

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, PETITIONER,
VS. HON. EMMANUEL G. PENA, AS PRESIDING JUDGE, RTC, NCJR, BR.
CLII, PASIG, METROPOLITAN MANILA, AND YEUNG CHUN KAM,
YEUNG...**

G.R. No. 77663. April 12, 1988

Ponente: TEEHANKEE, C.J.

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TEEHANKEE, C.J.

This special civil action for certiorari, prohibition and mandamus with preliminary injunction and/or restraining order seeks to set aside the orders, dated February 16 and March 5, 1987, rendered by respondent trial judge on grounds of lack of jurisdiction and grave abuse of discretion. The main issue is whether regional trial courts have jurisdiction over the petitioner Presidential Commission on Good Government (hereinafter referred to as the Commission) and properties sequestered and placed in its custodia legis in the exercise of its powers under Executive Orders Nos. 1, 2 and 14, as amended, and whether said regional trial courts may interfere with and restrain or set aside the orders and actions of the Commission. The Court holds that regional trial courts do not have such jurisdiction over the Commission and accordingly grants the petition. To eliminate all doubts, the Court upholds the primacy of administrative jurisdiction as vested in the Commission and holds that jurisdiction over all sequestration cases of ill-gotten wealth, assets and properties under the past discredited regime fall within the exclusive and original jurisdiction of the Sandiganbayan, subject to review exclusively by this Court.*

The antecedent facts are:

On March 25, 1986, the Commission issued an order freezing the assets, effects, documents and records of two export garment manufacturing firms denominated as American Inter-fashion Corporation and De Soleil Apparel Manufacturing Corporation. Said firms had both been organized by joint venture agreement on July 2, 1984 with the approval of the Garments & Textile Export Board. Two-thirds or 67% of the stock of both corporations were subscribed by so-called Local Investors represented by Renato Z. Francisco and Atty. Gregorio R. Castillo and one-third or 33% thereof were subscribed by the so-called Hongkong Investors, namely respondents Yeung Chun Kam and Yeung Chun Ho. The Commission appointed Ms. Noemi L. Saludo as Officer-in-Charge (OIC) of the said corporations with full authority to manage and operate the same. On June 27, 1986, the Commission designated the OIC, Saludo, and Mr. Yeung Chun Ho, private respondent herein, as authorized signatories to effect deposits and withdrawals of the funds of the two corporations. On September 4, 1986, the Commission designated Mr. Yim Kam Shing as co-signatory, in the absence of Mr. Yeung Chun Ho, and Mr. Marcelo de Guzman, in the absence of Ms. Saludo. However, in a memorandum dated February 3, 1987, and addressed to depositary banks of the said two corporations, Ms. Saludo revoked the authorizations previously issued upon finding that Mr. Yim Kam Shing was a Hongkong Chinese national staying in the country on a mere tourist visa, and designated James Dy as her co-signatory and Enrico Reyes Santos as the other authorized signatory with Teresita Yu as the latter's co-signatory. The said memorandum was approved by then Commissioner Mary Concepcion Bautista of the

Commission.

On February 11, 1987, the OIC withdrew the amount of P400,000.00, more or less, from the Metropolitan Bank and Trust Company against the accounts of the said corporations for payment of the salaries of the staff, employees and laborers of the same for the period from February 1 to 15 of 1987. On February 13, 1987, respondents Yeung Chun Kam, Yeung Chun Ho and Archie Chan who are all in Hongkong, instituted through Yim Kam Shing, an action for damages with prayer for a writ of preliminary injunction against the said bank, the Commission, then Commissioner Mary Concepcion Bautista and the OIC, Saludo, docketed as Civil Case No. 54298 of Branch 152 of the Regional Trial Court at Pasig, Metro Manila, presided by respondent judge, and questioning the aforesaid revocation of the authorization as signatory previously granted to Mr. Yim Kam Shing as private respondents' representative. On February 16, 1987, respondent judge issued ex-parte the questioned temporary restraining order enjoining the bank, its attorneys, agents or persons acting in their behalf "from releasing any funds of American Inter-fashion Corporation without the signature of plaintiff Yim Kam Shing and to desist from committing any other acts complained of x x x" and the Commission "from enforcing the questioned memorandum dated February 3, 1987" (Annex "J", Petition).

On February 20, 1987, the Commission filed a motion to dismiss with opposition to plaintiffs' (private respondents herein) prayer for a writ of preliminary injunction on the ground that the trial court has no jurisdiction over the Commission or over the subject of the case and that assuming arguendo its jurisdiction, it acted with grave abuse of discretion since private respondents as 33% minority shareholders are not entitled to any restraining order or preliminary injunction. On March 5, 1987, respondent judge issued the other assailed order denying the Commission's motion to dismiss and granting private respondents prayer for a writ of preliminary injunction on a P10,000-bond (Annex "L", Petition). On March 20, 1987, the Commission filed the petition at bar questioning the jurisdiction of respondent judge's court over it and praying for (a) the nullification of the aforesaid February 16 and March 5, 1987 orders and (b) the issuance of a writ of prohibition ordering the respondent judge to cease and desist from proceeding with the said case.

On March 24, 1987, the Court issued a temporary restraining order, "ordering respondent judge to cease and desist from enforcing his orders dated February 16 and March 5, 1987 and from proceeding with Civil Case No. 54298 x x x subject to the condition that the amounts that the petitioner may withdraw from the accounts of (the sequestered corporations) with the Metropolitan Bank and Trust Company, Inc., shall be limited to the 'necessary operating expenses of the two companies and for the payment of the salaries, wages and allowances of the companies' staff, employees and Laborers' x x x and that the proceeds and income received shall likewise in due course be deposited with the said companies' accounts with the said Metropolitan Bank and Trust Company, Inc."

On the issue of jurisdiction squarely raised, as above indicated, the Court sustains petitioner's stand and holds that regional trial courts and the Court of Appeals for that matter have no jurisdiction over the Presidential Commission on Good Government in the exercise of its powers under the applicable Executive Orders and Article XVIII, section 26 of the Constitution and therefore may not interfere with and restrain or set aside the orders and actions of the Commission. Under section 2 of the President's Executive Order No. 14 issued on May 7, 1986, all cases of the Commission regarding "the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees"[1], whether civil or criminal, are lodged within the "exclusive and original jurisdiction of the Sandiganbayan"[2] and all incidents arising from, incidental to, or related to, such cases necessarily fall likewise under the Sandiganbayan's exclusive and original jurisdiction, subject to review on certiorari exclusively by the Supreme Court.[3]

The Constitution and the applicable Executive Orders and established legal principles and jurisprudence fully

support the Court's ruling at bar.

1. The very first Executive Order issued by President Corazon C. Aquino after her assumption of office and the ouster of deposed President Ferdinand E. Marcos on February 25, 1986 was Executive Order No. 1 issued on February 28, 1986 creating the Presidential Commission on Good Government, charging it. with the task of assisting the President in regard to the "recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship." [4]

In the discharge of its vital task "to recover the tremendous wealth plundered from the people by the past regime in the most execrable thievery perpetrated in all history," [5] or "organized pillage" (to borrow a phrase from the articulate Mr. Blas Ople [6]), the Commission was vested with the ample power and authority

“(a) x x x

"(b) to sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto, in order to prevent their destruction, concealment or disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission from accomplishing its task.

"(c) to provisionally takeover in the public interest or to prevent the disposal or dissipation of business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities.

