

**LIWAYWAY PUBLISHING, INC. AND U.S. AUTOMOTIVE CO., INC.,
PETITIONERS, VS. PRESIDENTIAL COMMISSION ON GOOD
GOVERNMENT, HON. RAMON A. DIAZ, DEPUTY MINISTER, HON.
MARY CONCEPCION B...**

G.R. No. 77422. April 15, 1988

Ponente: TEEHANKEE, C.J.

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TEEHANKEE, C.J.:

These two cases are jointly resolved because of the common identity of and related issues by the parties, without prejudice to the writing of an extended opinion.

G.R. 77422 is a petition for certiorari and prohibition with preliminary injunction and/or restraining order filed on February 24, 1987 by Liwayway Publishing, Inc. (Liwayway hereafter) and U.S. Automotive Co., Inc. (US Automotive hereafter) seeking to annul and set aside two writs of sequestration issued by the Presidential Commission on Good Government (Commission hereafter) on February 12, 1987 on the shares of stocks of U.S. Automotive in Liwayway, as well as the implementing directive addressed to the Central Bank Governor of even date, and to prohibit the Commission from conducting proceedings in connection with the said sequestration.

G.R. 79126 is a petition for certiorari, prohibition and mandamus with prayer for preliminary writ of injunction and urgent ex-parte restraining order filed on July 27, 1987 by Bulletin Publishing Corporation (Bulletin hereafter) to set aside the April 14, 1987 order issued by the Commission which declared their intent to vote the "sequestered shares" in Bulletin; to prohibit the voting of Bulletin shares by respondents, their successors, on their representatives, to enjoin respondents, their successors, or their representatives from taking part or intervening, directly or indirectly, in any acts, in the management of Bulletin; and to direct the immediate acceptance by the Commission of Bulletin's offer to deposit in cash, under escrow, so as to protect the interest of the government, if any, a specific amount for the value of sequestered shares in the Bulletin pursuant to the restrictions on their transferability as provided in its Articles of Incorporation, with any banking institution as may be designated by this Court, pending and subject to final determination/adjudication of the ownership of said shares and to lift the sequestration order of April 11, 1986.

Liwayway and Bulletin are domestic corporations engaged in the business of publication of newspapers and magazines. The former publishes a daily newspaper, the "Balita", and three weekly vernacular magazines, namely, "Liwayway", "Bisaya" and "Bannawag", while the latter publishes the "Manila Bulletin" a daily newspaper and its weekly magazines, The "Philippine Panorama", all of general and national circulation. In both corporations, Mr. Emilio T. Yap is the biggest stockholder and Chairman of the Board of Directors. As of February 21, 1986, he held 2,617 Bulletin shares, while, U.S. Automotive,[1] a corporation wholly owned and controlled by him and his family, held 318,084 shares out of the total outstanding Bulletin shares of 567,808.5 with 198,052.5 thereof as treasury shares and 765,861 subscribed shares.[2] In Liwayway, "(B)y April, 1986, x x x U.S. Automotive Co. owned almost 70% of total Liwayway issued shares x x x." [3]

I. LIWAYWAY CASE

In G.R. 77422, the Commission had issued on February 12, 1987 two writs of sequestration, one addressed to the President/Chairman of the Board of the U.S. Automotive sequestering the President/Chairman's shares of stocks in the Liwayway as of April 15, 1986, and the other addressed to the President/Chairman of the Board of Liwayway sequestering all shares of stocks pertaining to U.S. Automotive in Liwayway Publishing, Inc. as of April 15, 1986.

On the same date, the Commission requested the Central Bank to instruct all commercial banks and non-bank financial institutions not to allow any withdrawals, transfers or remittances from funds or assets under any type of deposit accounts, trust accounts, and/or money market placements, including safety deposit boxes, stocks and bonds, bearer certificates and unnumbered accounts, except those which may pertain to payment of regular salaries and wages of Liwayway and HM Holding and Management, Inc. (hereafter, HMH&M).

