

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT [PCGG], AND
PCGG-NOMINEES/ DESIGNEES: EDUARDO M. VILLANUEVA, ROMAN
MABANTA, EDUARDO DE LOS ANGELES, RAMON DESUASIDO,
ALMARIO VELASCO, ...**

G.R. No. 82188. June 30, 1988

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FERNAN, J.:

Assailed in this consolidated petition for certiorari, mandamus and prohibition with prayer for preliminary injunction and/or temporary restraining order as having been issued with grave abuse of discretion and in excess of jurisdiction are two restraining orders issued by [1] the Securities and Exchange Commission Hearing Panel on March 3, 1988 in SEC Case No. 3297 entitled " Victor Africa and Rafael C. Valdez, Complainants, versus Eduardo M. Villanueva, et al., Respondents" enjoining the respondents therein as members of the Board of Directors of Eastern Telecommunications Philippines, Inc. [ETPI] from holding the stockholders' meeting scheduled on March 4, 1988; and [2] the Sandiganbayan on March 4, 1988 in SB Civil Case No. 0009 entitled "Republic of the Philippines, Plaintiff, versus Jose L. Africa, et al., Defendants," "enjoining the PCGG, its Commissioners, nominated Directors and/or Corporate Officers, employees, nominees, agents and/or representatives x x x from calling and/or holding stockholders meetings and voting (the) sequestered shares thereat for the purpose of amending the Articles or By-laws of ETPI, or otherwise effecting substantial changes in policy, programs or practices of said corporation." [1] The temporary restraining order dated March 4, 1988 was subsequently replaced by a writ of preliminary injunction on March 25, 1988. [2]

The relevant background facts of the case culled from Petitioners' URGENT CONSOLIDATED PETITION are as follows: Until 1974, Eastern Telecommunications of the Philippines [ETPI] was a wholly-owned subsidiary of Cable and Wireless, Ltd., operating under the name Eastern Extension Australasia and China Telegraph Company Ltd. [EEATC] by virtue of a royal decree from Spain, renewed in 1952 by the Philippine Government. In the late 1966, EEATC attempted to win a contract for the establishment of a satellite earth station but the contract was awarded by then President Ferdinand E. Marcos to a previously unknown corporation, the Philippine Overseas Telecoms Corporation [POTC], controlled by Messrs. Ilusorio, Poblador, Nieto, Benedicto and Reyes. Thereafter, desiring to obtain the franchise for the establishment of a tropospheric scatter system communications with Taiwan, but aware that it could not possibly do so without a strong Filipino partner, EEATC entered into a business alliance with POTC enabling them to obtain a franchise and the needed government approvals.

Despite this alliance, Cable & Wireless was uneasy about its tenure in the Philippines, in view of the then forthcoming expiration of the Laurel-Langley Act, which expiration would require American corporations to reorganize themselves into 60/40 corporations with majority Filipino ownership.

In March 1974, EEATC Philippine representative M.C. Bane was called to a conference at Camp Crame with the then Secretary of National Defense. Present at the meeting were representatives of RCA and Globe Mackay, who together with M.C. Bane, were told that they had until July of 1974 within which to reorganize their respective corporations into a 60/40 corporation in favor of Filipino ownership and that failing to do so, the Philippine

Government would take the necessary action.

With the deadline fast approaching, EEATC re-opened negotiations with POTC, which at that time had undergone rapid changes resulting in Nieto, Jr. becoming its controlling figure and Atty. Jose L. Africa as its negotiating representative. During the negotiations, Atty. Africa was quick to point out that EEATC was to deal only with the BAN Group [Benedicto, Africa and Nieto] allegedly at the express wish of then President Marcos.

