TRANS MIDDLE EAST (PHILS.) EQUITIES, INC., PETITIONER, VS. SANDIGANBAYAN (SECOND DIVISION), RESPONDENT.

G.R. NO. 129434. August 18, 2006

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing the June 17, 1997 Resolution[1] of the Sandiganbayan in Civil Case No. 0035, entitled "Republic of the Philippines, petitioner, versus Benjamin "Kokoy" Romualdez, et al; respondents."

Sometime in 1983, Atty. Edilberto S. Narciso, Jr. and his law firm organized into a corporation the Trans Middle East (Phils.) Equities, Incorporated (TMEPEI), petitioner herein, with a capital stock of P30,000,000.00 divided into 300,000 shares at P100.00 per share. Atty. Narciso acted as Treasurer.

On October 17, 1983, petitioner's Articles of Incorporation and By-laws were registered with the Securities and Exchange Commission (SEC).

On December 27, 1985, a special meeting of petitioner's stockholders was held and a new set of directors was elected. Atty. Narciso retained his position as Treasurer.

Meanwhile, on March 13, 1998, then President Corazon C. Aquino issued Executive Order (EO) No. 2 partly quoted as follows:

Executive Order No. 2

> REGARDING THE FUNDS, MONEYS, ASSETS, AND PROPERTIES ILLEGALLY ACQUIRED OR MISAPPROPRIATED BY FORMER PRESIDENT FERDINAND E. MARCOS, MRS. IMELDA ROMUALDEZ MARCOS, THEIR CLOSE RELATIVES, SUBORDINATES, BUSINESS ASSOCIATES, DUMMIES, AGENTS, OR NOMINEES.
>
> WHEREAS, the Government of the Philippines is in possession of evidence showing that there are assets and properties purportedly pertaining to former President Ferdinand E. Marcos, and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines;
>
> WHEREAS, said assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominium, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world;
>
> WHEREAS, a Presidential Commission on Good Government has been established primarily charged with the

> responsibility of recovering the aforesaid assets and properties for the Philippine Government.

x x x

> (3) Require all persons in the Philippines holding such assets or properties, whether located in the Philippines or abroad, in their names as nominees, agents or trustees, to make full disclosure of the same to the Commission on Good Government within thirty (30) days from the publication of this Executive Order, or the substance thereof, in at least two (2) newspapers of general circulation in the Philippines.

On April 10, 1986, pursuant to the said EO No. 2, Atty. Narciso, in his capacity as petitioner's Treasurer, sent a letter[2] to the Presidential Commission on Good Government (PCGG), which reads:

Dear Sirs:

> Re: PHILIPPINE COMMERCIAL INTERNATIONAL BANK SHARES UNDER EXECUTIVE ORDER NO. 2
>
> I have the honor to inform that TRANS MIDDLE EAST PHILS. EQUITIES, INC. (TMEPEI) IS THE OWNER OF 6,299,177 SHARES of Philippine Commercial International Bank (PCIB) which are registered in the books of PCIB as follows:

Name of Registered Owner

Number of Shares

TRANS MIDDLE EAST PHILS. EQUITIES, INC

6,119,067 shares

Edilberto S. Narciso, Jr.

180,110 shares

TOTAL

6,299,177 shares

> This matter is being reported conformable to Executive Order No. 2 of President Aquino, as the beneficial owner of said shares is former Gov. Benjamin Romualdez and it would thus appear that these shares are within the jurisdiction or cognizance of the Commission under Executive Order No. 2.
>
> However, as of March 31, 1986, these shares have outstanding claims, liens and charges against them in the approximate amount of P70,000,000.00 which are due and payable.

Thus, on April 15, 1986, the PCGG sequestered the 6,119,067 shares held by petitioner in Philippine Commercial and International Bank (PCIB) and the 180,110 shares held by Atty. Narciso in the same bank or a total of 6,299,177 shares.

In July 1987, the PCGG filed with the Sandiganbayan (hereinafter referred to as respondent court) Civil Case No. 0035, entitled "Republic of the Philippines versus Benjamin "Kokoy" Romualdez, Juliette Romualdez, President Ferdinand E. Marcos, Imelda R. Marcos, Jose F.S. Bengzon, Jr., Jose Vicente Jimenez, Armando V. Faustino, Jr., Leonardo C. Cruz, and Atty. Edilberto Narciso, Jr., et al." The complaint is for reconveyance, reversion, restitution, accounting, and damages for ill-gotten wealth.

