee and the Senior Managers of FMMC/PNI Holdings Inc. led by Jose S. Sandejas, J. Jose N. Mantecon and Kurt S. Bachmann, Jr., supported and assisted the formation of Erectors Holdings, Inc. for the purpose of making it assume the obligation of Erectors Inc. with Philguarantee in the amount of P527,387,440.71 without sufficient securities/collateral and despite this outstanding obligation, defendant Virata, as Chairman of Philguarantee, approved the Erectors Inc. Applications for loan guarantees that reached more than P2 Billion as of June 30, 1987.

4. On the ‘Specific Averments of Defendant’s Illegal Acts a (iv)’ [par. 17 of the expanded Second Amended Complaint]

Plaintiff, hereby incorporates by reference plaintiff’s Limited Bill of Particulars previously submitted to this

Honorable Court with the qualification that defendant Cesar Virata merely acted as agent.”[5]

Consequently, Virata filed on November 23, 1993 his comment on the bill of particulars with motion to dismiss the expanded Second Amended Complaint. He alleges that both the bills of particulars dated October 22, 1992 and November 3, 1993 are pro forma and should be stricken off the records. According to him, the bill of particulars dated November 3, 1993 is merely a rehash of the assertions made in the expanded Second Amended Complaint, hence, it is not the bill of particulars that is required by this Court in the previous case of Virata vs. Sandiganbayan, et. al. (G.R. No. 106527). Furthermore, a reading of the Limited Bill of Particulars dated October 22, 1992 shows that it alleges new imputations which are immaterial to the charge of being a dummy, nominee or agent, and that Virata acted, not as a dummy, nominee or agent of his co-defendants as what is charged in the complaint, but as a government officer of the Republic. Virata also questions the authority of PCGG and its deputized prosecutor to file the bill of particulars in behalf of the Republic. He asserts that the legal representation of the Republic by the OSG is mandated by law and that the Sandiganbayan, through its Resolution dated August 26, 1993, should not have allowed the OSG to abdicate its duty as the counsel of record for the Republic.

The Republic filed its Opposition to Virata’s Comment to Bill of Particulars on December 17, 1993. Subsequently, Virata filed his Reply to Opposition on January 18, 1994.

After considering the relevant pleadings and motions submitted by the parties, the Sandiganbayan, in a Resolution of February 16, 1994, admitted the bill of particulars submitted by the Republic and ordered Virata to file his responsive pleading to the expanded Second Amended Complaint. The relevant portion of the Resolution states as follows:

“In the resolution of this incident, We find that the bill of particulars, filed by the plaintiff on November 3, 1993 in compliance with the Supreme Court’s directive, appears to have substantially set out additional averments and particulars which were not previously alleged in the Expanded Amended Complaint. We likewise consider these additional averments and particulars to be sufficient enough to enable defendant Virata to frame his responsive pleading or answer and that what he feels are still necessary in preparing for trial should be obtained by various modes of discovery, such as interrogatories, depositions, etc. A bill of particulars is sufficient if matters constituting the causes of action have already been specified with sufficient particularity and which matters are within the moving party’s knowledge. It cannot be utilized to challenge the sufficiency of the claim asserted.

Simplicity of pleading is the idea of modern procedure, hence, evidentiary facts and details should not be allowed to clutter a complaint as much as possible, consistent with the right of the moving party to compel disclosure in instances where it is beyond cavil that He cannot adequately frame a responsive pleading. In the instant case, the bill of particulars submitted by the plaintiff, in Our considered opinion, is sufficient and adequate enough to fulfill its mission.”[6]

Dissatisfied, Virata filed this instant petition for certiorari under Rule 65 of the Rules of Court to challenge the foregoing Resolution of the Sandiganbayan.

The issues to be resolved in the instant case are as follows:

1. WHETHER OR NOT THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ADMITTING THE BILL OF PARTICULARS SUBMITTED BY THE REPUBLIC. 2. WHETHER OR NOT THE OFFICE OF THE SOLICITOR GENERAL AND THE PCGG ARE AUTHORIZED BY LAW TO DEPUTIZE A COUNSEL TO FILE THE BILL OF PARTICULARS IN BEHALF OF THE REPUBLIC.