The figure eventually arrived at for EEATC's assets was P10M of which P6M was to be the input of the BAN Group. However, upon Atty. Africa's information that the BAN Group could put up only P1M, a compromise was suggested for the new corporation to raise a bank loan from which Cable and Wireless could be paid for the assets to be acquired. After a series of negotiations, it was agreed that a loan of P7M was to be arranged and BAN would contribute P3M while Cable and Wireless would contribute P2M, thus establishing a 60/40 relationship in a new corporation. Despite this agreement, Africa again informed Cable and Wireless that the BAN Group could raise only P1M and asked whether it would be possible for Cable and Wireless to lend the group P2M repayable over a period of three [3] years. Seeing no other alternative, Cable and Wireless agreed to this arrangement. The loan document was drawn up while Nieto, Jr. secured the signature of then President Marcos on Presidential Decree No. 489 transferring the franchise of EEATC to the new corporation, Eastern Telecommunications of the Philippines, Inc. [ETPI].

Under the Management of Cable and Wireless ETPI grew and prospered. But when its dividends, which were paid in dollars to the BAN Group, began to run into millions, said group also started to intervene in the corporation's operations and management. Requests for employment of family relatives and high salaries for them: were made. The BAN Group likewise placed the majority of "their individual stockholdings in three separate companies, namely: Aerocom Investors, Universal Molasses, and Polygon, so that in 1986, the ownership of the Class "A" stocks of the corporation was as follows:

Roberto S. Benedicto

-

3.3 percent

Universal Molasses Corp.

-

16.6 percent

Manuel Nieto, Jr.

-

2.2 percent

Nieto's relatives

-

3.3 percent

Aerocom Investors and Managers Inc.

-

17.5 percent

Jose Africa

-

2.2 percent

Africa's relatives

-

.3 percent

Polygon Investors and Managers Inc.

-

17.5 percent

By the end of 1987, the initial capital of P1M of the BAN Group, its corporations and relatives had grown to the astronomical sum of P784,185,198.00. Cash dividends paid to them as of 1986 had amounted to P225,845,000.00 even as another P180,000,000.00 is due them for 1987, for a grand total of P405,845,000.00. In 1984, cash dividends to the BAN Group, etal., in the amount of \$1M were remitted to the United States.

Under a consultancy contract, Polygon Investors and Managers with Jose L. Africa as Chairman and his son, Victor Africa as President, earned from ETPI as of 1987 more than P57M. Likewise in 1987, ETPI paid to Jose L. Africa P1,200,000.00 as "professional fees" and Manuel H. Nieto, Jr., another P1,200,000.00 as "allowances."

On a prima facie finding that the three owned corporations, Aerocom, Universal and Polygon are Marcos-owned firms, the PCGG, on March 14, 1986 sequestered the company ETPI and on July 22, 1987 PCGG filed with the Sandiganbayan Civil Case No. 0009 for Reconveyance, Reversion, Accounting, Restitution of the ill-gotten ETPI shares and damages in connection therewith. The sequestration order was partially lifted with respect to the Class "B" shares which belonged to Cable and Wireless.

The root cause of the present controversy is the PCGG Resolution dated January 28, 1988 which ordered the reconvening and resumption of the annual stockholders meeting of the Eastern Telecommunications Philippines, Inc. on 29 January 1988 at 2:00 P.M. at the principal office of the corporation. The meeting was originally scheduled for 4 January 1988, but had to be and was duly adjourned the same day.

A copy of this resolution, contained in a letter addressed to the Chairman and Corporate Secretary of ETPI was received by respondent Victor Africa as Corporate Secretary of ETPI at 11:11 A.M. of January 29, 1988. At 2:00 P.M. of the same day, the reconvened stockholders' meeting was held over the objection interposed by said respondent Victor Africa as corporate secretary and stockholder of ETPI, on the manner the meeting was called. In said stockholders' meeting petitioners Eduardo M. Villanueva, as PCGG nominee, and Roman Mabanta and Eduardo de los Angeles as nominees of the foreign investors, Cable and Wireless Ltd. and Jose L. Africa [who was absent] were elected members of the Board of Directors. Immediately thereafter, the elected directors present held an organizational meeting, in turn, electing Eduardo Villanueva as President and General Manager, petitioners Ramon Desuasido, Almario Velasco and Ranulfo Payos as Acting Corporate Secretary, Acting Treasurer and Acting Assistant Corporate Secretary, respectively. The Board of Directors further resolved to hold a Board meeting on February 8, 1988.