"(d) to enjoin or restrain any .actual or threatened commission of acts by any person or entity that may render moot and academic, or frustrate or otherwise make ineffectual the efforts of the Commission to carry out its task under this Order. x x x." [7]

As stressed in Baseco, "So that it might ascertain the facts germane to its objectives, it [the Commission] was granted power to conduct investigations; require submission of evidence by subpoena ad testificandum and duces tecum; administer oaths; punish for contempt. It was given power also to promulgate such rules and regulations as may be necessary to carry out the purposes of (its creation)." [8]

2. These ample powers and authority vested in the Commission by the President in the exercise of legislative power granted her in the Provisional (Freedom) Constitution [9] were confirmed in said Constitution and in the 1987 Constitution. Thus, the Freedom Constitution (Proc. No. 3) mandated that "The President shall give priority to measures to achieve the mandate of the people to: x x x (d) recover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets or accounts x x x." [10] The Constitution overwhelmingly ratified by the people in the February 2, 1987 plebiscite likewise expressly confirmed that

"Sec. 26. The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the Congress may extend said period.

"A sequestration or freeze order shall be issued only upon showing of a prima facie case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within

six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.

"The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided." [11]

3. As can be readily seen from the foregoing discussion of the duties and functions and the power and authority of the Commission, it exercises quasi-judicial functions. In the exercise of quasi-judicial functions, the Commission is a co-equal body with regional trial courts and "co-equal bodies have no power to control the other." [12] The Solicitor General correctly submits that the lack of jurisdiction of regional trial courts over quasi-judicial agencies is recognized in section 9, paragraph 3 of Batas Pambansa Blg. 129 (the Judiciary Reorganization Act of 1980), which otherwise vests exclusive appellate jurisdiction in the Court of Appeals over all final judgments, decisions, resolutions, orders, or awards of regional trial courts and quasi-judicial agencies, instrumentalities, boards or commissions. But as already indicated hereinabove, the Court of Appeals is not vested with appellate or supervisory jurisdiction over the Commission. Executive Order No. 14, which defines the jurisdiction over cases involving the ill-gotten wealth of former President Marcos, his wife, Imelda, members of their immediate family, close relatives, subordinates, close and/or business associates, dummies, agents and nominees, specifically provides in section 2 that "The Presidential Commission on Good Government shall file all such cases, whether civil or criminal, with the Sandiganbayan which shall have exclusive and original jurisdiction thereof." Necessarily, those who wish to question or challenge the Commission's acts or orders in such cases must seek recourse in the same court, the Sandiganbayan, which is vested with exclusive and original jurisdiction. The Sandiganbayan's decisions and final orders are in turn subject to review on certiorari exclusively by this Court.

4. Having been charged with the herculean task of bailing the country out of the financial bankruptcy and morass of the previous regime and returning to the people what is rightfully theirs, the Commission could ill-afford to be impeded or restrained in the performance of its functions by writs or injunctions emanating from tribunals co-equal to it and inferior to this Court. Public policy dictates that the Commission be not embroiled in and swamped by legal suits before inferior courts all over the land, since the loss of time and energy required to defend against such suits would defeat the very purpose of its creation. Hence, section 4(a) of Executive Order No. 1 has expressly accorded the Commission and its members immunity from suit for damages in that: "No civil action shall lie against the Commission or any member thereof for anything done or omitted in the discharge of the task contemplated by this order."

The law and the courts frown upon split jurisdiction and the resultant multiplicity of actions. To paraphrase the leading case of *Rheem of the Phil., Inc. vs. Ferrer, et al.* [12-a], to draw a tenuous jurisdiction line is to undermine stability in litigations. A piecemeal resort to one court and another gives rise to multiplicity of suits. To force the parties to shuttle from one court to another to secure full determination of their suit is a situation gravely prejudicial to the administration of justice. The time lost, the effort wasted, the anxiety augmented, additional expenses incurred, the irreparable injury to the public interest - are considerations which weigh heavily against split jurisdiction.

Civil Case No. 54298 pending before respondent judge is expressly denominated as one "for damages with prayer for a writ of preliminary injunction" (Annex "I", petition) filed by private respondents against the Commission and then Commissioner Mary Concepcion Bautista. The said case is clearly barred by the aforequoted immunity provision of Executive Order No. 1, as buttressed by section 4(b) thereof which further provides that: "No member or staff of the Commission shall be required to testify or produce evidence in any judicial, legislative or administrative proceeding concerning matters within its official cognizance."

Executive Order No. 1 thus effectively withholds jurisdiction over cases against the Commission from all lower

courts, including the Court of Appeals, except the Sandiganbayan in whom is vested original and exclusive jurisdiction and this Court. Early on, in special civil actions questioning challenged acts of the Commission, its submittal that the cited Executive Order bars such actions in this Court was given short shrift, because this Court, as the third great department of government vested with the judicial power and as the guardian of the Constitution, cannot be deprived of its certiorari jurisdiction to pass upon and determine alleged violations of the citizens' constitutional and legal rights under the Rule of Law.

5. The rationale of the exclusivity of such jurisdiction is readily understood. Given the magnitude of the past regime's "organized pillage" and the ingenuity of the plunderers and pillagers with the assistance of the experts and best legal minds available in the market, it is a matter of sheer necessity to restrict access to the lower courts, which would have tied into knots and made impassible the Commission's gigantic task of recovering the plundered wealth of the nation, whom the past regime in the process had saddled and laid prostrate with a huge \$27 billion foreign debt that has since ballooned to \$28.5 billion.

To cite an example as recorded in Baseco, "in the ongoing case filed by the government to recover from the Marcoses valuable real estate holdings in New York and the Lindenmere estate in Long Island, former PCGG chairman Jovito Salonga has revealed that their names do not appear on any title to the property. Every building in New York is titled in the name of a Netherlands Antilles corporation, which in turn is purportedly owned by three Panamanian corporations, with bearer shares. This means that the shares of this corporation can change hands any time, since they can be transferred, under the law of Panama, without previous registration on the books of the corporation. One of the first documents that we discovered shortly after the February revolution was a declaration of trust handwritten by Mr. Joseph Bernstein on April 4, 1982 on a Manila Peninsula Hotel stationery stating that he would act as a trustee for the benefit of President Ferdinand Marcos and would act solely pursuant to the instructions of Marcos with respect to the Crown Building in New York." [13] Were it not for this stroke of good fortune, it would have been impossible, legally and technically, to prove and recover this ill-gotten wealth from the deposed President and his family, although their ownership of these fabulous real estate holdings were a matter of public notoriety.

Hence, the imperative need for the Government of the restored Republic as its first official act to create the Commission as an administrative and quasi-judicial commission to recover the ill-gotten wealth "amassed from vast resources of the government by the former President, his immediate family, relatives and close associates." [14]

This is the only possible and practical way to enable the Commission to begin to do its formidable job. Thus, in the fifties in an analogous case, the Court taking cognizance of the trend to vest jurisdiction in administrative commissions and boards the power to resolve specialized disputes ruled that Congress in requiring the Industrial Court's intervention in the resolution of labor-management controversies likely to cause strikes or lockouts meant such jurisdiction to be exclusive, although it did not so expressly state in the law. The court held that under the "sense-making and expeditious doctrine of primary jurisdiction . . . the courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered." [15]

In this era of clogged court dockets, the need for specialized administrative boards or commissions with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or essentially factual matters, subject to Judicial review in case of grave abuse of discretion, has become well nigh indispensable. For example, the Court in the case of Ebon vs. De Guzman [16] noted that the lawmaking authority,

in restoring to the labor arbiters and the NLRC their jurisdiction to award all kinds of damages in labor cases, as against the previous P.D. amendment splitting their jurisdiction with the regular courts, "evidently, . . . had second thoughts about depriving the Labor Arbiters and the NLRC of the jurisdiction to award damages in labor cases because that setup would mean duplicity of suits, splitting the cause of action and possible conflicting findings and conclusions by two tribunals on one and the same claim."

