

PALM AVENUE REALTY DEVELOPMENT CORPORATION AND PALM AVENUE HOLD-INGS COMPANY, INC., BOTH REPRESENTED BY THEIR ATTORNEY-IN-FACT, CLEOFÉ B. VILLAR-VERZOLA, PETITIONERS, VS. PRESID...

G.R. No. 76296. August 31, 1987

Ponente: NARVASA, J.

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NARVASA, J.:

At issue in this special civil action of certiorari and prohibition is the validity of the acts of the Presidential Commission on Good Government (hereafter, simply PCGG) in authorizing and directing the sale to respondent Benguet Management Corporation of sequestered shares of stock in accordance with a contract which petitioners contend had already been rescinded. It is petitioners' thesis that those acts were done without or in excess of the PCGG's authority or with grave abuse of discretion.

The res involved consists of 16,237,339 shares of stock of Benguet Corporation (Common Class A), of which the registered owners are the petitioners, Palm Avenue Realty Development Corporation and Palm Avenue Holdings Co., Inc. The shares had been pledged by the petitioners with three (3) institutions as security for loans obtained from the latter, namely: Philippine Commercial and International Bank (PCIB), Philippine Commercial Capital (PCC), and Equitable Bank.[1]

The PCGG sequestered these shares on or about April 5, 1986. It did so, apparently on the strength of evidence that the ostensible owners, herein petitioner corporations, were owned and controlled by a known "crony" of former President Marcos, Benjamin Kokoy Romualdez.[2] At that time, the loans were all past due and auction sale of the pledged stock was imminent.

Now, Benguet Management Corporation (hereafter, simply BENGUET) wished to acquire these shares of stock from the petitioners, intending to distribute them chiefly to the employees of Benguet Corporation and its subsidiaries pursuant to a plan named Employees' Stock Ownership and Incentive Plan, or ESOIP. BENGUET opened negotiations with the petitioners for the purchase of the stock. It found the petitioners to be willing sellers, but only of so much of the stock as was needed to be sold to pay the past due loans secured, as aforesaid, by the pledge of all said stock.

The negotiations culminated in the execution by the parties of a Contract to Purchase and Sell dated September 1, 1986.[3] Its principal stipulations were the following:

1. BENGUET would buy as much of the petitioners' stock as was needed to pay the latter's loans,[4] estimated to be 9.5 million shares.
2. The price was fixed at P29.00 per share, expected to be realized at a "cross sale" thru Papa Securities at the Manila or Makati Stock Exchange.

3. Additionally, (a) the written approval of the PCGG had to be obtained; (2) the purchasers were to procure the release of all stock from the pledgee banks; and (3) if this was not done within 60 days, BENGUET had the option either to withdraw from the contract, by notice in writing, or pay interest as provided in the agreement.

Approval by the PCGG was not immediately given. In a communication dated September 23, 1986 it opined that the price was too low, P43.00 per share being in its view the more adequate, and set down other conditions at variance with the stipulations in the contract of purchase and sale.¹ Both parties found the PCGG's terms quite unacceptable.

Eventually, however, due mainly to the efforts and representations of BENGUET, PCGG gave its approval. By letter dated October 14, 1986, signed by Commissioner Ramon Diaz, PCGG advised BENGUET that at its meeting on that same day it had approved the Contract to Purchase and Sell dated September 1, 1986.²

The petitioners protested. In their view, the contract had already been rescinded, and they had been freed from their commitments thereunder, because (1) the contract had been earlier disapproved by the PCGG, (2) and it had moreover been abandoned by BENGUET, which had opted to negotiate directly with the PCGG for the acquisition of the shares in question. They also alleged that they had since made their own arrangements with the pledgee banks for the release of the pledged stock upon payment of the obligations thereby secured. Moreover, they deemed it grossly unfair for the stock to be sold at P29.00 per share when the market price had already risen to P56.00 to P58.00 a share. The petitioners made known their objections to all parties concerned, including the broker, Papa Securities; the stock exchanges; the creditors-pledgees; the Securities and Exchange Commission.³ BENGUET disagreed. It pointed out that the action of the PCGG reflected in its letter of September 23, 1986 was not final; in fact the PCGG had, at BENGUET's instance, later reconsidered that action and given its approval on October 14, 1986 to the Contract to Purchase and Sell of September 1, 1986, well within the 60-day deadline fixed by the parties; and the contract could not be unilaterally cancelled or modified, e.g., as to the price stipulated for the shares of stock, the rise or fall of the stock prices in the stock market being at the risk of the parties.⁴

