

**REPUBLIC OF THE PHILIPPINES REPRESENTED BY THE
PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG),
PETITIONER, VS. SANDIGANBAYAN (SECOND DIVISION) AND
ROBERTO S. BENEDICTO, RESPO...**

G.R. NO. 129406. March 06, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

Before the Court is this petition for certiorari under Rule 65 of the Rules of Court to nullify and set aside the March 28, 1995[1] and March 13, 1997[2] Resolutions of the Sandiganbayan, Second Division, in Civil Case No. 0034, insofar as said resolutions ordered the Presidential Commission on Good Government (PCGG) to pay private respondent Roberto S. Benedicto or his corporations the value of 227 shares of stock of the Negros Occidental Golf and Country Club, Inc. (NOGCCI) at P150,000.00 per share, registered in the name of said private respondent or his corporations.

The facts:

Civil Case No. 0034 entitled Republic of the Philippines, plaintiff, v. Roberto S. Benedicto, et al., defendants, is a complaint for reconveyance, reversion, accounting, reconstitution and damages. The case is one of several suits involving ill-gotten or unexplained wealth that petitioner Republic, through the PCGG, filed with the Sandiganbayan against private respondent Roberto S. Benedicto and others pursuant to Executive Order (EO) No. 14,[3] series of 1986.

Pursuant to its mandate under EO No. 1,[4] series of 1986, the PCGG issued writs placing under sequestration all business enterprises, entities and other properties, real and personal, owned or registered in the name of private respondent Benedicto, or of corporations in which he appeared to have controlling or majority interest. Among the properties thus sequestered and taken over by PCGG fiscal agents were the 227 shares in NOGCCI owned by private respondent Benedicto and registered in his name or under the names of corporations he owned or controlled.

Following the sequestration process, PCGG representatives sat as members of the Board of Directors of NOGCCI, which passed, sometime in October 1986, a resolution effecting a corporate policy change. The change consisted of assessing a monthly membership due of P150.00 for each NOGCCI share. Prior to this resolution, an investor purchasing more than one NOGCCI share was exempt from paying monthly membership due for the second and subsequent shares that he/she owned.

Subsequently, on March 29, 1987, the NOGCCI Board passed another resolution, this time increasing the monthly membership due from P150.00 to P250.00 for each share.

As sequestrator of the 227 shares of stock in question, PCGG did not pay the corresponding monthly membership due thereon totaling P2,959,471.00. On account thereof, the 227 sequestered shares were declared delinquent to

be disposed of in an auction sale.

Apprised of the above development and evidently to prevent the projected auction sale of the same shares, PCGG filed a complaint for injunction with the Regional Trial Court (RTC) of Bacolod City, thereat docketed as Civil Case No. 5348. The complaint, however, was dismissed, paving the way for the auction sale for the delinquent 227 shares of stock. On August 5, 1989, an auction sale was conducted.

On November 3, 1990, petitioner Republic and private respondent Benedicto entered into a Compromise Agreement in Civil Case No. 0034. The agreement contained a general release clause^[5] whereunder petitioner Republic agreed and bound itself to lift the sequestration on the 227 NOGCCI shares, among other Benedicto's properties, petitioner Republic acknowledging that it was within private respondent Benedicto's capacity to acquire the same shares out of his income from business and the exercise of his profession.^[6] Implied in this undertaking is the recognition by petitioner Republic that the subject shares of stock could not have been ill-gotten.

In a decision dated October 2, 1992, the Sandiganbayan approved the Compromise Agreement and accordingly rendered judgment in accordance with its terms.

In the process of implementing the Compromise Agreement, either of the parties would, from time to time, move for a ruling by the Sandiganbayan on the proper manner of implementing or interpreting a specific provision therein.

