

**KANT KWONG AND YIM KAM SHING, PETITIONERS, VS.
PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, SECRETARY
RAMON A. DIAZ AND COMMISSIONER MARY CONCEPCION
BAUTISTA, RESPONDENTS.**

G.R. No. 79484. December 07, 1987

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

In this original action for Mandamus, petitioners pray that respondent Presidential Commission on Good Government (PCGG, for short) be commanded to lift without delay the Hold-Orders issued against them by the said entity for being in violation of their right to travel and for having been issued in grave abuse of authority since they are in no way involved in ill-gotten wealth nor in transactions connected therewith.

Petitioners are foreign nationals who are the representatives of the Hongkong-Chinese investors who own 33% of the shares of stock in two domestic garment corporations, namely, De Soleil Apparel Manufacturing Corporation and American Inter-Fashion Manufacturing Corporation, which firms were ordered sequestered by the PCGG on 25 March 1986 on the thesis that the Marcoses, through nominees and dummies, appear to control 67% of the firms' shareholdings.

On 13 February 1987 respondent Ramon A. Diaz, then Secretary of the PCGG, wrote the Minister of Public Information advising the latter that petitioners had been included in the Hold-Order list of the PCGG (Annex "L", Petition).

On 12 March 1987 petitioners filed before the PCGG an Urgent Motion to Lift Hold-Order with the request that the Motion be set for hearing on 16 March 1987 (Annex "M", Petition). The Motion, however, was not calendared for hearing on said date.

On 19 March 1987 the PCGG denied the Motion to Lift in an Order reading as follows:

"An 'Urgent Motion to Lift Hold Order' dated March 12, 1987 was filed by Kant Kwong and Yim Kam Shing. These are the official representatives of the Hongkong investors in these two sequestered corporations. Based on records/evidence in the possession of the Commission, all made known to their principals, such as un-explained withholding of documents covering substantial past shipments, deliberate delay in cashing letters of credit resulting in the lapse thereof, failure to remit payments due for past shipments, their obvious and unmitigated campaign to obstruct the release of funds needed for operations of the two garment firms, and orchestrated acts to discredit the Officer-in-Charge of the garments firms and the Commission and to obstruct the smooth operations of the garment firms, there is need for their presence in this country to resolve the above-enumerated issues, in order that operations of the corporations are not obstructed, production will not be delayed and corporate funds may be released. The Commission therefore denies the motion for lack of merit.

"SO ORDERED.

"March 19, 1987, Pasig, Metro Manila.

"FOR THE COMMISSION:

(SGD.) MARY CONCEPCION BAUTISTA

Commissioner

(SGD.) RAMON A. DIAZ

Secretary"

Hence, the present recourse predicated on the following grounds:

"A. The Hold-Order issued against the petitioners is a gross and unlawful violation of their constitutional right of travel and locomotion.

B. The Hold-Order against the petitioners is not authorized or sanctioned by Executive Orders Nos. 1, 2 and 14, nor by the Rules and Regulations of respondent PCGG.

C. The Hold-Order is an act of harrasment, motivated by ill-will and vindictiveness, and violates the elementary rules of due process, fair play and human decency.

D. The Hold-Order has caused and is causing damages and sufferings to the petitioners and their families."

On 24 September 1987, acting upon an Urgent Motion filed by petitioner Yim Kam Shing, this Court lifted, effective immediately, the Hold-Order issued against him for the purpose of allowing him to leave for Hongkong for urgent medical treatment.

Executive Order No. 1, dated 28 February 1986, created the PCGG and tasked it principally with:

"Section 2. x x x (a) 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.

" x x x "

Section 3 of the same Executive Order empowers the PCGG:

"(a) To conduct investigation as may be necessary in order to accomplish and carry out the purpose of this order.

"(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.

"x x x

"(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

"(h) To promulgate such rules and regulations as may be necessary to carry out the purposes of this order."

On 11 April 1986 the PCGG issued its Rules and Regulations, the pertinent section of which provides:

"SECTION 2. Writ of sequestration, freeze and hold orders. To enable the Commission to accomplish its task of recovering ill-gotten wealth, it may issue writs of sequestration and freeze and/or hold orders".