On October 24, 1986, the PCGG and BENGUET, drew up and signed a Memorandum of Agreement specifying the terms and conditions under which the Contract to Purchase and Sell of September 1, 1986 would be implemented.⁵ Briefly, those terms and conditions are as follows:

1. BENGUET would fund the acquisition cost of 9.5 million of the 16,237,339 sequestered shares at P29.00 per share¹ (the bulk of which would be paid to PCIB, PCC and Equitable Bank to extinguish their credits and bring about the release of all said 16,237,339 pledged shares).

2. 3 million out of the 9.5 million shares would be sold to the employees of BENGUET and its subsidiaries in accordance with the Employees' Ownership & Incentive Plan already referred to, supra, at P29.00 per share plus transaction costs. The rest of the purchased stock, numbering 6.5 million shares, would be warehoused, or held in trust for PCGG by BENGUET, to be sold when and as directed by the former. When sold, the proceeds of the sale of these 6.5 million shares would be delivered to the PCGG minus their acquisition cost (to BENGUET) of P29.00 per share (or P188,500,000.00).² The rest of the 16,237,339 shares released from the pledges thereon, numbering 6,737,339 would be held in custodia legis by the PCGG, free from liens and encumbrances.

3. The sequestration would be lifted as to the 9.5 million shares subject of the sale, upon their release and transfer to BENGUET by the pledgee banks.

4. Restoration of the status quo ante would take place in the event of a final judgment by a competent court invalidating the sale.

Carrying out this agreement, the PCGG -

1) directed the pledgees (PCIB, PCC and Equitable Bank), to "deliver to Benguet Management Corporation the certificates of stock covering the said shares respectively held by ** (them) upon ** receipt from Benguet Management Corporation of the payment of ** (their) respective loans";³

2) ordered the Manila stock exchange "to implement the request of First Pacific Securities Phils., Inc. under date of October 27, 1986 to effect the special block sale of 9.5 million shares of Benguet Corporation Common Class A at P29.00 per share";⁴

3) sequestered "all assets, properties, records and documents" of both petitioner corporations, and commanded them "to desist from doing any act, directly or indirectly, which may lead to dissipation, concealment and transfer of the sequestered assets, properties, records and documents, and to disburse funds only to support the routine or day-to-day operations ** and make available all records and documents ** which may be required to achieve the purposes" of the sequestration writ;¹ and

4) supervised, through Commissioner Diaz, the payment by BENGUET to the pledgees of the amounts of their credits and the release and surrender by the latter of all the pledged stock, and received the amount of P11,781,124.84.²

What the petitioners did was to file a petition in the Makati Regional Trial Court on October 27, 1986,³ praying that BENGUET be prohibited to implement the contract of September 1, 1986; the pledgee banks, PCIB, PCC, and Equitable Bank, be forbidden to accept any payment for, or release any of, the sequestered shares to BENGUET or its officers or representatives; and the broker Uytioco, be inhibited from trading said shares at either the Manila or Makati Stock Exchange.⁴ Pursuant to the prayer therefor in the petition, the Makati Court issued on October 28, 1986 a temporary restraining order requiring "all respondents, their agents or representatives to refrain from implementing the contract of 1 September 1986 and from trading the shares of stock subject of this action either at the Manila Stock Exchange or the Makati Stock Exchange."⁵

However, the restraining order failed to prevent the consummation of the acts sought to be stayed. The petitioners say the order was deliberately ignored by the respondents. This is denied by the latter. Some question also appears to have arisen respecting the sufficiency of the filing fee paid by petitioners.