Petitioner maintains the view that the allegations in the bill of particulars of November 3, 1993 remain vague,

general and ambiguous, and the purported illegal acts imputed to Virata have not been averred with sufficient definiteness so as to inform Virata of the factual and legal basis thereof.

Respecting the Limited Bill of Particulars dated October 22, 1992, which amplifies paragraphs 17 and 18 of the expanded Second Amended Complaint, Virata reiterates his basic arguments that the Limited Bill of Particulars fails to provide the relevant and material averments sought to be clarified by him and that it asserts for the first time new matters allegedly committed by him in different official capacities, to wit: a) as a member of the Central Bank Monetary Board, he, with the other Monetary Board members, approved Resolution No. 2320 dated December 14, 1973 regarding the restructuring of the loans of Benpres Corporation, Meralco Securities Corporation, and the Manila Electric Company, b) as Finance Minister, he executed an agreement with Manila Electric Company in connection with the sale of lands and facilities of the Gardner Station Unit No. 1, Gardner Station Unit No. 2, Snyder Station Unit No. 1, Snyder Station Unit No. 2, and Malaya Station Unit No. 1, and, c) as Chairman of the Board of Directors of the Philippine Export and Foreign Loan Guarantee Corporation, approved the request of Erector, Incorporated, for a guarantee to cover 100% of its proposed behest loan of US \$ 33.5 Million under the Central Bank Consolidated Foreign Borrowing Program. He argues that the thrust of paragraphs 17 and 18 of the expanded Second Amended Complaint is the charge that Virata acted as “dummy, nominee and/or agent,” however, the foregoing allegations in the Limited Bill of Particulars do not indicate that he acted as dummy, nominee or agent, but rather, as a government officer.

Invoking Section 3, Rule 17 of the Rules of Court, Virata argued that both the bills of particulars submitted by the Republic did not follow the Rules of Court and the orders of the Sandiganbayan and this Honorable Court, as such, the failure to comply with these legal orders is a ground for dismissal of the action. Additionally, it is asserted that under Rule 12, Section 1(c) of the Rules of Court, if an order of the court for a bill of particulars is not obeyed, it may order the striking out of the pleading to which the motion was directed. Accordingly, Virata prayed for the striking out of the bills of particulars dated October 22, 1992 and November 3, 1993 and the dismissal of the expanded Second Amended Complaint in so far as he is concerned.

We find the instant petition meritorious.

The rule is that a complaint must contain the ultimate facts constituting plaintiff's cause of action. A cause of action has the following elements, to wit: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[7] As long as the complaint contains these three elements, a cause of action exists even though the allegations therein are vague, and dismissal of the action is not the proper remedy when the pleading is ambiguous because the defendant may ask for more particulars. As such, Section 1, Rule 12 of the Rules of Court, provides, inter alia, that a party may move for more definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading or to prepare for trial. Such motion shall point out the defects complained of and the details desired. Under this Rule, the remedy available to a party who seeks clarification of any issue or matter vaguely or obscurely pleaded by the other party, is to file a motion, either for a more definite statement or for a bill of particulars.[8] An order directing the submission of such statement or bill, further, is proper where it enables the party movant intelligently to prepare a responsive pleading, or adequately to prepare for trial.[9]

A bill of particulars is a complementary procedural document consisting of an amplification or more particularized outline of a pleading, and being in the nature of a more specific allegation of the facts recited in the pleading.[10] It is the office of the bill of particulars to inform the opposite party and the court of the precise

nature and character of the cause of action or defense which the pleader has attempted to set forth and thereby to guide his adversary in his preparations for trial, and reasonably to protect him against surprise at the trial.[11] It gives information of the specific proposition for which the pleader contends, in respect to any material and issuable fact in the case, and it becomes a part of the pleading which it supplements.[12] It has been held that a bill of particulars must inform the opposite party of the nature of the pleader's cause of action or defense, and it must furnish the required items of the claim with reasonable fullness and precision.[13] Generally, it will be held sufficient if it fairly and substantially gives the opposite party the information to which he is entitled, as required by the terms of the application and of the order therefor. It should be definite and specific and not contain general allegations and conclusions. It should be reasonably certain and as specific as the circumstances will allow.[14]

Guided by the foregoing rules and principles, we are convinced that both the bill of particulars dated November 3, 1993 and the Limited Bill of Particulars of October 22, 1992 are couched in such general and uncertain terms as would make it difficult for petitioner to submit an intelligent responsive pleading to the complaint and to adequately prepare for trial.