As defined in the same Rules and Regulations, a Hold-Order is:

"D) x x x an order to temporarily prevent a person from leaving the country where his departure will prejudice, hamper or otherwise obstruct the task of the Commission in the enforcement of Executive Orders Nos. 1 and 2, because such person is known or suspected to be involved in the properties or transactions covered by said Executive Orders. x x x "

In this case, the justification for the issuance of the Hold-Orders against petitioners has been summarized by the Solicitor General, thus:

"x x x Petitioners, instead of cooperating with respondent PCGG in its task of investigating and recovering ill-gotten wealth of the former President, his immediate family, close relatives, associates or cronies, frustrated and hampered the investigation or otherwise prevented the Commission from accomplishing its task, by withholding documents covering substantial past shipments, which hold the key to the question earlier posed: Where have all the dollars gone? Have they gone a flying one by one to Switzerland?

"Petitioners likewise deliberately delayed the cashing of letters of credit resulting in the lapse thereof; failed to remit payments due for past shipments; obstructed the release of funds needed for operations of the two garment firms, orchestrated acts to discredit the officer-in-charge of the garment firms and respondent PCGG; and obstructed the smooth operations of the garment firms. To state that all the above acts of petitioners, in one way or another, frustrated, hampered or otherwise prevented respondent Commission from accomplishing its task under Executive Order No. 1 is to state here a consummate understatement.

"Hence, the issuance of the hold orders against petitioners remain unassailable."[1]

We find merit in the Petition. Petitioners' right to travel has, in fact, been impaired.

1. The validity of the Hold-Orders issued against petitioners on 13 February 1987 has already expired pursuant to the Rules and Regulations of the PCGG, which specifically provide:

"SECTION 1. x x x

"(D) x x x A 'hold-order' shall be valid only for a maximum period of six months, unless for good reasons extended by the Commission en banc."

The PCGG has not extended the life-span of the Hold-Orders in question nor has it advanced "good reasons" for doing so.

2. The grounds for the issuance of the Hold-Orders have become stale.

(a) The PCGG Order denying petitioners' Motion to Lift the Hold Orders against them states that "there is need for their presence in this country to resolve the issues (listed hereinbelow), in order that operations of the corporations are not obstructed, production will not be delayed and corporate funds may be released." The enumerated issues read:

"unexplained withholding of documents covering substantial past shipments,

deliberate delay in cashing letters of credit resulting in the lapse thereof,

failure to remit payments due for past shipments, their obvious and unmitigated campaign to obstruct the release of funds needed for operations of the two garment firms,

orchestrated acts to discredit the Officer-in-Charge of the garments firms and the Commission and to obstruct the smooth operations of the garment firms x x x " (Paragraphing supplied).

It strikes the Court, however, that although the business malpractices attributed to petitioners may have furnished sufficient basis for the issuance of the Hold-Orders against them, subsequent developments have apparently rendered them no longer controlling. Thus, as a result of the sequestration, the PCGG has already appointed an Officer-in-Charge for the two firms, with full authority to operate and manage the same (Annex "B", Petitioner); it has taken over the "management and operations of the sequestered corporations";[2] it has "initiated changes in the management and operations of the two corporations aimed at protecting not only the interest of the government but also that of the workers";[3] and since the take-over it has been able to accomplish the following:

"a. Halted the losses in the operations of the two corporations as declared by the Hongkong investors during the last two years, by posting a modest profit thereby enabling the corporations to pay the government some P697,000.00 in taxes i.e. from American Inter-Fashion alone.

"b. Discontinued the marketing agreement with Ringo Garments-Hongkong and organized a Manila-based marketing and procurement office.

"c. Firmed up new orders through the said local marketing office enough to sustain the full production of the two companies up to the end of the year at prices 30-50% higher than the orders previously coursed by the minority Hongkong investors through Ringo Garments, their own conduit company in Hongkong.

"d. Replaced the highly paid Hongkong-Chinese technicians with qualified, competent and deserving Filipino technicians who were promoted from the ranks.

"e. Upgraded the wages and benefits of the Filipino workers in the corporations.

"f. Instituted cost-saving measures to preserve the assets and to make operations more profitable.

"g. Partially collected from Ringo Garments-Hongkong the amount of US\$350,000.00 or P7 million representing the unpaid export bills due on past shipments. About \$437,126.32 remains unpaid despite the promise of Yim Kang Shing, representing the Hongkong investors to pay same"[4]

It would appear, therefore, that with the changes made and the accomplishments achieved, operations of the sequestered firms are no longer obstructed, production no longer delayed and funding is available.

Indeed, if petitioners have "obstructed the smooth operations" of the sequestered garment firms and "discredited their Officer-in-Charge", might it not be preferable that they be out of the country to ensure the cessation of their acts allegedly inimical to the operations of the sequestered garment firms?