Be this as it may, seven (7) days after they brought suit in the Makati RTC, the petitioners filed with this Court on November 3, 1986, the instant special civil action for certiorari and prohibition, praying that the acts they unsuccessfully sought to enjoin in the former action -- i.e., the implementation of the contract to purchase and sell of September 1, 1986, approved by the PCGG on October 14, 1986, inclusive of the special block sale of the 9.5 million shares and the release of all the sequestered shares by the pledgee banks -- be adjudged void ab initio, that disposition of any of the released shares or the proceeds of the sale of part thereof be prohibited, and that the shares be returned to them.

The petitioners do not challenge the power vested in the PCGG by law¹ inter alia to sequester property alleged to be "ill-gotten", "amassed by the leaders and supporters of the previous regime." In any event, this Court has already had occasion to sustain the constitutionality of the grant to the PCGG of that power, and the power to freeze assets and to provisionally take over business enterprises, in *Bataan Shipyard & Engineering Co., Inc. (BASECO) vs. Presidential Commission on Good Government, et al.*, G.R. No. 75885, May 27, 1987, in which were also laid down the limitations on said powers and the conditions for their proper exercise. What the petitioners contend is that the PCGG had acted without or in excess of its authority or jurisdiction, or with grave abuse of discretion, when it approved and directed the carrying out of the Contract to Purchase and Sell of September 1, 1986 despite their objections, and despite the fact that the stock could have been sold for a much higher price.

There can be no question that as sequestrator, the PCGG was obliged to preserve the stock that it had seized, and prevent its loss, disappearance, depreciation or deterioration.

Neither can there be any question that it was in the interest of all concerned -- including the Government, in the event that the stock be judicially declared to be "ill-gotten wealth" and awarded to it; or the ostensible owners, in the event that they succeed in vindicating their title to the property -- to prevent if at all possible the auction sale of the shares of stock in satisfaction of the obligations to secure which they had been pledged, given the universally accepted reality that such auction sales seldom fetch a fair or adequate price.² This is what the PCGG tried to do in this case, with no little success.

Paradoxically, by authorizing the sale of 9.5 million shares of the stock in question at a price of P29.00 per share, much lower than the prevailing market price at the time -- then ranging from P56 to P58 per share, *supra* -- the PCGG was able not only to preserve the bulk of the stock (16 million shares) 'but also to immediately take custody of a not inconsiderable sum of money, with expectation of obtaining a larger profit from the future sale of some other portion of the stock -- for the benefit of the party which may eventually be adjudged by competent authority to be the owner of the stock in question, whether it be the Government or the petitioners, or some other person -- and at the same time, respect a perfected and existing contract and make possible the attainment by BENGUET of the benefits provided in its Employees' Ownership and Incentive Plan, *supra*, to the advantage of its numerous employees and those of its subsidiaries.

The Memorandum of Agreement of October 23, 1986¹ did nothing more than to recognize and provide for the carrying out of the Contract to Purchase and Sell of September 1, 1986 which the petitioners had voluntarily entered into. Implementation of the Memorandum was in truth substantial implementation of the Contract.

BENGUET put up P275,000,000.00 representing the price of 9.5 million shares of the sequestered stock at P29.00 per share. Of this sum, P263,781,875.16 was paid to the petitioners' creditors (PCIB, PCC, Equitable Bank), and the latter released the 16,237,339 shares of BENGUET stock from the pledge constituted over them as security for the credits thus extinguished.

BENGUET took delivery of 9.5 million of the released shares, as purchaser thereof. It paid to PCGG the balance of the price, P11,781,124.84, and turned over to it the rest of the released shares of stock, numbering 6,737,339; and PCGG accepted the money and the stock in trust, as sequestrator and conservator thereof.

BENGUET did not however become owner of all the 9.5 million shares, but only of 3 million thereof, which it had destined for distribution to specific beneficiaries pursuant to its Employees' Ownership and Incentive Plan. It held the other 6.5 million shares in trust, to be sold by it when and as directed by the PCGG, upon the explicit understanding that should it ultimately sell said 6.5 million shares on PCGG's instructions, naturally upon the best available terms at time of sale, it was bound to deliver the proceeds to the PCGG minus the acquisition cost to it of the stock thus sold, i.e., P29.00 a share, plus costs incidental to acquisition and disposition, and an amount equal to 1% of the proceeds of the sale of all the 6.5 million shares when sold.