6. The Court recently had occasion to stress once more, in G.R. No. 82218, *Reyes vs. Caneba*, March 17, 1988, that "(T)he thrust of the related doctrines of primary administrative jurisdiction and exhaustion of administrative remedies is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. Acts of an administrative agency must not casually be overturned by a court, and a court should as a rule not substitute its judgment for that of the administrative agency acting within the perimeters of its own competence." Applying these fundamental doctrines to the case at bar, the questions and disputes raised by respondents seeking to controvert the Commission's finding of prima facie basis for the issuance of its sequestration orders as well as the interjection of the claims of the predecessor of American Inter-fashion and De Soleil Corporations, viz. Glorious Sun Phil., headed by Nemesio Co, are all questions that lie within the primary administrative jurisdiction of the Commission that cannot be prematurely brought up to clog the court dockets without first resorting to the exhaustion of the prescribed administrative remedies. The administrative procedure and remedies for contesting orders of sequestration issued by the Commission are provided for in its rules and regulations. Thus, the person against whom a writ of sequestration is directed may request the lifting thereof, in writing; after due hearing or *motu proprio* for good cause shown, the Commission may lift the writ unconditionally or subject to such conditions as it may deem, necessary, taking into consideration the evidence and the circumstances of the case. The resolution of the Commission is appealable to the President of the Philippines. The Commission conducts a hearing, after due notice to the parties concerned to ascertain whether any particular asset, property or enterprise constitutes ill-gotten wealth. The Commission's order of sequestration is not final, at the proper time, the question of ownership of the sequestered properties shall be exclusively determined in the Sandiganbayan, whose own decisions in turn are subject to review exclusively by the Supreme Court.

It should be emphasized here, as again stressed by the Court in the recent case of *Republic, et al. vs. De los Angeles, et al.* G.R. No. L-30240, March 25, 1988, that "it is well-recognized principle that purely administrative and discretionary functions may not be interfered with by the courts. In general, courts have no supervising power over the proceedings and actions of the administrative departments of government. This is generally true with respect to acts involving the exercise of judgment or discretion, and findings of fact. There should be no thought of disregarding the traditional line separating judicial and administrative competence, the former being entrusted with the determination of legal questions and the latter being limited as a result of its expertise to the ascertainment of the decisive facts." This is specially true in sequestration cases effected by the Commission for the recovery of the nation's plundered wealth that may affect the nation's very survival, in the light of the constitutional mandate that such sequestration or freeze orders "shall be issued only upon showing of a prima facie case"[17] and the settled principle that findings by administrative or quasi-judicial agencies like the Commission are entitled to the greatest respect and are practically binding and conclusive, like the factual findings of the trial and appellate courts, save where they are patently arbitrary or capricious or are not supported by substantial evidence.

7. The Solicitor General has herein picturesquely submitted its "more than prima facie evidence" for its sequestration and provisional take-over of the subject assets and properties as follows:

x x x the subject sequestered assets are completely owned and/or completely utilized and/or otherwise taken over by the Marcoses, with due 'compensation' to their co-participants in terms of tacitly agreed upon 'mutual

benefits,' for their personal benefits and selfish economic interests, including particularly the salting, stashing, and secreting of dollars abroad, cum loculo et pera, as witness the following, by way of summarizing PCGG's submission, x x x as supported by more than prima facie evidence:

"The fun: Glorious Sun, Phils., headed by Nemesio G. Co and with private respondents herein holding 40% of the shares of stock, soon after its incorporation on June 8, 1977, engaged in dollar salting, among other business unlawful manipulations. This was unearthed by the Garments and Textiles Export Board (GTEB) in January 1984. At that time, in the reign of Marcos, it had been decreed that the matter of dollar salting was the exclusive domain of the so-called 'Binondo Central Bank', and any other person or entity found engaging therein was guilty of 'economic sabotage,' more so where the 'saboteurs' are aliens like the herein private respondents who are otherwise known as the 'Hongkong investors'.

"The squeeze: GTEB, under the Ministry of Trade, under then Minister Roberto v. Ongpin, on April 27, 1984 choked the lifeliness of Glorious Sun in terms of canceling its export quotas, export authorizations, and license to maintain bonded warehouses and of disqualifying its 'major stockholders and officers from engaging in exports'. With protestations of innocence, Glorious Sun on May 25, 1984 even had the temerity to file a Petition with the Supreme Court (G.R. No. 67180). How did Glorious Sun extricate itself from the tightening screws let loose upon its neck by the then reigning Ceasar with his apparently legal contretemps?

"Easy: Give unto Ceasar what is Ceasar's. In July, 1984, herein private respondents came up with two (2) joint venture agreements, and within the month, respondents themselves withdrew their Petition in G.R. No. 67180. Pursuant to the two (2) joint venture agreements, American Inter-Fashion Co. was incorporated on August 22, 1984 and De Soleil on September 3, 1984, in each of which herein private respondents, the Hongkong investors, held 33% of the shares of stock while the 'Filipino investors' held 67%.

"The sting:

'In August, 1984, the GTEB informed Glorious Sun, Phils., that the substantial portion of the latter's cancelled export quotas had been awarded to American Inter-Fashion and De Soleil. But while the Yeung brothers control only 33% of the two corporations, they, however, operated and managed said corporations and utilized 100% of their export quota allocations. The Yeung brothers paid the nominees of the Filipino investors controlling 67%, the amount of \$3.75 per dozen as royalty for the utilization of the 67% export quota of said two corporations. It may also be stated that even before the export quota allocations were awarded to American Inter-Fashion and De Soleil, Glorious Sun, Phils., despite the GTEB decision, Annex A hereof, was allowed to ship out garments worth US \$1,261,794.00 under its [previously cancelled] quota from April 27 to May 30, 1984. And on petition of a foreign buyer, Generra Sports Company of Seattle, Washington, Glorious Sun, Phils., was allowed to fill its 3rd and 4th fashion-quarter orders of 186,080 pieces valued at about US \$1,159,531.00. As a result Glorious Sun, Phils. continued to operate its bonded manufacturing warehouse ordered closed by the GTEB (Please see GTEB Comment dated June 4, 1984 in G.R. No. 67180.). (pp. 9-10, Consolidated Reply, May 15, 1987).'

"The end of the fun: All was fun that ended in fun for all the participants in the fun, the squeeze and the sting, until of course the EDSA Revolution, when PCGG shortly sequestered the subject assets and provisionally took over the conservation thereof pursuant to law (Secs. 2 & 3, Executive Order No. 1, and related issuances) and pursuant to the very Baseco case cited ironically in the Motion at bar. Again, with protestations of innocence, the herein private respondents through their counsel and now Congressman Francisco Sumulong with the same temerity have gone to the courts and other forum (Civil Case No. 54298 entitled Yeung Chun Kam, et al. vs. PCGG, et al., RTC, Branch 151, Pasig, Metro Manila; SEC Case No. 003144 entitled Yeung Chun Kam, et al. vs. PCGG, et al., Securities and Exchange Commission) Just as Nemesio Co, allegedly President and owner of Glorious Sun, through counsel Benjamin C. Santos, has gone to the courts with the same protestations of innocence and equal temerity (Civil Cases Nos. 86-37220 and 86-57221 before RTC, Branches 33 and 36, Manila; Civil Cases Nos. 761-87 and 762-87, Metropolitan Trial Court, Branch 56, Malabon; Civil Case No.

