

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, PETITIONER,
VS. EDUARDO COJUANGCO, JR., AGR'L. CONSULTANCY SERV., INC.,
ARCHIPELAGO REALTY CORP., BALETE RANCH, INC., BLACK
STALLION ...**

G.R. No. 133197. January 27, 1999

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Private respondents (herein respondent Stockholders) other than San Miguel Corporation (SMC) are registered Stockholders of the latter corporation. A stockholders meeting was scheduled on April 21, 1998 at 2 p.m. During the pendency of the sequestration suit involving the sequestered shares of SMC, respondent stockholders filed a motion before the Sandiganbayan (SB) to enjoin petitioner Presidential Commission on Good Government (PCGG) from voting the PCGG-sequestered shares of stock and instead allow the movants a quo to vote those shares. Subject to the posting of a bond, the SB granted the motion in a resolution dated April 20, 1998, the dispositive portion of which reads:

“IN VIEW OF THE FOREGOING, there being no legal basis for preventing the defendants/movants from voting their sequestered shares of stock in the San Miguel Corporation, the plaintiff Presidential Commission on Good Government, its assignees, agents representatives or servants are enjoined from voting the shares of stock of herein defendants/movants at the scheduled stockholders meeting of said corporation scheduled for April 21, 1998 at 2:00 p.m. or at any other time to which said stockholders meeting may be continued or reset. The Chairman of the meeting and the secretary thereof will acknowledge the right of the following stockholders to vote the shares of stock registered in their names:

(names of respondent stockholders deleted)

“The movants shall post a bond of TWO HUNDRED AND FIFTY THOUSAND PESOS (P250,000.00) to answer for any undue damage that the plaintiff or the San Miguel Corporation shall suffer by reason of the sequestered shares of stock having been voted by or for said movants.

“SO ORDERED.”[1]

Due to the urgency of the matter and for lack of material time, petitioner without filing a motion for reconsideration, assailed the said resolution before this Court thru a petitioner for certiorari and mandamus with application for issuance of a temporary restraining order (TRO). The petition was filed on April 20, 1998 before the Supreme Court Office in Baguio City during its summer session.[2] Petitioner attached thereto a fax copy of the said SB resolution, although a certified copy was submitted later. The next day, the Court required respondents to file their Comment but declined to issue the TRO prayed for.[3] With the denial of the TRO, respondent stockholders were able to elect in said stockholders meeting three (3) nominees to the SMC Board of Directors (BOD).[4]

Before proceeding to the main issue, the court notes that an uncertified fax[5] copy of the assailed resolution

appended to the petition cannot be considered as compliance with the requirement of Rule 65 of the Rules of Court that a certified true copy must be attached and is sufficient reason to warrant the outright dismissal of the petition. However, due to the extraordinary situation of the case, particularly the date of the promulgation of the SB resolution, the date of the stockholders meeting, the summer session of the Supreme Court in Baguio City, and the subsequent submission by petitioner of a certified copy of the assailed SB resolution suffice to relax that particular rule of procedure.

The only query in this petition may be simplified as follows: In the SMC stockholders meeting of April 20, 1998 who between petitioner and respondent stockholders should vote the sequestered shares of stock.

Since 1986, petitioner had been voting the sequestered SMC shares and continued to exercise such right until 1997, except for some period in the year 1991. During the latter year, the Court in the case of *Cojuangco, Jr. vs. Roxas*,^[6] on which both respondent stockholders and SB anchor their position in this case, ruled that the PCGG had no right to vote the said shares. As said by the Court:

“The PCGG cannot perform acts of strict ownership of sequestered property. It is a mere conservator. It may not vote the shares in a corporation and elect the members of the board of directors. The only conceivable exception is in a case of a takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands as in BASECO. The constitutional right against deprivation of life, liberty and property without due process of law is so well-known and too precious so that the hand of the PCGG must be stayed in its indiscriminate takeover of and voting of shares allegedly ill-gotten in these cases. It is only after appropriate judicial proceedings when a clear determination is made that said shares are truly ill-gotten when such a takeover and exercise of acts of strict ownership by the PCGG are justified.

