

RICARDO SILVERIO, PETITIONER, VS. PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, RESPONDENT.

G.R. No. 77645. October 26, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a Petition for certiorari with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order.

The record of the case discloses that the herein petitioner Ricardo Silverio is a businessman residing in Makati, Metropolitan Manila. The respondent Presidential Commission on Good Government is a government agency created under Executive Order No. 1 issued on February 28, 1986 by President Corazon C. Aquino. The said Commission (hereinafter referred to as the PCGG) was designated to recover all properties which may have been illegally acquired by former President Ferdinand E. Marcos, his wife, their children, their relatives and their close associates.

On April, 1986, the Office of the Solicitor General (OSG) filed with the PCGG a Complaint for graft and corrupt practices and other crimes related to the public service.[1] The case was docketed as I.S. No. 1-A. The herein petitioner was among those included as defendants in the said case. It appears that in the course of the proceedings, the respondent PCGG issued several writs of sequestration against the properties of the petitioner.[2] Copies of such writs, however, have not been included in the record of the case.[3]

On May 21, 1986, the petitioner filed with the PCGG an Appearance and a Manifestation narrating therein the history of his automobile business enterprise, the Delta Motor Corporation.[4] Later that year, on December 9, 1986, the petitioner filed with the PCGG a "Motion to Quash Complaint and to Lift Sequestrations." [5] The petitioner argued that the Complaint filed by the OSG should be quashed because no connection between him and the other defendants has been alleged, and that there is no allegation therein as to any overt act supposedly committed by him with a view towards a common criminal design. He also argued that no probable cause has been shown or established to justify the sequestration of his properties.

On March 2, 1987, PCGG Undersecretary Ramon A. Diaz issued a Notice setting the hearing of the case for March 6, 1987.[6] The said Notice also states --

"Having found on the basis of prima facie evidence that the above-named defendants have acquired assets and properties manifestly out of proportion to their usual, normal income, this Commission hereby requests their appearances in person or by counsel to show cause why judicial proceedings should not be instituted against them in accordance with law."

On March 4, 1987, the petitioner filed with the PCGG an Ex Parte Urgent Motion requesting the said Commission to furnish him the "prima facie evidence" referred to in the Notice issued by Undersecretary Diaz.

The hearing of the case went through as scheduled although the petitioner maintains that the prosecution never

furnished him the requested prima facie evidence.[7]

Dissatisfied with the turn of events narrated above, the petitioner elevated the case to this Court by way of the instant Petition for certiorari under Rule 65 of the Rules of Court. The petitioner alleges that the respondent PCGG committed a grave abuse of discretion in failing or refusing to act on the "Motion to Quash Complaint and to Lift Sequestrations" despite the absence of a prima facie case against the petitioner.

On April 15, 1987, the respondent PCGG, represented by the OSG, submitted its Comment on the Petition as instructed by this Court.[8] On July 30, 1987, the petitioner submitted his Reply to the Comment.[9]

After a careful examination of the entire record of the case, We find the instant Petition devoid of merit.

Under Executive Order Nos. 1, 2, and 14, the respondent PCGG is empowered to issue writs of sequestration and similar orders so as to accomplish its duty of recovering illegally-acquired wealth.[10] The power to sequester property means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property or any records pertaining thereto may be found, including business enterprises and entities, -- for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving, the same -- until it can be determined, through appropriate judicial proceedings, whether the property was in truth "ill-gotten," i.e., acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State.[11]

Like the remedy of preliminary attachment and receivership, as well as delivery of personal property in replevin suits, sequestration and provisional takeover writs may issue ex parte, and no objection of any significance may be raised to the ex parte issuance of an order of sequestration, given its fundamental character of temporariness or conditionality, taking into account the obvious need to avoid alerting suspected possessors of "ill-gotten wealth" and thereby cause the disappearance or loss of the property precisely sought to be recovered.[12] The PCGG cannot exercise acts of dominion over the property sequestered because it is a conservator, not an owner.[13] The PCGG may thus exercise only powers of administration over the property or business sequestered.[14] And under Sections 5 and 6 of the Rules and Regulations of the PCGG, the opportunity to contest the propriety of the sequestration order is available to the parties whose properties had been sequestered.

The power to issue such writs, however, is qualified by Section 26 of the Transitory Provisions of the 1987 Constitution, which provides as follows --

"Sec. 26. xxx.

"A sequestration or freeze order shall be issued only upon showing of a prima facie case. xxx."

Restated, the respondent PCGG can issue such writs of sequestration only upon establishing a prima facie case against the petitioner.

The record of the case shows prima facie that the various business interests of the petitioner have enjoyed considerable privileges obtained from former President Marcos during his tenure as Chief Executive in violation of existing laws; privileges which could not have been so obtained were it not for the close association of the petitioner with the former President. We call the attention to the following documents submitted by the respondent Commission:

"1. A business report dated January 2, 1974 signed by petitioner addressed to "SIR" (Annex 1 hereto), which

reads:

"Sir:

'I am very happy to inform you Sir, that the shipment of machineries for our Progressive Car Manufacturing Program covered by our second reparations contract has arrived. Our project is now complete and for this Sir, I am very grateful.