Petitioners' plea for a temporary restraining order was heard on February 26, 1987, the hearing being limited to whether a restraining order should issue to restrain the Commission against denying Liwayway the use and availment of its funds in the banks to put out its regular publications as well as against the Commission's interference or intervention in the management or operations of Liwayway, considering the Central Bank's blanket memorandum, at the Commission's behest, to all banks not to allow any withdrawals or remittances from its funds, except for "payment of regular salaries and wages" which would virtually shut down its publications.

The then Solicitor General, now Secretary of Justice, Sedfrey Ordonez, as well as the Commission's then Vice-Chairman, now Chairman, Ramon Diaz, assured the Court that Liwayway's funds would not be choked off and that the Commission would not in any way interfere or intervene in the management or operations of the publication nor with its editorial policy or reportage or in any way impinge upon its freedom. It was brought out that Liwayway made over P8 million in 1986 and paid more than half of that in income tax, and they agreed further to preserve the status quo ante pending joining of the issues on the merits or a showing of some irregularity that would warrant the Commission's intervention.

On February 27, 1987, the Solicitor General filed his manifestation as undertaken by him, submitting a copy of the Commission's letter dated February 26, 1987, to the CB Governor, Jose Fernandez, modifying its previous memorandum of February 12th and asking him to instruct all banks to honor all checks of Liwayway and further stating that "(A)lthough mention is made in the letter of the naming of a fiscal agent, respondent Commission is not naming anyone at this time.

On the issue of freedom of the press, the Court noted with commendation the Solicitor General's pledge at the hearing that the Commission will not in any way act in such a way as to impinge upon the freedom of expression or freedom to publish the newspaper. The Court gave due faith and credence thereto and the above-cited undertakings of the Commission. Accordingly, in lieu of a temporary restraining order which has been rendered unnecessary by the Commission's manifestation and undertakings, the Court enjoined faithful compliance therewith by all concerned.

This renders moot this particular issue of unwarranted intervention of the Commission and impairment of press freedom. But with the closing out of this case, as hereafter ordered and the denial of petitioner's plea to lift the sequestration orders, the Court will formalize the parties' agreement through the issuance of an injunction to the same effect, to assure compliance regardless of any change in the composition of the Commission or of other public officials concerned.

As to the sequestration orders, the Commission claims that Emilio Yap, founder of U.S. Automotive Co., organized long before martial law, is a "crony" if not downright "dummy" of the deposed President Ferdinand

Marcos. Mr. Yap, in turn, has strongly countered the Commission's allegations as to his alleged business association with Mr. Marcos and their prima facie sufficiency in this wise:

On March 2, 1987, petitioners filed its manifestation and reply to the opposition alleging the following:

- Mr. Yap admits that he owns 2,508 shares of stocks of BASECO which constitute less than 2% of the total 218,819 outstanding shares of stocks of the company. He acquired the original 240 shares by subscription at the time of incorporation and augmented by stock dividends to the present stockholding of 2,508 shares.
- Regarding the BASECO certificates of shares of stocks purportedly belonging to Yap and endorsed to "someone" whose name was left in blank - this Court should require the respondents to produce the originals of said stock certificates in order to verify the claim that they have been endorsed in blank.
- He had resigned from the chairmanship of BASECO since October 20, 1983. Out of his duly paid investment of P60,000, he never received any cash dividend nor profited from BASECO.
- He has never been a stockholder nor an officer of the Jai-Alai Corporation.
- He owned only one qualifying share in the Manila International Port Terminals, Inc. (MIPTI) which he later endorsed to the new MIPTI Chairman. He resigned as chairman of the Board before the Aquino administration.
- He invested in the Bulletin in 1961, as second biggest stockholder on the invitation of Gen. Menzi long before Mr. Marcos became president.
- All original stock certificates issued to U.S. Automotive and treasury shares are all in the respective possession of the registered owners and have not been endorsed to anyone.