“In the light of the foregoing discussion, the Court finds and so holds that the PCGG has no right to vote and the sequestered shares of petitioners including the sequestered corporate shares. Only their owners, duly authorized representatives or proxies may vote the said shares.

The *Roxas* case was disposed by the Court as follows:

“WHEREFORE, the Petitions are GIVEN DUE COURSE and GRANTED Private respondents Adolfo Azcuna, Edison Coseteng and Patricio Pineda are hereby DIRECTED to vacate their respective offices as members of the Board of Directors of the SMC as soon as this decision is implemented. Contemporaneously with the installation of the safeguards above-required to enable the PCGG to perform its statutory role as conservator of the sequestered shares of stock or assets, the respondent SMC is hereby ORDERED to allow the petitioners to vote their shares in person or by proxy and to be voted for as members of the Board of Directors of the SMC and otherwise to enjoy the rights and privileges of shareholders; and the PCGG is hereby enjoined from voting the sequestered shares of stock except as otherwise authorized in the safeguards above-required. The questioned order of the Sandiganbayan dated 16 November 1989 is hereby SET ASIDE; however, the implementation of this decision shall be carried out under the supervision and control of the Sandiganbayan. The Court makes no pronouncement as to costs.

“SO ORDERED.”

In 1995, however, the Court en banc promulgated the consolidated sequestration cases which includes *PCGG v. Sandiganbayan*.^[7] Among others, the Court nullified in the latter case an earlier resolution issued by the SB lifting the sequestration over the shares of stock in the name of said stockholders. The respondents in the latter case and in this case are the same because the former case is merely an offshoot of the main sequestration suit. The fact that the sequestration remains does not automatically deprive the stockholders of their right to vote those shares which is a basic feature of their ownership – although questioned. But in resolving who should vote the

sequestered shares, necessitates a determination of the alleged ill-gotten character of those shares and consequently the rightful ownership thereof, which issue is still the subject of the main case still pending in the courts. In any case, what is involved herein is merely an incident of the main case and is limited only to the stockholders meeting scheduled for April 20, 1998. This resolution is without prejudice to the final disposition of the merits of the main suit.

Until the main sequestration suit is resolved, the right to vote the SMC sequestered shares depends on whether the two-tiered set by the Court in its June 10, 1993 Resolution in G.R. No. 115352 (*Cojuangco v. Calpo*) concurs. Those guidelines must be observed by the SB in resolving similar motions involving the right to vote the said shares, which are:

1.

whether there is prima facie evidence showing that the said shares are ill-gotten and thus belong to the state; and

2.

whether there is an immediate danger of dissipation thus necessitating their continued sequestration and voting by the PCGG while the main issue pends with the Sandiganbayan.

There is therefore “a need for some factual moorings” to resolve the issues raised herein and since the Court is not a trier of facts, it is proper to refer the matter to the appropriate tribunal.

With respect to the bond, it appears that the same is too minimal if compared to the value of the subject shares of stock and voting power of the members of the BOD represented/elected by such shares. It is just but fair that the bond should reasonably be increased.

ACCORDINGLY, the case is REMANDED to the Sandiganbayan for further proceedings. However, respondent stockholders are ORDERED to furnish an additional bond upon receipt of notice hereof, which is herein set at TWENTY-FIVE MILLION PESOS (P25,000,000.00) for the same purpose as mentioned by the Sandiganbayan, which shall strictly enforce this resolution.

SO ORDERED.

Davide, C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur.

[1] SB Resolution promulgated on April 20, 1998 penned by Presiding Justice Garchitorena with Justices Sandoval and Castañeda, Jr. concurring; Rollo, pp. 34-37, 203-206.

[2] The petition do not bear the signature of the Solicitor-general but was signed only by two special counsels and the verification was signed by Commissioner Herminio Mendoza.

[3] PCGG vs. Cojuangco, Jr., et al., G.R. No. 133197 (Minute Resolution dated April 21, 1998); Rollo, p. 192.

[4] Namely: Mr. Manuel M. Cojuangco, Attys. Estelito P. Mendoza and Gabriel L. Villareal; Rollo, p. 231.

[5] Facsimile.

[6] 195 SCRA 797.

[7] 240 SCRA 377.

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