The advantage of the above arrangement to the Government, or the party eventually declared owner of the disputed stock, is fairly obvious. What in truth was actually sold and transferred to the seller' ownership was, to repeat, only a block of 3 million shares out of the 16,237,339 sequestered shares. Title to the rest was not at all affected, and possession thereof remained in the PCGG for disposition in accordance with law. 6.5 million shares could be sold at any time deemed most appropriate, and under conditions deemed most favorable, by the PCGG, the proceeds also to come within its legal custody and also to be disposed of in accordance with law.

It may well be that some other scheme better than that involved in this case might have been conceived and

entered into with some other party. This is not at all certain, considering the no small outlay required, and the fact that not too many persons could be expected to be interested in acquiring such a big block of stock. The stark reality is that the PCGG did not have time to sit and wait, or shop around, for such a better arrangement. The petitioners had not themselves come up with anything more concrete than claims of access to some funding, or of efforts to come to some accord with their creditors which, however, needed approval of the PCGG in any case, as petitioners themselves acknowledge.¹ On the other hand the threat of the auction sale of the pledged stock because the obligations thereby secured were long past due and unpaid, was actual and imminent, and could not be ignored. Interest on these obligations was and had been piling up at the rate of P185,000.00 a day.² Moreover, the PCGG could not close its eyes to the actuality of the perfected Contract to Purchase and Sell executed on September 1, 1986 by and between the petitioners and BENGUET, and to the fact that the petitioners' claim -- that they had the right to rescind as they had actually rescinded the contract in view of the failure of BENGUET to obtain the approval thereof by the PCGG within 60 days -- is confuted by the un rebutted circumstance that the PCGG did in truth give that approval within 60 days, and the added circumstance that paragraph 2 of the contract, invoked by the petitioners, does not really provide for rescission at all, but merely grants to BENGUET the option either of withdrawing from the contract by notice in writing, or bearing "the interest expense for the loans secured by the shares of stock ** beginning on the sixty-first (61st) day from the date of ** (the) Agreement."³

It was no doubt in the light of these undeniable actualities, and in an attempt to discharge its responsibility to preserve the sequestered stock and put an end to its continuing and inexorable depreciation, that the PCGG performed the acts now subject of attack in the case at bar. Upon these facts and considerations, it cannot be said that the PCGG acted beyond the scope of the power conferred upon it by law. Indeed, it would appear that its acts were motivated and guided by the law creating it and prescribing its powers, functions, duties and responsibilities. Neither can it be said that it acted with grave abuse of discretion. It evidently considered and assessed the facts, the conflicting positions of the parties concerned, and the options open to it, before taking the course of action that it did. The possibility that it has erred cannot, to be sure, be completely eliminated. As above stated, it is entirely possible that a better bargain might have been struck with someone else. What cannot be denied is that the arrangement actually adopted and implemented has resulted in the satisfactory reconciliation of the conflicting factors in the case and the preservation of the stock for the benefit of the party that may finally be adjudged by competent court to be the owner thereof, and to a certain extent, to the advantage of numerous employees.

The petitioners have failed to demonstrate that respondent PCGG has acted without or in excess of the authority granted to it by law, or with grave abuse of discretion, or that it had exercised judicial or quasi-judicial functions in this case, correctible by certiorari.¹ The Court thus finds itself bereft of any justification to issue the prerogative writ of certiorari or prohibition that petitioners seek.