But as the Court has consistently held and reiterated in *PCGG vs. Peña*, G.R. No. 77663, decided also this month, the Supreme Court is not a trier of facts, and the parties' conflicting factual contentions have to be threshed out and adjudged in the Sandiganbayan, which is vested with exclusive jurisdiction over the case.

II. BULLETIN CASE

In G.R. 79126, the Commission issued on April 22, 1986 an order sequestering the shares of former President Marcos, Emilio Yap, Eduardo Cojuangco, Jr., their nominees or agents in the Bulletin Publishing Corporation. In an order dated April 14, 1987, the Commission declared their intent to vote the sequestered shares. Thus, on July 27, 1987, the instant petition was filed seeking the nullification of the above mentioned orders. It is petitioner's contention that what is at stake here is the freedom of our press institutions to independently manage their own affairs and effectively preserve editorial policies and objectives, without the shadow of government participation in the same, that governmental presence in petitioner's board will most certainly cast that shadow and threaten the independence of the press as an institution of mass media protected and guaranteed by the Constitution. The Court issued a temporary restraining order on July 28, 1987 ordering the respondents, their successors, agents or representatives to cease and desist from voting Bulletin shares, or otherwise from taking part or intervening, directly or indirectly, in any acts in the management of the Bulletin daily newspaper.

Respondents' comment alleged that the Commission will vote only the shares of Cesar Zalamea (121, 178 shares), Eduardo Cojuangco, Jr. (46,626 shares), and Jose Y. Campos (46,620.5 shares) for a total of 214,424.5 shares which were the subject of the sequestration order and that the shares of Emilio Yap were excluded by virtue of the Commission's order dated March 16, 1987.

Subsequently, however, petitioner alleged^[4] in its memorandum of January 2, 1988 that on July 31, 1987, the Commission sold to it 46,620.5 Bulletin shares of Mr. Jose Y. Campos for a total price of P8,173,506.06 per PTC Check No. 606380 and voucher and 121,178 Bulletin shares of Cesar Zalamea for a total price of P21,244,926.96

per PTC Check No. 607887 and voucher issued on October 15, 1987. As to the remaining 46,626 Bulletin shares of Mr. Cojuangco, Jr., under sequestration, the petitioner has offered to deposit in cash the value of the shares with the Commission, in the amount of P8,174,470.32 per PTC Check No. 607590, issued on October 15, 1987 which awaits the Commission's acceptance.

Respondents' memorandum of January 26, 1988, however, stated that only Mr. Campos' shares were voluntarily surrendered, hence, they were accepted by the Commission. On the matter of the shares of Cojuangco and Zalamea, it contended that unless there is a confession or admission that the said shares are "ill-gotten assets" of Mr. Marcos and/or his cronies, the true ownership of the shares has still to be determined by the Sandiganbayan where Civil Case No. 0022 entitled "Republic. . . vs. Emilio T. Yap, et al." is pending. Petitioner, however, denies being a party therein. Subject to said admission, the Commission considers it premature to enter into any transaction affecting those shares pending determination of their ownership.

In their Memorandum, respondents Commission and members expressly have declared that the Commission no longer intends to exercise its right to vote the sequestered shares, that the Commission's present role is confined largely to monitoring Bulletin's activities in terms of preventing any dissipation and disposition of funds and assets and does not extend to the exercise of the voting of the shares, unless subsequent events or circumstances call for such exercise pursuant to law. Thus, respondents urge the dismissal of the petition "for want of factual basis." As in the Liwayway case, the Commission concedes that it may not lawfully intervene and participate in the management and operations of a private mass media such as Bulletin for the purpose of maintaining its freedom and independence as guaranteed by the Constitution and therefore the temporary restraining order heretofore issued on July 28, 1987 ordering the Commission or its representative to "cease and desist from voting the shares or otherwise from intervening directly or indirectly in the management of petitioner Bulletin" will be made permanent. The issue left for resolution is whether the Commission may continue to refuse to accept the cash deposit offered for the present balance of 46,626 minority sequestered shares in the name of Mr. Eduardo Cojuangco as prayed for in the petition.