In its Second Amended Complaint dated January 22, 1988, the PCGG alleged, among others, that:

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> Defendants Benjamin "Kokoy" Romualdez and Juliette 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 devices, schemes and stratagems to unjustly enrich themselves at the expense of plaintiff and the Filipino people, among others:
>
> x x x
>
> [j] effected, with the active collaboration among others, Edilberto S. Narciso, Jr., Jose F.S. Bengzon, Jr., Jose Vicente E. Jimenez, Amando V. Faustino, Jr., and Leonardo C. Cruz, the sale of shareholdings of the First Philippine Holdings Corporation in the Philippine and Commercial and International Bank (PCIB) to Trans Middle East Philippines Equities, Inc., a front organization of defendant Benjamin Romualdez. The acquisition of PCIB shares was packed by PCIB and financed by PCIB and Philippine Commercial Capital, Inc., through loan extended to SOLOIL Inc., for and in behalf of Trans Middle East Equities, Inc. The manner by which PCIB in effect funded the purchase of shares of its own capital stock was done in violation of banking laws, rules and regulations on (i) loans to directors, officers, stockholders and other related interest (DOSRI), (ii) single borrower's Limit (SBL), (iii) disclosure requirements, and (iv) duty to ascertain identity of borrower and purpose of the loan.

In his Answer dated September 23, 1988, Atty. Narciso denied the above allegations, thus:

> They [he and other lawyers in the law firm] have not singly or collectively made any attempt to conceal, hide or dispose of any or all of the assets and properties of Benjamin Romualdez; to the contrary, said persons shortly after the revolution and in compliance with Executive Order Nos. 1 and 2 of President Corazon C. Aquino, voluntarily and without bargaining for immunity, disclosed to the PCGG all of the assets and properties of Benjamin Romualdez known to them. More particularly, the ownership by Benjamin Romualdez of Trans Middles East Philippines Equities, Inc. which, in turn, owns 6,299,177 PCIBank shares was voluntarily disclosed to the PCGG by answering defendant himself. This disclosure enables the PCGG to immediately place all of the 6,299,177 PCIBank shares under sequestration and subsequently to received approximately P6,600,000.00 in cash dividends accruing to those shares.

The answers of Attys. Bengzon, Jimenez, and Faustino state the same allegations contained in Atty. Narciso's answer.

On March 24, 1988, petitioner TMEPEI filed with respondent court a Motion to Intervene alleging that it is the registered owner of 6,119,067 common shares of the PCIB and the recognized owner of 180,110 shares or a total of 6,299,177 shares which correspond to only 12.97% of the common shares of the bank; and that the PCGG sequestered its shares without due process and exercised all rights of ownership thereof. Petitioner thus prayed for the issuance of a temporary restraining order (TRO) and a writ of preliminary injunction to enjoin the PCGG from exercising acts of ownership.

On April 14, 1988, the PCGG filed its Opposition to petitioner's motion to intervene, contending that Benjamin Romualdez is the beneficial owner of the sequestered shares as shown by the letter of Atty. Narciso dated April 10, 1986, quoted earlier.

On April 27, 1988, respondent court issued a Resolution granting petitioner's motion to intervene and accordingly admitted its complaint-in-intervention.

On May 7, 1991, petitioner filed an urgent motion for the issuance of a TRO to enjoin the PCGG from voting its sequestered shares in the PCIB stockholders' meeting to be held on May 9, 1991.

On May 8, 1991, respondent court granted the motion and issued a TRO.

On October 3, 1991, respondent court promulgated a Resolution perpetually enjoining the PCGG from voting

petitioner's 6,299,177 shares (which increased to 10,853,481) in any PCIB stockholders' meeting and allowing petitioner to vote the same shares in all elections.

The PCGG filed its Motion for Reconsideration but the same was denied by respondent court.

Hence, the PCGG filed with this Court a petition for certiorari assailing the Resolutions of respondent court dated October 3, 1991 and May 26, 1992, contending that they were issued with grave abuse of discretion. The petition was docketed as G.R. No. 105808.

On June 18, 1996, this Court issued a Resolution granting PCGG's petition and setting aside respondent court's challenged Orders. It held that the question of who has the right to vote the sequestered shares is not yet ripe for adjudication. It hinges on the determination of the issue of whether the subject shares of stock constitute ill-gotten wealth, a factual matter which only respondent court can determine. This Court then directed respondent court to resolve the issue with reasonable dispatch.

On January 16, 1997, respondent court issued a Resolution setting the case for hearing. Upon the PCGG's request, respondent court issued a subpoena to Atty. Narciso, requiring him to appear and testify on March 11 and 12, 1997 regarding petitioner's assets and transactions, specifically its shares of stocks with the PCIB.

On March 6, 1997, Atty. Narciso filed a Manifestation and Motion seeking a "directive" from respondent court whether he should testify on matters relative to petitioner's assets and transactions considering that he and his law firm acted as its counsel in 1981 for the purpose of incorporating or registering said petitioner with the SEC.

On March 17, 1997, the PCGG filed its Comment stating, among others, that Atty. Narciso is being subpoenaed to identify the documents he filed with the PCGG. The fact that he filed those documents shows that their contents are not confidential.

On April 29, 1997, the PCGG served on Atty. Narciso a Request for Admission, asking him to admit or deny 14 matters specified therein, including the genuineness, due execution, and truth of the contents of his letter to the PCGG dated April 10, 1986. This prompted Atty. Narciso to file a second Manifestation and Motion on May 15, 1997. He prayed for a ruling on whether he will be violating the lawyer-client privileged communication rule should he testify and admit the truth of the matters indicated in the PCGG's Request for Admission.