Let us examine the bill of particulars dated November 3, 1993:

1. The first paragraph of the foregoing bill of particulars provides that "(I)mmediately after defendants Ferdinand E. Marcos and Benjamin 'Kokoy' Romualdez took control of Meralco and its subsidiaries, defendant Ferdinand E. Marcos issued Presidential Decree No. 551 on September 11, 1974 which effected the reduction of electric franchise tax being paid by Meralco from 5% to 2% as well as lowered tariff duty of fuel oil imports from 20% to 10% and allowed Meralco to retain the 3% reduction in franchise tax rates thereby allowing it to save as much as P258 million as of December 31, 1992." Further, it is stated that "(D)efendant Cesar Virata then Minister of Finance, supported PD 551 and in fact issued the guidelines on its implementation which were heavily relied upon by the Board of Energy in its questioned ruling dated 25 November 1982 by allowing Meralco to continue charging higher electric consumption rates despite their savings from the aforesaid reduction of franchise tax without any significant benefit to the consumers of electric power and resulting in the loss of millions of pesos in much needed revenues to the government."

The abovequoted paragraph of the said bill of particulars is supposed to be the amplification of the charge against Virata stated in paragraph 14(b) of the expanded Second Amended Complaint-which is his alleged active collaboration in the reduction of electric franchise tax and tariff duty of fuel oil imports. Yet, a careful perusal of the said paragraph shows that nothing is said about his alleged active collaboration in reducing the taxes. Aside from the bare assertion that he "supported PD 551" and "issued the guidelines on its implementation," the bill of particulars is disturbingly silent as to what are the particular acts of Virata that establish his active collaboration in the reduction of taxes. The allegation that he supported PD 551 and issued its implementing guidelines is an insufficient amplification of the charge because the same is but a general statement bereft of any particulars. It may be queried-how did Virata support PD 551? What were the specific acts indicating his support? What were these implementing guidelines issued by him and when were they issued? In supporting PD 551 and in issuing its implementing guidelines, what law or right, if there is any, is violated by Virata? It is worthy to note that, until now, PD 551 has not been declared unconstitutional. In fact, this Court upheld its validity in the case of *Philippine Consumer Foundation, Inc. vs. Board of Energy and Meralco*.^[15]

2. In the second paragraph of the said bill of particulars, it is alleged that "(D)efendant Cesar E.A. Virata, then Prime Minister [sic], caused the issuance of a confidential memorandum dated October 12, 1982 to then President Ferdinand E. Marcos informing the latter of the recommendation of the cabinet of the so called Three Year Program for the Extension of Meralco Services of Areas within the 60 Kilometer Radius of Manila in order to justify Meralco's anomalous acquisition of electric cooperatives and which later required the Monetary Board and

Philguarantee then headed by defendant Virata to recommend the restructuring of Meralco's foreign and local obligation which led to the extending of loan accommodation by the Development Bank of the Philippines and Philippine National Bank in favor of Meralco."

The foregoing allegation purportedly amplifies the charge stated in paragraph 14 (g) of the expanded Second Amended Complaint, that is-Virata's active collaboration in securing the approval by Ferdinand Marcos and his cabinet of the Three Year Program for the Extension of Meralco's Services within the Manila Area. However, just like the first paragraph of the said bill of particulars, this Court finds that the second paragraph failed to set forth particularly or specifically the charge against Virata. It is an incomplete or floating disclosure of material facts replete with generalizations and indefinite statements which seemingly ends to nowhere. There are certain matters alleged that need to be clarified and filled up with details so that Virata can intelligently and fairly contest them and raise them as cogent issues, to wit: a) In causing the issuance of the said memorandum, what law, duty or right, if there is any, is violated by Virata?; b) What was the recommendation of the cabinet regarding the Three Year Program? The Republic should have at least furnish the substantial or important features of the recommendation; c) What were these electric cooperatives? Were these cooperatives the same as those enumerated in paragraph 14(e) of the expanded Second Amended Complaint?[16] Why was the acquisition of these cooperatives anomalous?; and d) What were Virata's specific acts as the head of Philguarantee which led to the restructuring of Meralco's obligation? What was his participation in recommending the restructuring of Meralco's obligation? What were these foreign and local obligations? How much of the obligation was recommended for restructuring? What were the loan accommodations given in favor of Meralco? When were they given and how much were involved in the transaction?