54911, RTC, Branch 151, Pasig, Metro Manila) and with his own 'brand' of private army to boot, resorted to the midnight plunder of the subject sequestered assets under a 'midnight' writ (issued in Civil Case No. 54911 by Judge Eutropio Migriño). Obviously, the herein private-respondent as well as Nemesio Co would like to continue their fun.”[18]

Such proliferation of suits filed against the Commission in the trial courts, and gross disregard of the Commission's primacy of administrative jurisdiction has of course compelled the Commission to question in turn in this Court and obtain restraining orders against the lower courts' usurpation of jurisdiction, in the following pending cases:

- G.R. No. 79901 (PCGG v. Hon. Eutropio Migriño, Executive Judge, Regional Trial Court of Pasig and Glorious Sun Fashion Manufacturing Co., Inc. and Nemesio Co)
- G.R. No. 80072 (PCGG v. Emilio Opinion, Presiding Judge of the Metropolitan Trial Court, Branch 56, Malabon, Metro Manila; Glorious Sun Fashion Manufacturing Co., Inc. and Nemesio Co)
- G.R. No. 80121 (PCGG v. Hon. Maxima M. Japzon as Presiding Judge of the Regional Trial Court, Branch 36, Manila; Glorious Sun Fashion Garments Manufacturing Co., Inc. and Nemesio Co.)
- G.R. No. 80281 (PCGG v. Hon. Felix Barbers as Presiding Judge of the Regional Trial Court, Branch 33, Manila, Deputy Sheriff Salvador A. Pueca and Glorious Sun- Fashion Garments Manufacturing Co., Inc. and Nemesio Co)
- G.R. No. 80395 (PCGG v. Hon. Emilio C. Opinion as Presiding Judge of Branch 56 of the Metropolitan Trial Court, Malabon, Metro Manila; Glorious Sun Garments Manufacturing Co., Inc. and Nemesio Co)

Going back to the pre-EDSA squeeze and scam, it need only be added that everything at the time seemingly ended to everybody's satisfaction. Nemesio Co's Glorious Sun, Phil. notwithstanding the GTEB's closure order, continued to operate its bonded warehouse and to ship out millions of dollars of garments under its supposedly cancelled export quotas and peremptorily withdrew on August 20, 1984[19] its petition in G.R. No. 67180 from this Court. The two new substitute corporations American Inter-Fashion Co. and De Soleil cropped out of nowhere to take over the factories and export quotas and it was of public notoriety, particularly in the trade, that the family had taken over.

8. This is the thrust of the complaint filed on July 16, 1987 [well ahead of the Constitutional deadline of August 2, 1987] by the Solicitor General on behalf of the Commission representing Plaintiff Republic of the Philippines docketed as Civil Case No. 0002, PCGG-3, with the Sandiganbayan, against therein defendants Ferdinand E. Marcos, Imelda R. Marcos, Imelda (Imee) R. Marcos, Tomas Manotoc, Irene R. Marcos Araneta, Gregorio Ma. Araneta III and Ferdinand R. Marcos, Jr., for reversion, reconveyance, restitution, accounting and damages, involving, among others, the subject matter of the petition at bar, namely, American Inter-Fashion and De Soleil Corporations, together with their assets, shares of stocks, effects, evidence and records, which the Commission avers, based on documents in its possession, were "illegally acquired by said defendants in unlawful concert with one another and with gross abuse of power and authority. x x x"[20] The Commission correctly submits that "questions on whether or not the Plaintiff Republic of the Philippines is entitled to reversion, reconveyance, restitution, accounting or damages in respect of the above-subject matter is for the Sandiganbayan to resolve" - not in any of the scattershot cases that respondents have filed in the various courts of the land.

The Court has so held in various cases, among them, Ofelia Trinidad vs. PCGG. et al., G.R. No. 77695, June 16, 1987, wherein We pointed out that - "The Supreme Court is not a trier of facts: it cannot conceivably go over all the minute evidence that may be presented by the PCGG. What is significant is that this Court believes that in the instant case no abuse, much less a grave abuse of discretion has been exercised by the PCGG," and

Agro-Industrial Foundation Colleges of Southern Philippines, et al. vs. Regional XI Operating Team No. Five and/or the PCGG. G.R. No. 78116, July 28, 1987, wherein We ruled that the parties affected "may raise their defenses at the appropriate time and before the proper forum [the Sandiganbayan]. They will have their day in court."

9. What has not been appreciated by respondents and others similarly situated is that the provisional remedies (including the encompassing and rarely availed of remedy of provisional takeover) granted to the Commission in pursuing its life-and-death mission to recover from a well-entrenched plundering regime of twenty years., the ill-gotten wealth which rightfully belongs to the Republic although pillaged and plundered in the name of dummy or front companies, in several known instances carried out with the bold and mercenary, if not reckless, cooperation and assistance of members of the bar as supposed nominees, the full extent of which has yet to be uncovered, are rooted in the police power of the State, the most pervasive and the least limitable of the powers of Government since it represents "the power of sovereignty, the power to govern men and things within the limits of its domain." [21] Police power has been defined as the power inherent in the State "to prescribe regulations to promote the health, morals, education, good order or safety, and general welfare of the people." [22] Police power rests upon public necessity and upon the right of the State and of the public to self-protection. [23] "Salus populi suprema est lex" - the welfare of the people is the supreme law. For this reason, it is coextensive with the necessities of the case and the safeguards of public interest. Its scope expands and contracts with changing needs. [24] "It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare." [25]

That the public interest and the general welfare are subserved by sequestering the purported ill-gotten assets and properties and taking over stolen properties of the government channeled to dummy or front companies is stating the obvious. The recovery of these ill-gotten assets and properties would greatly aid our financially crippled government and hasten our national economic recovery, not to mention the fact that they rightfully belong to the people. While as a measure of self-protection, if, in the interest of general welfare, police power may be exercised to protect citizens and their businesses in financial and economic matters, it may similarly be exercised to protect the government itself against potential financial loss and the possible disruption of governmental functions. Police power as the power of self-protection on the part of the community bears the same relation to the community that the principle at self-defense bears to the individual. [26] Truly, it may be said that even more than self-defense, the recovery of ill-gotten wealth and of the government's own properties involves the material and moral survival of the nation, marked as the past regime, was by the obliteration of any line between private funds and the public treasury and abuse of unlimited power and elimination of any accountability in public office, as is a matter of public record and knowledge.

10. Despite all the complexities and difficulties, the original Commission created under Executive Order No. 1 headed by its first chairman, now Senate President Jovito R. Salonga, and composed of Hon. Ramon Diaz, the incumbent chairman, now Associate Justice Pedro L. Yap of this Court, Hon. Raul Daza, now a ranking member of the House of Representatives, and Hon. Mary Concepcion Bautista, now chairman of the Human Rights Commission, and the present Commission headed by Chairman Ramon Diaz have produced unprecedented positive results for which they fully deserve the inadequately expressed (- at times -) appreciation and gratitude of the nation. The report as of the end of 1987 of Chairman Ramon Diaz shows the great extent of the Commission's accomplishments despite its limited resources, but fortunately bolstered by the spontaneous and welcome assistance of friendly foreign governments and lawyers, in the brief period of less than two years since its creation and which are regarded yet as the tip of the iceberg:

"PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT

SUMMARY OF ACCOMPLISHMENTS

As of January 05, 1988

1. CASH & OTHER CASH ITEMS

Funds turned over to the Treasury - Gen. Fund 592,350,799.00

Proceeds of Sale of Princeton Property with PNB New York 20,500,000.00

Proceeds of New Jersey Settlement 9,669,781.00

Proceeds of Auction Sale 17,231,429.00

Proceeds of Sale of Paintings 8,879,500.00

SBTC (1st payment Seq.T/Ds) 250,000,000.00

UCPB Bal of Profit Sharing 77,678,854.00

Other Cash Items (Certificates of Time Deposits) 1,492,951.00

Contribution to CARP 140,000,000.00

Sub-Total P 1,117,803,314.00

2. OTHER RECOVERED FUNDS

Government Funds in TRB/National Treasury

(Casino Funds) 1,138,000,000.00

T-Bills delivered to the Office of the President 100,020,000.00

Funds from Filbakers 59,884,453.00

P 1,297,904,453.00

3. RECEIVABLES

Projected Proceeds of Sale of knick-knacks and

Furnitures from Hachensach

in Olympic Towers 20,720,000.00

Projected Proceeds of New York

Properties (Lindenmere,

Olympic Towers Apartments,

Makiki Properties) \$9.0M 184,500,000.00

SBTC Certificates of Time Deposits 731,407,842.00

Sub-total . P 936,627,842.00

4. FUNDS HELD IN TRUST

Funds with the Treasury 71,975,722.00

Funds with PNB-Ortigas 52,535,298.00

Sub-Total P 124,511,020.00

Grand Total P 3,476,846,629.00

5. JEWELRY

Estimated Value P 250 M

6.