On June 17, 1997, respondent court, acting on the two manifestations and motions of Atty. Narciso issued the assailed Resolution,[3] directing him to respond to the PCGG's Request for Admission and to testify on matters not specified therein, subject to the court's ruling on the objections seasonably raised by the proper party. Respondent court held that the letter dated April 10, 1986 sent by Atty. Narciso to the PCGG is "not confidential or intended to be so" as it was made for the purpose of communicating it to others pursuant to EO No. 2. Moreover, Section 24 (b), Rule 130 of the Revised Rules of Court on privileged communication by a client to his lawyer "was reenacted" in the 1989 Rules on Evidence. It is general in its terms, for it covers all confidential communications by all clients to their lawyers in the course of the latter's professional employment. On the other hand, EO No. 2 was passed in March 1986. It applies only to disclosures of assets or properties constituting ill-gotten wealth allegedly amassed during the Marcos regime placed in the names of nominees, agents or trustees. This being so, EO No. 2 shall control.

Hence, the present petition anchored on the following grounds:

I.

RESPONDENT SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT ISSUED THE RESOLUTION DATED JUNE 17, 1997

DEPRIVING PETITIONER OF DUE PROCESS.

II.

RESPONDENT SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT RULED THAT THE SUBJECT SUBPOENA AS WELL AS THE REQUEST FOR ADMISSION IS NOT VIOLATIVE OF THE LAWYER-CLIENT PRIVILEGE RULE.

In its Comment, the PCGG alleged that respondent court did not gravely abuse its discretion when it issued its assailed Resolution. Petitioner cannot claim denial of due process since it failed to file seasonably its comment on the two manifestations and motions of Atty. Narciso despite notice. When those incidents were heard on March 11 and May 23, 1997, petitioner's Opposition To/Comment on Manifestation and Motion was not yet filed. It was submitted to respondent court only on May 29, 1997, without even an accompanying motion for leave to admit the same. Hence, there was no denial of due process because petitioner was given the opportunity to be heard.

The petition lacks merit for the following reasons:

First, a motion for reconsideration is needed before a petition for certiorari can be resorted to,[4] subject to some exceptions.[5] In this case, petitioner did not file with respondent court a motion for reconsideration of its assailed Resolution before it resorted to certiorari. Neither did it explain why it should be excused from complying with such requirement.

Second, on petitioner's contention that it was denied due process, let it be stressed that where a party was given an opportunity to participate in the proceedings but failed to do so, he cannot complain of deprivation of due process.[6]

Here, petitioner was afforded the opportunity to be heard. "To be heard" does not only mean presentation of testimonial evidence in court – one may also be heard through pleadings, and where opportunity to be heard through pleadings is accorded, as in this case, there is no denial of due process.[7]

Respondent court directed petitioner to file its comment on the manifestations and motions of Atty. Narciso. However, despite notice, petitioner did not file any comment. Records disclose that if filed the same only on May 29, 1997 after the incidents were deemed submitted for resolution. Therefore, petitioner cannot complain it was deprived of due process.

Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can present its side or defend its interests in due course, there is no denial of procedural due process.[8] What is repugnant to due process is the denial of the opportunity to be heard,[9] which is not present here.

Lastly, it bears stressing Atty. Narciso, in his two manifestations and motions, was seeking advice or "directive" from respondent court. It is not the duty of any court to give advice or "directive." The court only decides actual controversies involving rights legally demandable and enforceable, and to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[10] Thus, the motions should have been dismissed outright. At any rate, we fail to discern any taint of grave abuse of discretion on the part of respondent court when it issued the challenged Resolution. If at all, it only committed an error of judgment.

One last word. It has been confirmed that Atty. Narciso is now dead. Verily, the issues raised by petitioner and the PCGG and the questioned Resolution of respondent court have become moot.

WHEREFORE, the petition is DISMISSED.

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SO ORDERED.

Puno, (Chairperson), Corona and Garcia, JJ., concur.Azcuna, J., on official leave.

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[1] Penned by Associate Justice Jose S. Balajadia (retired) and concurred in by Associate Justice Sabino R. De Leon, Jr. (deceased) and Associate Justice Edilberto G. Sandoval.

[2] Rollo, p. 134.

[3] Annex "A," Petition, id., pp. 34-55.

[4] Gabi Multi Purpose Cooperative, Inc. v. Republic, G.R. No. 155126, November 9, 2004, 441 SCRA 484; Sunshine Transportation, Inc. v. NLRC, G.R. No. 116025, February 22, 1996, 254 SCRA 51.

[5] (a) where the order is a patent nullity, as where the court a quo has no jurisdiction; (b) where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings are ex parte or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.

[6] Bautista v. Court of Appeals, G.R. No. 157219, May 28, 2004, 430 SCRA 353.

[7] Batul v. Bayron, G.R. No. 157687, 424 SCRA 26.

[8] Air Philippines Corporation v. International Business Aviation Services, Phils., Inc., G.R. No. 151963, September 9, 2004, 438 SCRA 51.

[9] Gaoiran v. Alcala, G.R. No. 150178, November 26, 2004, 444 SCRA 428.

[10] Section 1, Article VIII of the Constitution.

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