It is admitted of record that "the Sequestration Order of April 22, 1986 is limited to a minority of 214,424.5 shares in the name of Messrs. Cesar Zalamea, Eduardo Cojuangco, Jr. and Jose Y. Campos at the time of its issuance, as follows:

Cesar Zalamea 121,178 shares

Eduardo Cojuangco, Jr. 46,626 shares

Jose Y. Campos

46,620.5 shares

Total 214,424.5 shares"

and that the Bulletin shares of Emilio Yap owned by him since 1961 were excluded from the said sequestration, by virtue of the Commission's order of March 16, 1987.

Likewise, in consonance with the Commission's very purpose and objective of preserving the assets and ill-gotten wealth that may be recovered, pertaining to the deposed President Marcos, and converting them into cash to be returned to the people in government projects such as the Comprehensive Agrarian Reform Program (CARP), it has acknowledged the recognized vested right of the Bulletin to purchase Bulletin shares that may be put up for sale, since the government is barred anyway from acquiring ownership and management of private mass media

such as the Bulletin Publishing, Inc. under Art. XVI, sec. 11 of the Constitution which provides: "Sec. 11(1). The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens."

In the letter dated July 8, 1987 of Commission Chairman Diaz to Kapisanan ng mga Manggagawa sa Media ng Pilipinas (KAMMP), he recognized the restrictions on the transferability of Bulletin shares accruing in favor of petitioner Bulletin when he wrote

"In view of the foregoing, when and if we dispose of those shares, the first step to take is to offer the same to the corporation, and the corporation may offer it to the other stockholders if it so desires. But we cannot avoid the circumstance that the corporation itself will desire to buy the stocks and therefore, the transaction will end here."

(1) Thus, on July 31, 1987, PCGG sold to petitioner Bulletin 46,620.5 Bulletin shares of Mr. Jose Y Campos for a total price of P8,173,506.06 per PTC Check No. 606380 and Voucher (pp. 11-12, Petitioner's Addendum).

(2) The PCGG also sold to petitioner Bulletin 121,178 Bulletin shares of Mr. Cesar C. Zalamea for a total price of P21,244,926.96 and accepted PTC Check No. 607887 and Voucher issued on October 15, 1987 (pp. 12-13, Petitioner's Addendum), now as (Annex 'A'). As already noted hereinabove, there is a counter-allegation on the part of the Commission that it had not sold the Zalamea shares but there are indications that it had accepted the check and voucher therefor as stated therein. Whatever be the case, this is immaterial in the light of the resolution of the case providing for the exercise of petitioner Bulletin's right of preemption over such shares.

(3) As to the remaining 46,626 Bulletin shares of Mr. Eduardo Cojuangco, Jr. under sequestration, petitioner Bulletin has consistently offered to deposit in cash the value of the shares with respondent PCGG, in the amount of P8,174,470.32 per PTC check No. 607590, issued on October 15, 1987, and which awaits PCGG acceptance. (pp. 13-14, Petitioner's Addendum).

Petitioner correctly maintains that its offer in good faith to PCGG of the cash deposit for the sequestered shares will protect the interest of the government, if any, pending final determination/adjudication of the matter.

The offer of cash deposit is in line with the government program on privatization and in keeping with constitutional guarantee of press freedom and to maintain private mass media free from government intervention in its management directly or indirectly.

The Commission has nothing to lose and everything to gain by accepting the cash deposit offered by petitioner for the shares in the name of Mr. Eduardo Cojuangco, Jr.