(b) Another reason given for the issuance of the Hold-Orders is that petitioners had "frustrated and hampered the investigation or otherwise prevented the Commission from accomplishing its task". The Court takes judicial notice of the fact, however, that Civil Case No. 0002 entitled "Republic of the Philippines vs. Ferdinand E. Marcos, et als.," has been filed by the PCGG before the Sandiganbayan on 16 July 1987. To all appearances, therefore, the PCGG's investigative task relative to the sequestered garment firms and their involvement, if any, in ill-gotten wealth or in any transactions connected therewith, has terminated. Another reason, therefore, for petitioners' continued presence in the country has been virtually eliminated.

We likewise find that petitioners have been denied the rudiments of fair play. The Rules and Regulations of the PCGG specifically provide:

"SECTION 5. Who may contest. - The person against whom a writ of sequestration or freeze or hold order is directed may request the lifting thereof in writing, either personally or through counsel within five (5) days

from receipt of the writ or order, or in the case of a hold order, from date of knowledge thereof."

"SECTION 6. Procedure for review of writ or order. - After due hearing or motu proprio for good cause shown, the Commission may lift the writ or order unconditionally or subject to such conditions as it may deem necessary, taking into consideration the evidence and the circumstances of the case. x x x "

And yet, the PCGG has not given petitioners any opportunity to contest the Hold-Orders issued against them. After their issuance, no hearing had been set; a request for the same had been disregarded. Petitioners' Motion to Lift the Hold-Orders was summarily denied. The "issues" spelled out against petitioners have remained unresolved over a period of nine (9) months. The PCGG must thus be faulted for a disregard of the requirements of "fairness and due process" expressly mandated by Executive Order No. 14, reading:

"WHEREAS, the overriding considerations of national interest and national survival require that the Presidential Commission on Good Government achieve its vital task efficiently and effectively, with due regard to the requirements of fairness and due process (5th Whereas clause).

Under the environmental circumstances of the case, the Hold-Orders against petitioners preventing them from leaving the country cannot be prolonged indefinitely. The right to travel and to freedom of movement is a fundamental right guaranteed by the 1987 Constitution[5] and the Universal Declaration of Human Rights to which the Philippines is a signatory.[6] That right extends to all residents regardless of nationality. And "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law".[7]

While such right is not absolute but must yield to the State's inherent police power upon which the Hold-Orders were premised, no "good reasons" have been advanced which could justify the continued enforcement of the Hold-Orders.

Petitioners are foreign nationals. Their 33% interest in the sequestered firms is recognized by the PCGG itself. There is no showing that those interests appear prima facie to be ill-gotten wealth. No charges have been filed against them before the Sandiganbayan. They face no criminal indictment nor have they been provisionally released on bail that their right to travel might be restricted.

Although, as averred by respondents, the recognized rule is that, in the performance of an official duty or act involving discretion, the corresponding official can only be directed by Mandamus to act but not to act one way or the other, "yet it is not accurate to say that the writ will never issue to control his discretion. There is an exception to the rule if the case is otherwise proper, as in cases of gross abuse of discretion, manifest injustice, or palpable excess of authority".[8]

In this case, for reasons already stated, we find that the PCGG acted with gross abuse of discretion in maintaining the Hold-Orders against petitioners for an indefinite length of time. By so doing it has arbitrarily excluded petitioners from the enjoyment of a fundamental right - the right to freedom of movement - to which they are entitled.[9] Mandamus lies.

WHEREFORE, in the interest of the early and full restoration of petitioners' right to travel, the Court hereby LIFTS the Hold-Orders issued by respondent Presidential Commission on Good Government against petitioners, effective immediately, upon the condition that they shall hold themselves available if and whenever needed by said Commission in the performance of its task.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Paras, J., no part. He is related to one petitioners' lawyers.

[1] Rollo, pp. 84 & 85.

[2] Comment of the Solicitor General, p. 2.

[3] *ibid.*, p. 7.

[4] Solicitor General's Comment, pp. 9 & 10.

[5] "Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law" (Art. III).

[6] "Art. 13. Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country including his own, and to return to his country."

[7] Article 8, Universal Declaration of Human Rights.

[8] Moran, Comments on the Rules of Court, 3rd Ed., Vol. II, pp. 172-173 cited in *Antiquera vs. Baluyot, et al.*, 91 Phil. 214 [1952].

[9] Section 3, Rule 65, Rules of Court.

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