On February 22, 1994, Benedicto filed in Civil Case No. 0034 a "Motion for Release from Sequestration and Return of Sequestered Shares/Dividends" praying, inter alia, that his NOGCCI shares of stock be specifically released from sequestration and returned, delivered or paid to him as part of the parties' Compromise Agreement in that case. In a Resolution^[7] promulgated on December 6, 1994, the Sandiganbayan granted Benedicto's aforementioned motion but placed the subject shares under the custody of its Clerk of Court, thus:

WHEREFORE, in the light of the foregoing, the said "Motion for Release From Sequestration and Return of Sequestered Shares/Dividends" is hereby GRANTED and it is directed that said shares/dividends be delivered/placed under the custody of the Clerk of Court, Sandiganbayan, Manila subject to this Court's disposition.

On March 28, 1995, the Sandiganbayan came out with the herein first assailed Resolution,^[8] which clarified its aforementioned December 6, 1994 Resolution and directed the immediate implementation thereof by requiring PCGG, among other things:

(b) To deliver to the Clerk of Court the 227 sequestered shares of [NOGCCI] registered in the name of nominees of ROBERTO S. BENEDICTO free from all liens and encumbrances, or in default thereof, to pay their value at P150,000.00 per share which can be deducted from [the Republic's] cash share in the Compromise Agreement. [Words in bracket added] (Emphasis Supplied).

Owing to PCGG's failure to comply with the above directive, Benedicto filed in Civil Case No. 0034 a Motion for Compliance dated July 25, 1995, followed by an Ex-Parte Motion for Early Resolution dated February 12, 1996. Acting thereon, the Sandiganbayan promulgated yet another Resolution^[9] on February 23, 1996, dispositively reading:

WHEREFORE, finding merit in the instant motion for early resolution and considering that, indeed, the PCGG has not shown any justifiable ground as to why it has not complied with its obligation as set forth in the Order of December 6, 1994 up to this date and which Order was issued pursuant to the Compromise Agreement and has already become final and executory, accordingly, the Presidential Commission on Good Government is hereby given a final extension of fifteen (15) days from receipt hereof within which to comply with the Order

of December 6, 1994 as stated hereinabove.

On April 1, 1996, PCGG filed a Manifestation with Motion for Reconsideration,[10] praying for the setting aside of the Resolution of February 23, 1996. On April 11, 1996, private respondent Benedicto filed a Motion to Enforce Judgment Levy. Resolving these two motions, the Sandiganbayan, in its second assailed Resolution [11] dated March 13, 1997, denied that portion of the PCGG's Manifestation with Motion for Reconsideration concerning the subject 227 NOGCCI shares and granted Benedicto's Motion to Enforce Judgment Levy.

Hence, the Republic's present recourse on the sole issue of whether or not the public respondent Sandiganbayan, Second Division, gravely abused its discretion in holding that the PCGG is at fault for not paying the membership dues on the 227 sequestered NOGCCI shares of stock, a failing which eventually led to the foreclosure sale thereof.

The petition lacks merit.

To begin with, PCGG itself does not dispute its being considered as a receiver insofar as the sequestered 227 NOGCCI shares of stock are concerned.[12] PCGG also acknowledges that as such receiver, one of its functions is to pay outstanding debts pertaining to the sequestered entity or property,[13] in this case the 227 NOGCCI shares in question. It contends, however, that membership dues owing to a golf club cannot be considered as an outstanding debt for which PCGG, as receiver, must pay. It also claims to have exercised due diligence to prevent the loss through delinquency sale of the subject NOGCCI shares, specifically inviting attention to the injunctive suit, i.e., Civil Case No. 5348, it filed before the RTC of Bacolod City to enjoin the foreclosure sale of the shares.

The filing of the injunction complaint adverted to, without more, cannot plausibly tilt the balance in favor of PCGG. To the mind of the Court, such filing is a case of acting too little and too late. It cannot be over-emphasized that it behooved the PCGG's fiscal agents to preserve, like a responsible father of the family, the value of the shares of stock under their administration. But far from acting as such father, what the fiscal agents did under the premises was to allow the element of delinquency to set in before acting by embarking on a tedious process of going to court after the auction sale had been announced and scheduled.