The cash deposit being offered by petitioner is similar in nature and purpose to a cash bond put up for a litigant during the pendency of the case. In both situations, the rights of the parties and of the government, are adequately protected.

This cash deposit including interest earning is to be applied on the said 46,626 shares under any of the following two (2) alternatives specifically proposed by petitioner:

"Alternative 'A' - To standby as full payment plus whatever interest earnings thereon upon final judgment of the Court declaring the Republic of the Philippines as owners of the 46,626 shares, accompanied by the corresponding original stock certificates, issued in the name of the government, duly endorsed in favor of the Bulletin Publishing Corporation, free from liens and encumbrances; or

Alternative 'B' - To immediately return to Bulletin Publishing Corporation the cash deposit in the amount of P8,174,470.32 plus whatever interest earnings thereon upon final judgment by the Court declaring that Mr.

Eduardo Cojuangco, Jr. is the true owner of the 46,626 shares."

This Resolution is issued to uphold the freedom of our press institutions to independently manage their affairs and effectively preserve their editorial policies and objectives, without the shadow of government participation and intervention. The Commission itself has recognized that government presence in petitioner's Board will most certainly cast that shadow and threaten the independence of the press which is protected and guaranteed by the Constitution, and hence had given up its initial idea to vote the sequestered shares in petitioner Bulletin.

ACCORDINGLY, in the Liwayway case, G.R. No. 77422, judgment is rendered

- As per agreement of the parties as set forth in the Resolution of March 3, 1987, enjoining the Commission from any act interfering or intervening in any way or manner with the management or operations or affairs of petitioner Liwayway Publishing, Inc.; and
- Dismissing the petition for a writ of prohibition to enjoin respondents from enforcing in any manner the writs of sequestration heretofore issued over the questioned Liwayway shares whose ownership will have to be tried and determined in the Sandiganbayan.

In the Bulletin case, G.R. No. 79126, judgment is likewise rendered

- Making permanent the temporary restraining order heretofore issued on July 28, 1987;
- Directing the Commission to accept the cash deposit of P8,174,470.32 offered by petitioner for the 46,626 sequestered shares in the name of Mr. Eduardo Cojuangco Jr. expressly subject to the alternative conditions (A and B) hereinabove set forth, and likewise directing the Commission to accept the cash deposit, if it has not actually sold the Cesar C. Zalamea Bulletin shares to petitioner (supra, p. 13, par. [2]), of P21,244,926.96 for the sequestered shares of Bulletin in the name of Mr. Cesar Zalamea under the same alternatives already mentioned; and
- Remanding the case regarding the issue of ownership of the said sequestered Bulletin shares for determination and adjudication to the Sandiganbayan.

Yap, Fernan, Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Griño-Aquino, J., did not take part in the deliberation.

Gutierrez, Jr., J., on leave.

[1] Organized as a partnership in 1947 x x x and incorporated in 1950. From 1947 to 1968, it was a world-wide leading dealer in U.S. military surplus motor vehicles x x x. Thereafter, it dealt in real estate and investment until the present. (Petition, rollo, p. 2).

[2] Annex "MM" of Petition, rollo, p. 39.

[3] Opposition (To the Plea for Temporary Restraining Order), rollo, p. 31.

[4] Originally, Bulletin offered the amount of P37,592,903.34 for the value of 214,424.5 sequestered shares. Subsequently, however, the Commission allegedly sold to the Bulletin 167,798.5 of the sequestered shares. What remains now is allegedly only 46,626 shares which Bulletin has offered to purchase for P8,174,470.32. The corresponding check and voucher covering deposit in cash for the value of the remaining shares have been prepared since October 15, 1987 and are awaiting the Commission's acceptance. (Addendum to Reply to PCGG comments, rollo, p. 154 and Memorandum for Petitioner, p. 3, thereof). The Commission, however, alleged that only 46,620.5 shares were sold to the Bulletin (Respondents' Memorandum, p. 5 thereof.)

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