3. Regarding the third paragraph of the said bill of particulars, We find the same as a mere recast or restatement of the charge set forth in paragraph 14 (m) of the expanded Second Amended Complaint, which is Virata's alleged support, assistance and collaboration in the formation of Erectors Holding, Incorporated. The said paragraph of the bill of particulars states that "(D)efendant Cesar Virata, as Chairman of Philguarantee and the Senior Managers of FMMC/PNI Holdings Inc. led by Jose S. Sandejas, J. Jose N. Mantecon and Kurt S. Bachmann, Jr. supported and assisted the formation of Erectors Holdings, Inc. for the purpose of making it assume the obligation of Erectors Inc. with Philguarantee in the amount of P527,387,440.71 without sufficient securities/collateral and despite this outstanding obligation, defendant Virata, as Chairman of Philguarantee, approved the Erectors Inc. Applications for loan guarantees that reached more than P2 Billion as of June 30, 1987."

Clearly from the foregoing allegation, the Republic failed miserably to amplify the charge against Virata because, instead of supplying the pertinent facts and specific matters that form the basis of the charge, it only made repetitive allegations in the bill of particulars that Virata supported and assisted the formation of the corporation concerned, which is the very same charge or allegation in paragraph 14 (m) of the expanded Second Amended Complaint which requires specifications and unfailing certainty. As such, the important question as to what particular acts of Virata that constitute support and assistance in the formation of Erectors Holding, Incorporated is still left unanswered, a product of uncertainty.

We now take a closer look at the Limited Bill of Particulars dated October 22, 1992.

The said bill of particulars was filed by the Republic to amplify the charge of Virata's being a dummy, nominee or agent stated in paragraphs 17 and 18 of the expanded Second Amended Complaint. In the subsequent bill of particulars dated November 3, 1993, the said charge was qualified by the Republic in the sense that Virata allegedly acted only as an agent. Let us consider each paragraph of the said bill of particulars:

1. The first paragraph of the Limited Bill of Particulars states that "(D)efendant Virata, while being one of the

members of the Central Bank's Monetary Board, approved Resolution No. 2320 dated December 14, 1973, allowing the Benpres Corporation, Meralco Securities Corp. (MSC) and Manila Electric Company (MERALCO) to refinance/restructure their outstanding loan obligations, a 'sweetheart' or 'behest' accommodation which enabled Meralco Foundation, Inc. to acquire ownership and control of Manila Electric Company." It is stated further that "Meralco Foundation, Inc. was then controlled by the Marcos-Romualdez Group with Benjamin (Kokoy) Romualdez being the beneficial owner and, thereby, expanding the said group's accumulation of ill gotten wealth."

It is apparent from the foregoing allegations that the Republic did not furnish Virata the following material matters which are indispensable for him to be placed in such a situation wherein he can properly be informed of the charges against him: a) Did Virata, who was only one of the members of the Board, act alone in approving the Resolution? Who really approved the Resolution, Virata or the Monetary Board?; b) What were these outstanding loan obligations of the three corporations concerned? Who were the creditors and debtors of these loan obligations? How much were involved in the restructuring of the loan obligations? What made the transaction a 'sweetheart' or 'behest' accommodation?; and c) How was the acquisition of MERALCO by Meralco Foundation, Inc. related to the Resolution restructuring the loan obligations of the three corporations?

2. The second paragraph provides that " (O)n July 11, 1978 defendant Virata representing the Republic of the Philippines as Finance Minister, executed an Agreement with the Manila Electric Co. (MERALCO) whereby the government agreed to buy the parcels of land, improvements and facilities known as Gardner Station Unit No. 1, Gardner Station Unit No. 2, Snyder Station Unit No. 1, Snyder Station Unit No. 2 and Malaya Station Unit No. 1 for One Billion One Hundred Million Pesos (P1,100,000,000.00), a transaction which was so disadvantageous to the government and most favorable to MERALCO which gained a total of P206.2 million;" that "(A)s a result of this transaction, MERALCO was relieved of its heavy burden in servicing its foreign loans which were assumed by the government;" that "xxx, the agreement clearly showed the 'sweetheart' deal and favors being given by the government to MERALCO which was then owned and/or controlled by Benjamin Romualdez representing the Marcos-Romualdez group, when it provided that the 'sale is subject to the reservation of rights, leases and easements in favor of Philippine Petroleum Corp., First Philippine Industrial Corp. (formerly MERALCO Securities Industrial Corp.) and Pilipinas Shell Petroleum Corp. insofar as the same are presently in force and applicable'."