The PCGG's posture that to the owner of the sequestered shares rests the burden of paying the membership dues is untenable. For one, it lost sight of the reality that such dues are basically obligations attached to the shares, which, in the final analysis, shall be made liable, thru delinquency sale in case of default in payment of the dues. For another, the PCGG as sequestrator-receiver of such shares is, as stressed earlier, duty bound to preserve the value of such shares. Needless to state, adopting timely measures to obviate the loss of those shares forms part of such duty and due diligence.

The Sandiganbayan, to be sure, cannot plausibly be faulted for finding the PCGG liable for the loss of the 227 NOGCCI shares. There can be no quibbling, as indeed the graft court so declared in its assailed and related resolutions respecting the NOGCCI shares of stock, that PCGG's fiscal agents, while sitting in the NOGCCI Board of Directors agreed to the amendment of the rule pertaining to membership dues. Hence, it is not amiss to state, as did the Sandiganbayan, that the PCGG-designated fiscal agents, no less, had a direct hand in the loss of the sequestered shares through delinquency and their eventual sale through public auction. While perhaps anti-climactic to so mention it at this stage, the unfortunate loss of the shares ought not to have come to pass had those fiscal agents prudently not agreed to the passage of the NOGCCI board resolutions charging membership dues on shares without playing representatives.

Given the circumstances leading to the auction sale of the subject NOGCCI shares, PCGG's lament about public respondent Sandiganbayan having erred or, worse still, having gravely abused its discretion in its determination as

to who is at fault for the loss of the shares in question can hardly be given cogency.

For sure, even if the Sandiganbayan were wrong in its findings, which does not seem to be in this case, it is a well-settled rule of jurisprudence that certiorari will issue only to correct errors of jurisdiction, not errors of judgment. Corollarily, errors of procedure or mistakes in the court's findings and conclusions are beyond the corrective hand of certiorari.[14] The extraordinary writ of certiorari may be availed only upon a showing, in the minimum, that the respondent tribunal or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion.[15]

The term "grave abuse of discretion" connotes capricious and whimsical exercise of judgment as is equivalent to excess, or a lack of jurisdiction.[16] The abuse must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[17] Sadly, this is completely absent in the present case. For, at bottom, the assailed resolutions of the Sandiganbayan did no more than to direct PCGG to comply with its part of the bargain under the compromise agreement it freely entered into with private respondent Benedicto. Simply put, the assailed resolutions of the Sandiganbayan have firm basis in fact and in law.

Lest it be overlooked, the issue of liability for the shares in question had, as both public and private respondents asserted, long become final and executory. Petitioner's narration of facts in its present petition is even misleading as it conveniently fails to make reference to two (2) resolutions issued by the Sandiganbayan. We refer to that court's resolutions of December 6, 1994[18] and February 23, 1996[19] as well as several intervening pleadings which served as basis for the decisions reached therein. As it were, the present petition questions only and focuses on the March 28, 1995[20] and March 13, 1997[21] resolutions, which merely reiterated and clarified the graft court's underlying resolution of December 6, 1994. And to place matters in the proper perspective, PCGG's failure to comply with the December 6, 1994 resolution prompted the issuance of the clarificatory and/or reiteratory resolutions aforementioned.

In a last-ditch attempt to escape liability, petitioner Republic, through the PCGG, invokes state immunity from suit.[22] As argued, the order for it to pay the value of the delinquent shares would fix monetary liability on a government agency, thus necessitating the appropriation of public funds to satisfy the judgment claim.[23] But, as private respondent Benedicto correctly countered, the PCGG fails to take stock of one of the exceptions to the state immunity principle, i.e., when the government itself is the suitor, as in Civil Case No. 0034. Where, as here, the State itself is no less the plaintiff in the main case, immunity from suit cannot be effectively invoked.[24] For, as jurisprudence teaches, when the State, through its duly authorized officers, takes the initiative in a suit against a private party, it thereby descends to the level of a private individual and thus opens itself to whatever counterclaims or defenses the latter may have against it.[25] Petitioner Republic's act of filing its complaint in Civil Case No. 0034 constitutes a waiver of its immunity from suit. Being itself the plaintiff in that case, petitioner Republic cannot set up its immunity against private respondent Benedicto's prayers in the same case.