COMPANIES WHICH WERE AFFECTED

BY SEQUESTRATION ORDER INCLUDING

RADIO AND TV STATIONS

297 Companies were subject to sequestration (including those whose sequestrations was lifted and those surrendered companies by J.Y. Campos and those holding companies whose investments in shares were affected by Writs of Sequestration) 74 Companies have available financial statements with estimated total assets of 223 Companies still without financial statements 18 TV Stations were sequestered 38 Radio Stations were sequestered

P 44 B

7. REAL PROPERTIES (BUILDING AND
IMPROVEMENTS)

Coconut Palace

13 Houses and improvements

12 Condominium units Offices of

R.S. Benedicto, E. Garcia, etc.

2 National Art and Museum Centers

2 Fishponds

8. SEQUESTERED LANDS (INCLUDING
IMPROVEMENTS)

450 parcels of land (including

improvements) have been issued

with specific Writs of Sequestration

of which only 148 have an area of

19,276,970.76 sq. m.

23 Haciendas of which 13 haciendas

constituting RSB Farms, Inc. have

an area of 27,859,207.00 sq. m.

9. SURRENDERED LANDS .BY JOSE YAO CAMPOS

Total area in sq. m. of all surrendered

properties 19,684,435.45 sq. m.

Disposed to DAR (202 IRC titles)

with total area of 13,997.529 sq. m.

Remaining balance of 75 titles recommended for

disposal, with total area of 5,686,906.45 sq. m.

OTHER INFORMATION:

81 Sequestered Vehicles

29 Sequestered Aircrafts

13 Sequestered Vessels"

11. A final word about the alleged misdeeds of the OIC which the Solicitor General has denounced as false and unfounded.[27] Such alleged misdeeds, even if taken as true for the nonce, do not and cannot detract from the Commission's accomplishments in the unselfish service of the nation, rendered with integrity and honor and without the least taint of scandal and self-interest (in welcome contrast to the past regime's rape and plunder sub silentio of the nation!). In our free and democratic space now, with full restoration of a free press and the people's liberties, it should be acknowledged with some sort of appreciation that any such misdeeds on the part of the Commission's representatives or agents have been subjected to full public exposure and the erring parties dismissed and replaced.

ACCORDINGLY, the writs of certiorari and prohibition shall issue. The orders of respondent Judge dated February 16, 1987 and March 5, 1987 are hereby set aside as null and void. Respondent Judge is ordered to cease and desist from any further proceeding in Civil Case No. 54298 which is hereby ordered DISMISSED. This decision is IMMEDIATELY EXECUTORY.*

SO ORDERED.

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

Gutierrez, Jr., and Feliciano, JJ., please see separate opinion.

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

[*] Infra, at pages 5-6 hereof.

[1] Title of Executive Order #2 issued on March 12, 1986.

[2] Executive Order No. 14, sec. 2, issued on May 7, 1986.

[3] P.D. No. 1606, sec. 7 provides that "decisions and final orders [of the Sandiganbayan] shall be subject to review on certiorari by the Supreme Court in accordance with Rule 45 of the Rules of Court."

[4] Executive Order No. 1, section 2(a)

[5] Isagani A. Cruz, J. separate opinion in Basco vs. PCGG, 150 SCRA 181, 258.

[6] Idem, at page 243.

[7] Executive Order No. 1, sec. 3.

[8] See fn. 5, quoting Executive Order No. 1, sec. 3 (e) to (h).

[9] Proc. No. 3, March 25, 1986.

[10] Idem, Art. II.

[11] Art. XVIII, sec. 26.

[12] National Electrification Administration vs. Mendoza, 138 SCRA 632.

12-a 19 SCRA 130.

[13] Baseco vs. PCGG, writer's separate opinion, 150 SCRA at p. 249.

[14] Executive Order No. 1, first whereas clause.

[15] Pambujan Sur United Mine Workers v. Samar Mining Co., Inc., 94 Phil. 932, 941 (1954).

[16] 113 SCRA 52, 56 (1982).

[17] Art. XVIII, sec. 26, Constitution.

[18] Rollo, pp. 275-281, emphasis supplied

[19] As per Supreme Court Resolution of August 20, 1984 reading in part thus: "G.R. No. 67180 (Glorious Sun Fashion Garments Manufacturing Company [Philippines] Incorporated v. Garment and Textile Export Board, etc., et al.).- The withdrawal of the petition in this case filed by Attys. Barredo, Reyno and Tomacruz, counsel for petitioner, is GRANTED, x x x ."

[20] Rollo, pp. 274-275

[21] Chief Justice Taney, cited in Morfe v. Mutuc, 22 SCRA 424

[22] See Primicias v. Fugoso, 80 Phil. 71; Ignacio v. Elas, 55 O.G. 2162

[23] Churchill v. Rafferty, 32 Phil. 580

[24] Bernas, Primer on the 1973 Constitution, p. 32, 1983 ed.

[25] Churchill v. Rafferty, supra

[26] AMJUR 2d, Constitutional Law, Secs. 420 and 370

[27] Rollo, p. 284, et seq.

[**] In immediately executory decisions, no motion for extension of time to file a motion for reconsideration shall be granted.

ADDENDUM

TEEHANKEE, C.J.:

I make this Addendum to the foregoing main opinion of the Court to express briefly my views on certain statements made in the dissenting opinion of Mr. Justice Gutierrez and the separate concurring opinion with qualifications of Mr. Justice Feliciano, which for lack of time I have not been able to submit to the members of the majority who have concurred with the opinion written by me for the Court.*** It is not that the statements I make in this Addendum are in any way incompatible with those made in the main opinion; in fact, they are made simply by way of clarification or amplification.

It can be readily seen from a reading of the main and the dissenting opinions that while both are agreed that 67% of the shares and assets of the two corporations were taken over by the family and crony of the deposed President,

they view such takeover in different lights: The main opinion gives prima facie status to the position taken by the petitioner Commission that Nemesio G. Co, the previous majority shareholder of Glorious Sun Fashion Garments Mfg. Co., predecessor of the two corporations, had made a deal with Mr. Marcos and transferred his interests to the nominees of Mr. Marcos in return for benefits and concessions received; while the dissenting opinion views Mr. Co as a "poor victim" of Mr. Marcos. This dispute, involving as it does PCGG-sequestered properties, as held by the majority on the basis of the provisions of the law, Executive Order No. 14, comes within the exclusive and original jurisdiction of the Sandiganbayan. Simply because Mr. Co claims himself to be a victim does not mean that the jurisdiction must be split, with the Sandiganbayan's jurisdiction limited to the PCGG acting against the nominees of Mr. Marcos holding 67% of the shares and assets of the two corporations, and Mr. Co being free to sue the PCGG in the regular courts. To force the State to draw a tenuous jurisdiction line and split jurisdiction is to undermine stability in litigations and to force the parties, particularly the government as represented by the PCGG to shuttle from one court to another to secure full determination of its suit for reversal, reconveyance, restitution, etc., of the subject matter of the petition, that is, the two corporations, together with the assets, shares of stock, evidence of record, etc. It would be to create an intolerable situation gravely prejudicial to the administration of justice, that undermines the tremendous task given to the PCGG to recover ill-gotten wealth accumulated by Mr. Marcos, his immediate family, relatives, subordinates and close associates, directly or through nominees.