There are certain matters in the foregoing allegations which lack in substantial particularity. They are broad and definitely vague which require specifications in order that Virata can properly define the issues and formulate his defenses. The following are the specific matters which the Republic failed to provide, to wit: a) What made the transaction 'disadvantageous' to the government? The allegation that it was disadvantageous is a conclusion of law that lacks factual basis. How did MERALCO gain the P206.2 million? The Republic should have provided for more specifics how was the transaction favorable to MERALCO?; b) What were these foreign obligations of MERALCO which were assumed by the government? Who were the creditors in these obligations? When were these obligations contracted? How much were involved in the assumption of foreign obligations by the government?; and c) By the presence of the provision of the contract quoted by the Republic, what made the agreement a 'sweetheart' deal? The allegation that the agreement is a 'sweetheart deal' is a general statement that needs further amplification.

3. The third paragraph states that "(A)t the meeting of the Board of Directors of the Philippine Export and Foreign Loan Guarantee Corp. held on September 16, 1983 defendant Virata acting as Chairman, together with the other members of the board, approved the request of Erectors Inc., a Benjamin Romualdez owned and/or controlled corporation, for a guarantee to cover 100% of its proposed behest loan of US\$ 33.5 Million under the Central

Bank Consolidated Foreign Borrowing Program with the Philippine National Bank, Development Bank of the Philippines, Interbank, Philippine Commercial International Bank and Associated Bank as conduit banks, to refinance Erectors, Inc.'s short term loans guaranteed by Philguarantee, which at present forms part of the government's huge foreign debt; that "(S)uch act of defendant Virata was a flagrant breach of public trust as well as a violation of his duty to protect the financial condition and economy of the country against, among others, abuses and corruption".

In like manner, the foregoing paragraph contains incomplete and indefinite statement of facts because it fails to provide the following relevant matters: a) What was this \$33.5 million proposed behest loan? What were its terms? Who was supposed to be the grantor of this loan?; b) What were these short term loans? Who were the parties to these transactions? When were these transacted? How was this \$ 33.5 million behest loan related to the short term loans?

Furthermore, as correctly asserted by petitioner Virata, the Limited Bill of Particulars contains new matters which are not covered by the charge that Virata acted as agent of his co-defendants in the expanded Second Amended Complaint. Apparently, as may be examined from the three paragraphs of the Limited Bill of Particulars, Virata, in so doing the acts, can not be considered as an agent of any of his co-defendants, on the contrary, the factual circumstances stated in the said bill of particulars indicate that Virata acted on behalf of the government, in his official capacity as a government officer. This observation is established by the allegations that Virata acted as a member of the Central Bank Monetary Board, as chairman of the Board of Directors of the Philippine Export and Foreign Loan Guarantee Corporation, and, when he executed the Agreement with Meralco on July 7, 1978 concerning the sale of certain properties, he acted as the Finance Minister of the government and as a representative of the Republic in the contract. In performing the said acts, he, therefore, acted as an agent of the government, not as an agent of his co-defendants, which is the charge against him in the expanded Second Amended Complaint. Accordingly, the allegations in the Limited Bill of Particulars are irrelevant and immaterial to the charge that Virata acted as an agent of his co-defendants.

As clearly established by the foregoing discussion, the two bills of particulars filed by the Republic failed to properly amplify the charges leveled against Virata because, not only are they mere reiteration or repetition of the allegations set forth in the expanded Second Amended Complaint, but, to the large extent, they contain vague, immaterial and generalized assertions which are inadmissible under our procedural rules.

It must be remembered that in our decision promulgated on April 6, 1993 (G.R. No. 106527), We required the Republic to submit a bill of particulars concerning the first three charges against Virata averred in paragraphs 14 b(ii), 14 g, and 14 m of the expanded Second Amended Complaint, on the other hand, as regards the charges stated in paragraphs 17 and 18 of the said complaint, the Republic was ordered to file the required bill of particulars by the Sandiganbayan through its Resolution dated August 4, 1992. The Republic purportedly complied with these orders by filing the questioned bill of particulars dated November 3, 1993 and the Limited Bill of Particulars of October 22, 1992. However, as shown by the above discussion, the two bills of particulars were not the bills of particulars which fully complied with the Rules of Court and with the orders of the Sandiganbayan and this Court.