In fact, by entering into a Compromise Agreement with private respondent Benedicto, petitioner Republic thereby stripped itself of its immunity from suit and placed itself in the same level of its adversary. When the State enters into contract, through its officers or agents, in furtherance of a legitimate aim and purpose and pursuant to constitutional legislative authority, whereby mutual or reciprocal benefits accrue and rights and obligations arise therefrom, the State may be sued even without its express consent, precisely because by entering into a contract the sovereign descends to the level of the citizen. Its consent to be sued is implied from the very act of entering into such contract,[26] breach of which on its part gives the corresponding right to the other party to the agreement.

Finally, it is apropos to stress that the Compromise Agreement in Civil Case No. 0034 envisaged the immediate recovery of alleged ill-gotten wealth without further litigation by the government, and buying peace on the part of the aging Benedicto.[27] Sadly, that stated objective has come to naught as not only had the litigation continued to ensue, but, worse, private respondent Benedicto passed away on May 15, 2000,[28] with the trial of Civil Case No. 0034 still in swing, so much so that the late Benedicto had to be substituted by the administratrix of his estate.[29]

WHEREFORE, the instant petition is hereby DISMISSED.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, and Corona, JJ., concur.
Azcuna, J., in the result.

[1] Penned by Associate Justice Romeo M. Escareal, with Associate Justices Minita Chico-Nazario (now a member of this Court) and Roberto M. Lagman, concurring; Rollo, pp. 14-27.

[2] Rollo, pp. 28-43.

[3] Issued by then Pres. Corazon C. Aquino investing the Sandiganbayan exclusive and original jurisdiction over cases involving the ill-gotten wealth of former President Ferdinand E. Marcos, members of his immediate family, close relatives, subordinates, close and/or business associates, dummies, agents and nominees.

[4] Creating the PCGG to assist the President in the recovery of vast government resources allegedly amassed by then former President Marcos, his immediate family, relatives and close associates and defining its powers.

[5] Par. II (a).

[6] Petition, Rollo, p. 6.

[7] Rollo, pp. 127-132, Annex 6 of Comment.

[8] Rollo, pp. 14-27, Annex "A" of the Petition.

[9] Rollo, pp. 138-139, Annex 9 of Comment.

[10] Rollo, pp. 44-46, Annex "C" of the Petition.

[11] Rollo, pp. 28-43, Annex "B" of the Petition.

[12] Petition, Rollo, p. 7.

[13] Id. at pp. 7-8, Petition, citing *Bataan Shipyard & Engineering Co. v. PCGG*, 150 SCRA 181 (1987).

[14] *Lee v. People*, 393 SCRA 397 (2002).

[15] *Camacho v. Coresis, Jr.*, 387 SCRA 628 (2002).

[16] *Litton Mills, Inc. v. Galleon Trader, Inc.*, 163 SCRA 489 (1988).

[17] *Duero v. Court of Appeals*, 373 SCRA 11 (2002).

[18] See Note #7, *supra*.

[19] See Note #9, *supra*.

[20] See Note # 1, *supra*.

[21] See Note #2, *supra*.

[22] Reply, Rollo, p. 160; and Memorandum, Rollo, pp. 260-261.

[23] *Id.*, citing *Garcia v. Chief of Staff*, 16 SCRA 120 (1966).

[24] Rejoinder, Rollo, pp. 169-170.

[25] *Froilan v. Pan Oriental Shipping Co.*, 95 Phil. 905, 912 (1954).

[26] *Santos v. Santos*, 92 Phil. 281, 284 (1952).

[27] March 28, 1995 Resolution of the Sandiganbayan; Rollo, p. 20.

[28] Notice of death, Rollo, pp. 210-212.

[29] Rollo, p. 228.

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