'It was my wish to convey my gratitude earlier, but the circumstances of your new conduct of government made me hesitate to communicate with you as I did before. So, I manifested to Gen. Ver sometime ago that I am available anytime at your pleasure to convey my appreciation, requesting him to advise me when I can see you. However, with the arrival of the machineries and the completion of our project, I feel that this is the opportune time to convey my personal gratitude.

'I am also glad to report that our company did very well in 1973. We are not declaring dividends this year nor have we declared dividends since our organization as all profits are used for expansion. All accumulated profits are of course a liability of the company to stockholders. By plowing back all profits for expansion we have progressed to be the 27th largest company in 1972 and will probably be within the first 20 in 1973.

'I also wish to offer to you Sir, more participation in the fruits of our endeavor, together with the public and with my family, for I owe to you success of our project, to the public who should share in the opportunities of investments, and to my family whose future I am responsible for.

'With wishes for a Happy New Year to you Sir, and Mrs. Marcos, I am always your faithful and loyal,

(Sgd.) R.C. SILVERIO"

2. A certification dated August 25, 1967 signed by petitioner (Annex "2"), whereby petitioner committed himself to pay \$290,000.00 to someone, whose identity unfortunately is again of public knowledge, in consideration of his arrangements for making possible the award to petitioner of 200 units of Kawasaki Scoop Loader. The certification reads:

"TO WHOM IT MAY CONCERN:

'For and in consideration of your arrangement for making possible to us the award of two hundred (200) units Kawasaki Scoop Loader, Model LDL6, I hereby commit to pay you the sum of Two Hundred Ninety Thousand (\$290,000.00) Dollars based on F.O.B. value of \$2,900,000.00, more or less, upon final award to our suppliers, the Toyota Tsusho Kaisha, Ltd., Tokyo, Japan, Equipment to be supplied by Kawasaki Stock of Tokyo, Japan.

'Makati, Rizal, August 25, 1967.

(Sgd.) R.C. SILVERIO

3. Another certification dated August 25, 1967, signed by petitioner (Annex 3), whereby petitioner committed himself to pay \$499,500.00 to someone whose identity unfortunately is again of public knowledge in consideration of arrangements for making possible the award to petitioner of certain equipment. The certification reads:

'TO WHOM IT MAY CONCERN:

'For and in consideration of your arrangement for making possible to us the award of One Thousand (1,000) units Toyota Rear Dump Truck model FA110LD-H, I hereby commit to pay you the sum of Four Hundred Ninety Nine Thousand Five Hundred (\$499,500.00) Dollars based on F.O.B. value of \$4,995,000.00, more or less, upon final

award to our suppliers the Toyota Tsusho Kaisha, Ltd., Tokyo, Japan, equipment to be supplied by Toyota Motor Sales Co. Ltd., Tokyo, Japan.

Makati, Rizal, August 25, 1967.

(Sgd.) R. C. SILVERIO'

4. A receipt dated January 19, 1979 (Annex 4), signed by Hector Rivera acknowledging receipt from Fe Gimenez of the following dividend checks of petitioner Ricardo Silverio from Meralco Securities and First Philippine Holdings Corporation, to wit:

PCIB #003534 dtd. April 28, 1978 P 1,209.11

PCIB #003201 dtd. April 15, 1978 1,209.11

PCIB #003516 dtd. Oct. 2, 1978 1,209.11

BPI #003161 dtd. April 28, 1978 1,209.11

BPI #003613 dtd. April 28, 1978 1,209.11

BPI #003619 dtd. April 28, 1978 1,209.11

BPI #003278 dtd. April 28, 1978 1,209.11

BPI #0666 dtd. April 28, 1978 97.75

BPI #0483 dtd. April 28, 1978 97.75

BPI #0754 dtd. April 28, 1978 P 97.75

BPI #0495 dtd. April 28, 1978 97.75

PCIB #9822 dtd. Sept. 25, 1978 10,576.98

PCIB #08932 dtd. June 15, 1978 11,752.20

PCIB #07553 dtd. Dec. 15, 1978 6,623.72

PCIB #0762 dtd. April 30, 1978 97.75

PCIB #0638 dtd. Oct. 2, 1978 97.75

PCIB #005096 dtd. Oct. 15, 1978 1,088.20

PCIB #0894 dtd. Oct. 31, 1978 87.97

P 39,179.34

5. Among bundles, a bundle of Meralco Stock certificates in the name of petitioner endorsed in blank (Annexes 5, 6 and 7) to wit:

Stock Certificate No.

Date

Issued

Kind of Stocks

Value

Per Share

No. of

Shares

06940

Jan. 25/72

Preferred

P10.00

1,566

30234

Jan. 15/73

Cumulative

10.00

1,175

18682

Jan. 20/72

Cumulative/

Convertible

10.00

1,175

6. Among bundles, a bundle of Meralco dividend checks (Annexes 8, 9, 10, 11, 12 and 13) payable to petitioner and endorsed by him in blank.

7. A bundle, among bundles, of Meralco Securities Corporation dividend checks (Annexes 14, 15, 16 and 17) payable to petitioner endorsed by him in blank.