In other words, the filing by the petitioners of the instant special civil action for certiorari and prohibition in this Court despite the pendency of their action in the Makati Regional Trial Court, is a species of forum-shopping. Both actions unquestionably involve the same transactions, the same essential facts and circumstances. The petitioners' claim of absence of identity simply because the PCGG had not been impleaded in the RTC suit, and the suit did not involve certain acts which transpired after its commencement, is specious. In the RTC action, as in the action before this Court, the validity of the contract to purchase and sell of September 1, 1986, i.e., whether or not it had been efficaciously rescinded, and the propriety of implementing the same (by paying the pledgee banks the amount of their loans, obtaining the release of the pledged shares, etc.) were the basic issues. So, too, the relief was the same: the prevention of such implementation and/or the restoration of the status quo ante. When the acts sought to be restrained took place anyway despite the issuance by the Trial Court of a temporary restraining order, the RTC suit did not become *functus officio*. It remained an effective vehicle for obtention of relief; and petitioners' remedy in the premises was plain and patent: the filing of an amended and supplemental pleading in

the RTC suit, so as to include the PCGG as defendant and seek nullification of the acts sought to be enjoined but nonetheless done. The remedy was certainly not the institution of another action in another forum based on essentially the same facts. The adoption of this latter recourse renders the petitioners amenable to disciplinary action and both their actions, in this Court as well as in the Court a quo, dismissible.²

WHEREFORE, the petition is DISMISSED, and the Partial Temporary Restraining Order issued on November 6, 1986 lifted and set aside. Costs against petitioners.

Teehankee, C.J., Yap, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Fernan, J., no part, my former firm represented one of respondents.

Feliciano, J., no part, my former firm represented one of parties.

[1] Rollo, pp. 4-5

[2] See letter dated April 4, 1986, addressed to the PCGG by Jose S. Sandejas, identified as petitioners' attorney-in-fact (rollo, pp. 172-173) stating that the "beneficial owner" of the stock is Benjamin Romualdez and requesting that the auction sale of the pledged shares scheduled on April 7 be restrained.

[3] Annex B, petition, Rollo, pp.-6-8; also, Supplemental (Side)Agreement (Annex 6, private respondents' Comment, for payment of attorney's fees to Atty. Delia L. Hermoso

[4] Owing to PCIB, PCC, and Equitable Bank, supra.

1 Annex C, petition

2 Annex I-1, rollo, p. 77

3 SEE petitioners' letter dtd. Oct. 2, 1986, rollo, p. 65; ALSO, Annexes L, M, M-1, N, N-1 and N-2, and O, of petition

4 SEE letter dated Oct. 2, 1986 of BENGUET (per its VP and Corporate Secretary), Annex F, petition

5 Annex 10, private respondents' Comment, rollo, pp. 186 et seq

1 TOTAL: P275,500,000.00, exclusive of "transaction costs"

2 If the sale of the 6.5 million shares were to take place at, say, P60.00 per share, the proceeds would amount to P390,000,000.00. Deducting the acquisition cost to BMC of said 6.5 million shares, i.e., P188,500,000.00 (6.5M shares x P29.00 pr share), this would mean that P201,500,000.00 more or less would be received by the PCGG and held by it under sequestration.

3 Letter dated Oct. 24, 1986, Annex P, petition

4 Letter dated Oct. 27, 1986, Annex Q, petition

1 Annex R, petition

2 Rollo, p. 18. This represents the difference between the total purchase price of 9.5 million shares at P29.00 per share (P275,500,000.00), on the one hand, and the total amounts paid to the pledgee banks in payment of their credits, principal, interests and other charges (P263,781,875.16), on the other.

3 Rollo, p. 192

4 The action was docketed as Case No. 15241

5 Annex S, petition

1 Executive Orders Numbered 1, 2 and 14, in relation to Sec. 1, d, ART. II of the Provisional Constitution (Proclamation No. 3)

2 Had the auction sale gone through, the likelihood is that all the 16,237,339 shares would have been sold for the amount of the indebtedness only, i.e., P263,781,875.16

1 Annex 10, private respondents' Comment, supra

1 SEE Annex H, petition, rollo, pp. 72, 75

2 SEE rollo, pp. 134, 290

3 Rollo, p. 59

1 SEE Santiago, Jr. v. Bautista, 32 SCRA 188, 195-200, and Astudillo v. PHHC Board, 73 SCRA 15, 21

2 E. Razon, Inc., et al. v. Philippine Port Authority, et al., G.R. No. 75197, Resolution dated July 31, 1986; Buan v. Lopez, Jr., 145 SCRA 34, 38-39

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