The main opinion's quoting the "picturesque" submittal by the Solicitor General of prima facie evidence for its case should not connote, as misperceived in the dissenting opinion, that said submittals represent the facts: At this stage, neither the submittals of the Solicitor General nor those of Mr. Co as stated in the dissenting opinion can be taken as established facts. These issues have to be threshed out in a proper trial before the Sandiganbayan.

The dissenting opinion states that "(I)f the PCGG investigative action were solely against the 67% allegedly misappropriated by a Marcos daughter and a Marcos crony, I will have no hesitation in concurring with the majority opinion that this is a case where exclusive jurisdiction over all incidents is vested in the Sandiganbayan."

In response, it should be stressed that this is a case precisely where jurisdiction over all incidents should be vested in one court, the Sandiganbayan. The issues are not simplistic and precisely because of this, all hearings and processes should be limited exclusively in one court, subject to review by the Supreme Court. Otherwise, as already pointed out, given the magnitude of the past regime's "organized pillage" and the ingenuity of the plunderers and pillagers with the assistance of the experts and best legal minds available in the market, and in several known instances carried out with the questionable and mercenary cooperation and assistance of members of the bar as supposed nominees, the government's claims would have been tied into knots throughout the land as in this case and made impossible the Commission's gigantic task of seeking to recover the plundered wealth of the nation for the benefit of the people to whom it rightfully belongs.

Again, it should also be stressed that jurisdiction is conferred by law which, in the case of ill-gotten wealth of Mr. Marcos, has been vested exclusively in the Sandiganbayan. The question of the wisdom of vesting such exclusive jurisdiction in one court, the Sandiganbayan, is not for this Court to encroach upon or legislate.

With respect to the qualifications expressed by Mr. Justice Feliciano in his separate opinion, I just wish to point out two things: First, the main opinion does not claim absolute immunity for the members of the Commission. The cited section of Executive Order No. 1 provides the Commission's members immunity from suit thus: "No civil action shall be against the Commission or any member thereof for anything done or omitted in the discharge of the task contemplated by this order." No absolute immunity like that sought by Mr. Marcos in his Constitution for himself and his subordinates is herein involved. It is understood that the immunity granted the members of the Commission by virtue of the unimaginable magnitude of its task to recover the plundered wealth and the State's

exercise of police power was immunity from liability for damages in the official discharge of the task granted the members of the Commission much in the same manner that judges are immune from suit in the official discharge of the functions of their office. Secondly, as to the seemingly grudging acknowledgment of the achievements so far of the Commission in terms of recovered funds and properties, the observation that the Sandiganbayan still has to rule that these funds and assets constitute ill-gotten wealth of Mr. Marcos and his associates ignores two facts: (1) many of these recovered funds and properties were turned over to the Commission by self-confessed cronies and dummies of Mr. Marcos, who, as Mr. Marcos stated, had proper documentation to the properties in their names, but who, because they were stricken by their conscience or because of other extraneous considerations have voluntarily confessed to being Mr. Marcos' dummies and turned over these recovered property and assets in tens if not in hundreds of millions of pesos to the Commission; and (2) Rep. Act No. 1379 provides that whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, such unexplained wealth shall be presumed *prima facie* to have been unlawfully acquired, in an appropriate proceeding, such as that filed in the Sandiganbayan, and the burden is placed upon such public official or employee to show cause why the property aforesaid or any part thereof should not be forfeited and declared property of the State. This provision is fully applicable to Mr. Marcos and members of his family, all of whom were public officials during his regime, as well as many of his cronies and associates who held public office and the burden is on them and not on the Commission or the Republic to show that , their property is not ill-gotten wealth.

CONCURRING WITH QUALIFICATIONS

FELICIANO, J.:

I concur with the great bulk of the majority opinion so vigorously written by the Chief Justice. I seek below to clarify, principally to myself, certain qualifications which do not affect the result reached but which, to my mind, should be made.

The Presidential Commission on Good Government (PCGG) is, of course, an administrative agency which has been charged with the vitally important task of investigating and recovering "all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad -- during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relations" (Section 2 [a], Executive Order No. 1, dated 28 February 1986; 82 Official Gazette, p. 1234 [3 March 1986]).

In the carrying out of this fundamental task, the PCGG has been authorized to sequester or place under its control or possession assets which it believes constitute "ill-gotten wealth" of Mr. Marcos or his associates. Necessarily, the PCGG is authorized to determine whether or not there is sufficient *prima facie* basis to warrant sequestering particular assets as probably constituting such "ill-gotten wealth". In *Bataan Shipyard & Engineering Co., Inc. (Baseco) v. Presidential Commission on Good Government, et al.*, G.R. No. 75885, 27 May 1987, it was made abundantly clear that under Executive Order No. 14, dated 7 May 1986, the PCGG's own rules and regulations and Article No. XVIII, Section 26 of the 1987 Constitution, sequestration and take over orders issued by the PCGG, must rest upon a *prima facie* basis.

It is also quite clear that the determinations made by the PCGG at the time of issuing sequestration or provisional take over orders cannot be regarded as final determinations; that the assets sequestered or provisionally taken over in fact constitute "ill-gotten wealth" within the meaning of Executive Order No. 1 is a determination which can be

finally made only by a court; and that the court vested with jurisdiction to make that determination is the Sandiganbayan. Thus, the PCGG was required to bring suit for recovery or reconveyance of "ill-gotten wealth" before the Sandiganbayan by Executive Order No. 14. As pointed out in the majority opinion, the Sandiganbayan is vested with exclusive original jurisdiction over such cases.

The principal thrust of the Chief Justice's opinion is that to prevent the splitting of jurisdiction and consequent multiplicity of cases relating to the ownership of assets which may have been placed under sequestration or provisional take over orders, all such cases which are reasonably related to the question of ownership and characterization of such assets, are properly regarded as embraced within the exclusive original jurisdiction vested upon the Sandiganbayan. I entirely agree with this basic holding. It would follow that all parties who claim ownership of or rights to assets which have been subjected to sequestration and which are the subject matter of proceedings before the Sandiganbayan must be regarded as having a right to intervene in the proceedings before the Sandiganbayan. It seems equally clear that parties who are not allowed to intervene in proceedings before the Sandiganbayan cannot, consistently with the Due Process Clause of the Constitution, be regarded as bound by any decision which the Sandiganbayan may render in respect of ownership of such assets. There appears no basis for supposing that proceedings before the Sandiganbayan are the nature of in rem proceedings.

I would submit, with respect, that the foregoing is all that is necessary to arrive at the resolution of this case. The PCGG is clearly not a court. The majority opinion states that the PCGG "exercise quasi-judicial functions" and that "in the exercise of quasi-judicial functions, the PCGG is a co-equal body with Regional Trial Courts." It seems to me that PCGG can be regarded as exercising quasi-judicial functions only in a loose and non-technical sense. The PCGG is not a quasi-judicial body in the same sense that the National Labor Relations Commission (NLRC), the Securities and Exchange Commission (SEC) and the Office of the Insurance Commissioner (OIC) exercise quasi-judicial functions. The PCGG in issuing sequestration or take over orders is not properly regarded as determining private rights, even though subject to judicial review in a proper case. All that the PCGG is really doing in so issuing such orders is determining that there exist prima facie basis for filing the appropriate proceedings before the Sandiganbayan to seek recovery and reconveyance, etc., of the sequestered assets as probably belonging to the category of "ill-gotten wealth". Without pre-empting the question of the civil or criminal nature of such proceedings, the PCGG is appropriately analogized not to a court or to a quasi-judicial body but rather to a fiscal or public prosecutor.