As such, in view of the Republic's failure to obey this Court's directive of April 6, 1993 (G.R. No. 106527) and the Sandiganbayan's order of August 4, 1992 to file the proper bill of particulars which would completely amplify the charges against Virata, this Court deems it just and proper to order the dismissal of the expanded Second Amended Complaint, in so far as the charges against Virata are concerned. This action is justified by Section 3, Rule 17 of the Rules of Court, which provides that:

“ Section 3. Failure to prosecute. - If plaintiff fails to appear at the time of the trial, or to prosecute his action

for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court." (italics ours)

Regarding the second issue of the instant case, Virata contends that the Presidential Commission on Good Government is not authorized by law to deputize a counsel to prepare and file pleadings in behalf of the Republic. Neither can the Office of the Solicitor General validly deputize an outside counsel to completely take over the case for the Republic. According to petitioner, only the Office of the Solicitor General is mandated by law to act counsel for the Republic. Thus, the bill of particulars filed for the Republic by "private counsel" or "deputized prosecutor" of the PCGG is unauthorized.

This contention is devoid of merit.

We are of the opinion that the Limited Bill of Particulars dated October 22, 1992 signed by Ramon Felipe IV and the Bill of Particulars dated November 3, 1993 signed by Reynaldo Ros are valid pleadings which are binding upon the Republic because the two lawyer-signatories are legally deputized and authorized by the Office of the Solicitor General and the Presidential Commission on Good Government to sign and file the bills of particulars concerned.

Realizing that it can not adequately respond to this Court's order of April 6 1993 (G.R. No. 106527) requiring the Republic to submit the bill of particulars concerning the first three charges against Virata, the Office of the Solicitor General deemed it better to seek the help of the Presidential Commission on Good Government by availing the services of the latter's lawyer who would directly file the required bill of particulars in behalf of the Republic. This circumstance prompted the Office of the Solicitor General to manifest before the Sandiganbayan on August 20, 1993 that it would be the PCGG which would file the required bill of particulars and move that it be excused from doing so as the PCGG, being in-charge of investigating the case, was in a better position than the OSG. Armed with this authority given by the OSG, the PCGG, through one of its deputized prosecutors, Reynaldo Ros, filed the bill of particulars dated November 3, 1993 to amplify the first three charges against Virata stated in paragraphs 14 b(ii), 14g, and 14 m of the expanded Second Amended Complaint.

The action of the OSG in seeking the assistance of the PCGG is not without legal basis. The Administrative Code of 1987, which virtually reproduces the powers and functions of the OSG enumerated in P.D. No. 478 (The Law Defining the Powers and Functions of the Office of the Solicitor General), provides, inter alia, that:

" Section 35. Powers and Functions. xxx.

It (the OSG) shall have the following specific powers and functions:

xxx

(8) Deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases.

(9) Call on any department, bureau, office, agency, or instrumentality of the Government for such service assistance and cooperation as may be necessary in fulfilling its functions and responsibilities and for this purpose enlist the services of any government official or employee in the pursuit of his task. xxx."[17]

Contrary to Virata's contention, the Solicitor General did not abdicate his function and turn over the handling of the instant case to the PCGG. Nowhere in the manifestation and motion filed by the OSG on August 20, 1993 is there an iota or indication that the OSG is withdrawing from the case and that the PCGG is taking over its prosecution. What the OSG did was merely to call the PCGG for assistance and authorize it to respond to the

motion for a bill of particulars filed by Virata. The OSG was impelled to act this way because of the existence of the special circumstance that the PCGG, which has the complete records of the case and being in charge of its investigation, was more knowledgeable and better informed of the facts of the case than the OSG.

The authority, therefore, of Attorney Reynaldo Ros to sign and submit in behalf of the Republic the bill of particulars dated November 3, 1993 is beyond dispute because 1) he was duly deputized by the PCGG in pursuance to its power to prosecute cases of ill-gotten wealth under Executive Order No. 14 of May 14, 1986, 2) the OSG empowered the PCGG to file the bill of particulars as evidenced by the OSG's manifestation and motion filed on August 20, 1993, and 3) there was no abdication of OSG's duty by giving the PCGG the authority to file the bill of particulars.