8. Stock Certificate of 10,000 shares (Annex 18) of Delta Motor Corporation in the name of petitioner which he endorsed in blank.

9. A comprehensive business report on Delta, Filipinas Bank, Hinobaan Copper Project, etc. dated May 10, 1980 (Annex 19) addressed to the deposed President Marcos, signed by petitioner, asking for forgiveness for not reporting to the deposed President very often, but at the same time expressing his appreciation for the approval of the Central Bank assistance to Filipinas Bank. Petitioner likewise reports to Marcos on the status of the Hinobaan Copper and expresses thanks, for Marcos' support and ends the report with a renewed commitment to Marcos. The latter reads in part, thus:

‘Sir:

'I hope you will forgive me for not communicating with you very often and for seeming to shy away. It is just that because of the close personal relationship developing between us over the past few years, and to avoid being misunderstood, I felt it appropriate instead to sacrifice the honor and pleasure of constantly being with your

company. Moreover, I need not mention my innate reticence about being in the limelight which constant association with a great personage like you brings about. The recent developments, however, compel me to write this letter to:

- '1. express my sincerest appreciation for your approval of the Central Bank assistance to the Filipinas Bank;
2. inform you of the status of the Hinobaan Copper project, and also express to you my gratitude for the support you have extended;
3. renew my commitment to you and to your goals and aspirations for the country; and
4. request for your continued understanding and support.

'xxx xxx xxx

'We cannot solve our problems nor accomplish the many more things to be done without your continued understanding and support. I humbly seek your assistance, sir. I wish to assure you that I will continue laboring with rolled-up sleeves as long as I can in support of your great and dynamic leadership and in gratitude for all the things you have done for me.

'Respectfully yours,

(Sgd.) R.C. SILVERIO"[15]

In sum, the respondent Commission made the following assertion --

"Bringing its discretion to bear on all the foregoing, the PCGG is of the belief or opinion (cf: Sec. 5, B.P. Blg. 227) that there exist more than 'reasonable grounds' (Sec. 3, PCGG Rules & Regs., April 11, 1986; cf.: *Dobson v. Commissioner*, 320 U.S. 489) or 'prima facie' evidence (*Tourist Duty-Free Shops, Inc. vs. PCGG*, et al., G.R. NO. 74302, Res., May 27, 1986; *BASECO v. PCGG*, et al., G.R. No. 75885, Res., Oct. 28, 1986) if not more than mere 'some' evidence (*Ang Eng Chong v. Collector*, 23 Phil. 128) or mere 'any' evidence (*Que Quay v. Collector*, 33 Phil. 128) for the exercise of its sovereign-mandated exclusive power and authority under Section 3, Executive Order No. 1."[16]

The veracity of the above-mentioned document and the contents thereof will still have to be ascertained and the petitioner will have the opportunity to defend his interests before the Sandiganbayan, the decision of which could still be reviewed by this Court in an appropriate case. As far as the instant Petition is concerned, these documents show that there is a prima facie case against the herein petitioner sufficient to authorize the respondent PCGG to institute legal action against him as provided for by law. For these reasons, We believe that the prima facie case required under Section 26 of the Transitory Provisions of the 1987 Constitution has been established and/or demonstrated by the respondent Commission.

On the basis of the foregoing discussions, We are not convinced that the respondent PCGG Committed a grave abuse of discretion in pursuing the legal action against the petitioner under the circumstances obtaining in this case. Accordingly, the writ of certiorari sought by the petitioner cannot issue.

These observations notwithstanding, this Court takes judicial notice of the fact that before September, 1987, the OSG had already filed the corresponding suit against the defendants in I.S. No. 1-A before the Sandiganbayan. On this score alone, the instant petition is rendered moot and academic.

WHEREFORE, in view of the foregoing, the instant Petition for certiorari is hereby DISMISSED for lack of merit. We make no pronouncement as to costs.

SO ORDERED.

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

[1] Pages 42 to 46, Rollo. At the time the Complaint was filed, the Solicitor General was Mr. Sedfrey Ordoñez.

[2] Page 39, Rollo.

[3] The issuance of the writs of sequestration appears to be admitted by the PCGG in page 20 of its Comment. Pages 78 to 113, Rollo.

[4] Pages 47 to 52, Rollo.

[5] Pages 53 to 68, Rollo.

[6] Pages 69 to 72, Rollo.

[7] Page 7, Petition; page 8, Rollo.

[8] Pages 78 to 113, Rollo.

[9] Pages 149 to 167, Rollo.

[10] Executive Order No. 2 was issued on March 12, 1986. Executive Order No. 14 was issued on May 7, 1986.

[11] Section 1 (B), Rules and Regulations of the PCGG. Cited in Bataan Shipyard & Engineering Co., Inc. (BASECO) v. PCGG, G.R. No. 75885, May 27, 1987.

[12] Bataan Shipyard & Engineering Co., Inc. (BASECO) v. PCGG, *supra*.

[13] *Ibid*.

[14] *Ibid*.

[15] Pages 13 to 20, Comment; pages 90 to 96, Rollo.

[16] *Ibid*, pages 19 to 20.

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