I do not consider that this is simply a matter of verbal description or of semantic equivalency. The preliminary or prima facie findings of the PCGG implicit in each issuance of sequestration orders, are not entitled to the same respect that findings of fact of administrative agencies or tribunals exercising quasi-judicial functions are ordinarily accorded by courts. The PCGG must still carry the burden of proving before the Sandiganbayan that the assets it has sequestered in fact belong to Mr. Marcos or his associates and that such assets constitute "ill-gotten wealth" within the meaning of Executive Order No. 1 and Article No. XVIII (26) of the 1987 Constitution or "ill-gotten properties" within the meaning of Article No. 2 [1] [b] of the Provisional Constitution dated 25 March 1986.

In Section No. 4 of the majority opinion, it is said:

"4. Having been charged with the herculean task of bailing the country out of the financial bankruptcy and morass of the previous regime and returning to the people what is rightfully theirs, the Commission could ill-afford to be impeded or restrained in the performance of its functions by writ or injunctions emanating from tribunals co-equal to it and inferior to this Court. Public policy dictates that the Commission be not embroiled in and swamped by legal suits before inferior courts all over the land, since the loss of time and energy required to defend against such suits would defeat the very purpose of its creation. Hence, Section 4 (a) of Executive Order No. 1 has expressly accorded the Commission and its members immunity from suit for

damages in that: 'No civil action shall lie against the Commission or any member thereof for anything done or omitted in the discharge of the task contemplated by this order.'

x x x x x x x x

Civil Case No. 54298 pending before respondent judge is expressly denominated as one 'for damages with prayer for a writ of preliminary injunction (Annex "I", petition) filed by private respondents against the Commission and then Commissioner Mary Concepcion Bautista. The said case is clearly barred by the aforequoted immunity provision of Executive Order No. 1, as buttressed by Section 4 (b) thereof which further provides that: "No member or staff of the Commission shall be required to testify or produce evidence in any judicial, legislative or administrative proceeding concerning matters within its official cognizance".'

x x x x x x x x."

(Underscoring supplied)

The above underscored portions are, it is respectfully submitted, clearly obiter. It is important to make clear that the Court is not here interpreting, much less upholding as valid and constitutional, the literal terms of Section 4 (a), (b) of Executive Order No. 1. If Section 4 (a) were given its literal import as immunizing the PCGG or any member thereof from civil liability "for anything done or omitted in the discharge of the task contemplated by this Order", the constitutionality of Section 4 (a) would, in my submission, be open to most serious doubt. For so viewed, Section 4 (a) would institutionalize the irresponsibility and non-accountability of members and staff of the PCGG, a notion that is clearly repugnant to both the 1973 and the 1987 Constitutions and a privileged status not claimed by any other official of the Republic under the 1987 Constitution. Article No. XIII, Section 1 of the 1973 Constitution which formed part of the Provisional Constitution of 25 March 1986, under Section 2 thereof, provided as follows:

"Section 1. Public office is a public trust. Public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty, and efficiency and shall remain accountable to the people." (Underscoring supplied)

In closely comparable language, Article No. XI, Section 1 of the 1987 Constitution stresses that:

"Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." (Underscoring supplied)

It may be further submitted, with equal respect, that Section 4 (a) of Executive Order No. 1 was intended merely to restate the general principle of the law of public officers that the PCGG or any member thereof may not be held civilly liable for acts done in the performance of official duty, provided that such member had acted in good faith and within the scope of his lawful authority. It may also be assumed that the Sandiganbayan would have jurisdiction to determine whether the PCGG or any particular official thereof may be held liable in damages to a private person injured by acts of such member. It would seem constitutionally offensive to suppose that a member or staff member of the PCGG could not be required to testify before the Sandiganbayan or that such members were exempted from complying with orders of this Court.

Turning, finally, to Section No. 10 of the majority opinion, the information there set out is, of course, impressive and heartening; it is, however, at once obiter and gratis. Neither the magnitude of the figures nor the use of phrases such as "funds turned over to the treasury" and "other recovered funds" should obscure the fact that the Sandiganbayan still has to rule that all these funds and assets do constitute "ill-gotten wealth" of Mr. Marcos and his associates. It seems important to bear in mind that no transfer of ownership to the Republic of the Philippines can legally take place until a final ruling to that effect is rendered by the Sandiganbayan and, ultimately, this Court.

DISSENTING OPINION

GUTIERREZ, JR., J.:

It is with no little trepidation that I write this dissent to one of the valedictory decisions of the Chief Justice. However, I have carefully gone over the pleadings and pertinent records and am convinced that this is again one case where the Presidential Commission on Good Government (PCGG) has stepped beyond legal and constitutional boundaries. I find no alternative but to dissent.

The PCGG has been given unprecedented powers by Executive Orders of a revolutionary Government and by the Transitory Provisions of the Constitution.

Not content with powers which are more than sufficient to accomplish the purposes for which it was created, the PCGG has, in various cases now before us, strained and broken beyond what I view as the unduly generous guidelines of *BASECO v. PCGG* (150 SCRA 151). The instant case is an example of how the PCGG may mindlessly encroach on the rights of hapless individuals who are themselves victims of oppression and make it difficult if not virtually impossible for them to readily recover what was seized against their will by persons close to the former regime.

Since the PCGG has often acted as if the noble ends for which it was created perhaps justify the employment of extreme and supra-legal measures, I submit, that the Supreme Court's function is more to find out how the rights of parties caught by an unfeeling steam-roller may be protected instead of going out of its way to shield the PCGG from legal suits and other actions. The powerful PCGG needs no protection or succor from us. Private persons who plead with PCGG for the maintenance of their rights but who are brusquely turned away are the ones we should assist.

Notwithstanding the Court's decision in this case, the factual antecedents of the controversy will still have to be determined after a protracted trial before the Sandiganbayan. However, by calling the petitioner's picturesque (but illusive) presentation as "more than prima facie evidence", the majority opinion might give the Sandiganbayan the wrong impression that said submissions indeed represent the facts. I urge that this is not so. The facts are still to be established.

We had occasion to look into the beginnings of this case in 1984 in G.R. No. 67180, *Glorious Sun Fashion Garments Manufacturing Co. v. Garments and Textile Export Board (GTEB)*, et al.

Glorious Sun started with a P600,000.00 capitalization in 1977. It has steadfastly contended that far from salting dollars abroad, it invested every available centavo of its earnings in expanding its export potentials such that by 1983 its capital was already P9,500,000.00. The private respondents in the petition now before us owned 40% of the shares of stock while 60% was owned by the Nemesio Co group.

By 1983, Glorious Sun was exporting more than 309,000 dozens of garments valued at US\$19,900,000.00 annually. It was employing more than 3,000 workers. As the second biggest garment exporter of the Philippines, covetous eyes fell upon it. Glorious Sun's lifelines were choked (to use the Solicitor General's words) by the GTEB under then Minister Roberto V. Ongpin which cancelled its export quotas, authority to engage in exports, and license to maintain bonded warehouses in order, it now appears, to give opportunity to certain parties to acquire the business.

I participated in the deliberations and hearings of the Glorious Sun case in 1984 and I recall that there was not the slightest scintilla of evidence to support the charges of dollar salting made by GTEB. A scrap of yellow pad paper

on which were pencilled a few computations and with nothing to support them, a graph of import prices of four local importers identified only by letters, and another piece of paper with supposed 1983 prices of fabrics were the only "proof" that the respondent Minister with all the power (he was issuing warrants of arrest) and resources at his command could produce before the Court. So patently arbitrary was the finding of dollar salting that it would have been easy for the First Division of the Court to uphold the exporter's rights. Unfortunately, Glorious Sun in an act of business "prudence" and possibly worried that retaliatory acts would be taken against its stockholders' other firms and enterprises decided to withdraw the petition and rely completely on the GTEB's sense of justice and compassion. It turned out to be a fatal error.