On the other hand, the deputation of Ramon Felipe IV by the Solicitor General to sign and file the Limited Bill of Particulars is based on Section 3 of Presidential Decree No. 478, which provides that:

"Section 3. The Solicitor General may, when necessary and after consultation with the Government entity concerned, employ, retain, and compensate on a contractual basis, in the name of the Government, such attorneys and experts or technical personnel as he may deem necessary to assist him in the discharge of his duties. The compensation and expenses may be charged to the agency or office in whose behalf the services have to be rendered." (italics ours)

The Solicitor General is mandated by law to act as the counsel of the Government and its agencies in any litigation and matter requiring the services of a lawyer. In providing the legal representation for the Government, he is provided with vast array of powers, which includes the power to retain and compensate lawyers on contractual basis, necessary to fulfill his sworn duty with the end view of upholding the interest of the Government. Thus, the Solicitor General acted within the legal bounds of its authority when it deputized Attorney Felipe IV to file in behalf of the Republic the bill of particulars concerning the charges stated in paragraph 17 and 18 of the expanded Second Amended Complaint.

At any rate, whether or not the lawyer-signatories are duly deputized would not be decisive in the resolution of this case considering that the two bills of particulars filed by the Republic are mere scraps of paper which miserably failed to amplify the charges against Virata. For the Republic's failure to comply with the court's order to file the required bill of particulars that would completely and fully inform Virata of the charges against him, the dismissal of the action against him is proper based on Section 3, Rule 17 of the Revised Rules of Court and the relevant jurisprudence thereon.[18] Simple justice demands that as stated earlier, petitioner must know what the complaint is all about. The law requires no less.

Although this Court is aware of the Government's laudable efforts to recover ill-gotten wealth allegedly taken by the defendants, this Court, however, cannot shrink from its duty of upholding the supremacy of the law under the aegis of justice and fairness. This Court in dismissing the action against the petitioner has rightfully adhered in the unyielding tenet - *principia, non homines* - the rule of law, not of men.

ACCORDINGLY, the instant petition is hereby GRANTED and the expanded Second Amended Complaint, in so far as petitioner Virata is concerned, is hereby ordered DISMISSED.SO ORDERED.

Puno and Mendoza, JJ, concur.

Regalado, (Chairman), J., in the result.

Romero, no part.

- [1] The complaint which originally impleaded forty five defendants was amended to include eight other co-defendants.
- [2] Rollo, pp. 57-78, Second Amended Complaint pp. 18-40.
- [3] Rollo, pp. 96-98.
- [4] Virata vs. Sandiganbayan, G.R. No. 106527, April 6, 1993. See 221 SCRA 52.
- [5] Rollo, pp. 125-126 , Bill of Particulars dated November 3,1993, pp. 1-2.
- [6] Rollo, pp. 38-39 , Resolution promulgated on February 16, 1994, pp. 7-8.
- [7] Dulay vs. Court of Appelas, G.R. No.108017, April 3,1995 ; 243 SCRA 220.
- [8] Bantillo vs. IAC , No.75311 , October 18,1988 ; 166 SCRA 508.
- [9] Ibid.
- [10] 71 CJS 376 , p. 799.
- [11] Tan vs. Sandiganbayan , G.R. No. 84195 , December 11,1989.
- [12] 61 Am Jur 2d 296 , pp. 287-288.
- [13] 71 CJS 398 , p. 830.
- [14] Ibid., p. 831.
- [15] G.R. 63018 , October 22,1985 (Resolution).
- [16] Rizal Electric Cooperative; Talim Electric Cooperative; the electric firms in Laguna and Quezon; First Cavite Electric Cooperatrive, Inc.; the three electric cooperatives in Bulacan; Communications and Electricity Development Authority in Cavite ; and the San Mateo Electric Light and Power Company.
- [17] Book IV , Title III , Chapter 12 of Executive Order No. 292.
- [18] Santos vs. Liwag, 101 SCRA 327, No. L-24238, November 28, 1980, Aranico-Rabino vs. Aquino, No. L-46641, October 28, 1977, 10 SCRA 253.

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