Glorious Sun's export quotas were turned over to hastily organized corporations -- the American Inter-Fashion Co. and De Soleil. The Hongkong businessmen and minority owners of Glorious Sun were allowed to hold 33% of the stocks of these two corporations while 67% was given, according to PCGG, to a daughter and crony of then President Marcos.

Hence, the PCGG freeze orders on the two corporations.

If the PCGG investigative action were solely against the 67% allegedly misappropriated by a Marcos daughter and a Marcos crony, I will have no hesitation in concurring with the majority opinion that this is a case where exclusive jurisdiction over all incidents is vested in the Sandiganbayan.

Unfortunately, the issues are not that simplistic. The respondents as well as the so-called "interjector" are not cronies.

What is the recourse of the poor victims whose properties were seized on charges so hastily trumped up that not a semblance of due process appears in the records?

Not only were the exports quotas and business licenses cancelled but millions of pesos worth of machineries and physical plant were unceremoniously confiscated. No compensation was given and no rentals are now paid for the use of manufacturing facilities which are not owned by the two new corporations, which have never appeared in their balance sheets as assets, and which the two new corporations have clearly never claimed. Why should we not allow the owners to use summary remedies for acquiring possession, assuming that the issue of ownership has to be resolved somewhere else? I feel this issue is not exclusive for the Sandiganbayan.

There is nothing in the records to show that the members of the Nemesio Co group are tainted with the slightest color of cronyism. They can only be victims of the illegal acquisition charged in OC No. 0002, PCGG-3 before the Sandiganbayan, not malefactors who spirited away public funds or properties. They are not parties and have no standing in a recovery of illegal wealth case before the Sandiganbayan.

If citizens similarly situated as the members of the Nemesia Co group are summarily shunted aside and even maligned when they plead with the PCGG for the return of their properties, why should not regular courts have jurisdiction over the issues they raise? How can private persons file an action with the anti-graft court against private parties who took away their quotas and factories? Why should the PCGG be immune from suit where the complainants insist that it continues the illegal seizure inflicted by the GTEB, the Marcos daughter and the Marcos crony?

If the PCGG keeps flip-flopping, promising to pay rent at one time, then reneging on the promise, only to reiterate it again, to which court should the victims apply? If the owners sue the PCGG officers-in-charge who mismanage their firms and lead them to destruction, why should the former not seek redress before regular courts familiar with the handling of these types of grievances against government action? Do the owners have to wait for years while the Sandiganbayan and the Tanodbayan wade through all the illegal wealth cases before they can hope for

redress for injustices committed during a past regime?

Under the sweeping declaration of the majority opinion, everything -- including issues which have nothing to do with cronyism or illegal acquisition of wealth but where alleged cronies or members of the "family" are somehow involved -- must go to the Sandiganbayan.

I have the highest respect for the Chief Justice and the other members of the Court but I regret most sincerely that I cannot join them in such an artless and simplistic approach.

The private respondents in this petition are foreign nationals but they, too, have rights. As foreign investors, they have cast their lot with us in our financial travails and our hopes for a better tomorrow. They claim that owning only 33% of the two corporations on paper, in truth they solely and exclusively financed the operations of the garment firms. They point out that De Soleil and American Inter-Fashion do not own any assets except the export quotas. All machinery, equipment, and leasehold rights are owned by Glorious Sun. In spite of the injustices perpetrated by the previous regime, the private respondents continued to operate the businesses, provide employment to the 3,000 employees, and tried their best not to allow any disruptions and to keep the corporations alive. As far as I can gather from the records, the private respondents have not been charged before the Sandiganbayan for anything. They have no standing there.

The private respondents are only trying to protect their proprietary rights against what they perceive are arbitrary PCGG incursions when they went to the civil courts. I must again stress that no illegal wealth cases have been brought against them. The civil suit they filed with the Pasig Regional Trial Court is simply to annul the joint venture agreement between local investors of American Inter-Fashion and the private respondents on the ground of vitiated consent. It has nothing to do with plundered wealth, organized pillage, on sequestration of ill-gotten wealth. Like the group of Nemesio Co, the private respondents also profess to be victims. They charge the OIC appointed by the PCGG with anomalies, including irresponsible, capricious, and arbitrary acts (See pp. 16-21 of the respondents' April 3, 1987 Comments). Why do they have to be haled and dragged before the Sandiganbayan when they are the complainants in an annulment of contract case and not the defendants?

The PCGG may be a powerful agency of government but in cases not involving its basic functions, I believe it is not above or beyond the jurisdiction of regular courts of justice. I continue to have great faith in our Regional Trial Courts and in the Court of Appeals.

According to the majority opinion, the PCGG, in the exercise of quasi-judicial functions is co-equal with regional trial courts. I am afraid that such an all-embracing dictum is fraught with dangerous implications. In the two years we have reviewed PCGG actions, I have yet to see the PCGG deliberately avoid questionable shortcuts or studiously apply the fine points and the established principles of investigative due process. For this reason, it is better reined in rather than emboldened by a too expansive definition of its powers.

The PCGG is an investigator and prosecutor, not a judge. It is not a quasi-judicial tribunal. More appropriate is the majority opinion in *BASECO v. PCGG* (supra) where the Court stated:

"PCGG not a 'Judge': General Functions

"It should also by now be reasonably evident from what has thus far been said that the PCGG is not, and was never intended to act as, a judge. Its general function is to conduct investigations in order to collect evidence establishing instances of 'ill-gotten wealth;' issue sequestration, and such orders as may be warranted by the evidence thus collected and as may be necessary to preserve and conserve the assets of which it takes custody and control and prevent their disappearance, loss or dissipation; and eventually file and prosecute in the proper court of competent jurisdiction all cases investigated by it as may be warranted by its findings. It does not try and decide, or hear and determine, or adjudicate with any character of finality or compulsion, cases involving

the essential issue of whether or not property should be forfeited and transferred to the State because 'ill-gotten' within the meaning of the Constitution and the executive orders. This function is reserved to the designated court, in this case, the Sandiganbayan. (Ex. Ord. No. 14). There can therefore be no serious regard accorded to the accusation, leveled by BASECO, (Rollo, pp. 695-697) that the PCGG plays the perfidious role of prosecutor and judge at the same time." (id. p. 218)

It is the Sandiganbayan and not the PCGG which should be equated with courts of justice.

I share with all right thinking Filipinos the hope that the PCGG succeeds in its vital but uneviably difficult function of ferreting out and recovering ill-gotten wealth through courts of justice. Needless to say, only legitimate and praiseworthy procedures, must, of course, be applied in this task. Perhaps even more important than the recovery of much-needed money is our standing true by principles of due process, fair play, and other aspects of civil liberties.

I am not privy to the methods used in the acquisition, or the motivations behind the surrender, of the properties such as casino funds, surrendered lands, SBTC cash items, etc., mentioned in pages 28-30 of the majority opinion. Since the PCGG accomplishments, according to the Court, are only the tip of the iceberg and there must be much more to come, the report is indeed impressive. However, I wonder if encomiums are appropriate in a court decision at this time. Granting that the PCGG has done such a great job in the two years of its existence, I feel that the dispensing of commendations should be left to the Press Secretary, independent media, or public opinion. The trial of the illegal wealth cases has not even started. The Sandiganbayan decisions on these cases will undoubtedly be elevated to us. I am sorry and I regret very much my inability to join the rest of the Court in prematurely singing Hallelujahs for the Presidential Commission on Good Government.

I, therefore, register my dissent and vote to DISMISS the instant petition.

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