At the February 8, 1988 meeting, the Board of Directors resolved, among others, to propose amendments to ETPI's Articles of Incorporation to abrogate "the right of first refusal" clause embodied in Article 10 thereof and to call for a special stockholders meeting in February 29, 1988 for the purpose of ratifying the proposed

amendment.

On February 15, 1988, respondents Victor Africa and Rafael C. Valdez, as alleged erstwhile Corporate Secretary and Director, respectively, of ETPI, filed before the Securities and Exchange Commission [SEC] a verified complaint with prayer for preliminary injunction, docketed therein as SEC Case No. 3297, assailing the legality of the Board of Directors' and Corporate Officers' elections at the reconvened stockholders meeting on January 29, 1988, the Board meetings of January 29 and February 8, 1988 as well as all the acts done by the Board during said meetings.

During the pendency of the application for preliminary injunction, respondents Victor Africa and Rafael Valdez filed an urgent motion for a temporary restraining order to enjoin the Board of Directors from proceeding with the special stockholders meeting on February 29, 1988. This motion was opposed by therein respondents Mabanta and delos Angeles.

On February 26, 1988, by way of special appearance, the office of the Solicitor General filed an omnibus motion for the PCGG to intervene and for the dismissal of the case in so far as Villanueva, Velasco, Payos and Desuasido were concerned, claiming that they were PCGG nominees/designees, and therefore beyond the jurisdiction of the SEC.

At the hearing on February 29, 1988, therein respondent de los Angeles agreed to defer the February 29 meeting but at the resumption of the hearing on March 1, 1988, therein petitioners reiterated their urgent motion for a temporary restraining order, manifesting that the meeting of February 29, 1988 was merely adjourned to March 4, 1988.

On March 3, 1988, after marathon hearings on the application for a temporary restraining order, the hearing panel of the SEC issued the assailed order, effective for twenty (20) days, on the grounds that "the said stockholders meeting on March 4, 1988 ... is not really that urgent and to afford the Panel sufficient time to deliberate on the matter without rendering the act sought to be enjoined academic." [3]

Also on March 3, 1988, respondents Jose Africa and Manuel H. Nieto, Jr. as stockholders of ETPI filed in Civil Case No. 0009 of the Sandiganbayan a motion for injunction with prayer for a temporary restraining order to enjoin the PCGG, its Commissioners, nominated Directors and/or Corporate Officers, employees, nominees, agents and/or representatives from calling or holding meetings of the stockholders and the Board of Directors, managing the corporation, controlling its policies, running its day-to-day business, etc. The following day, March 4, 1988, the Sandiganbayan issued the second assailed temporary restraining order. Hence, this petition, PCGG maintaining that both the SEC and Sandiganbayan acted with grave abuse of discretion and in excess of jurisdiction in issuing said temporary restraining orders, the SEC for having done so without first resolving its motion for intervention and for dismissal of the case; and the Sandiganbayan for taking cognizance of the motion, thereby intervening with the PCGG's executive and administrative jurisdiction.

Without giving due course to the petition, the Court set the case for hearing on March 17, 1988. At said hearing, We required the parties to file their memoranda on the applicability of the case of Bataan Shipyard & Engineering, Co., Inc. vs. Presidential Commission on Good Government [150 SCRA 181] to the petition at bar. All parties complied with this order.

We shall deal first with the SEC case. By its own terms, the temporary restraining order issued in SEC Case No. 3297 was effective only for twenty (20) days. The same has therefore already expired, rendering the challenge against it moot and academic. This, notwithstanding, the Court has decided to delve deeper into the SEC case to correct a blatant jurisdictional defect and thus save the parties unnecessary waste of time and effort as well as to

avoid multiplicity of suits and promote the orderly administration of justice.

On the basis of the allegations in the complaint filed by respondent Victor Africa and Rafael Valdez in SEC Case No. 3297, it would appear that the complaint being lodged before the SEC pertained primarily to an intra-corporate controversy. The respondents named therein are the individual members of the Board of Directors and the Corporate Officers of ETPI and the acts sought to be nullified or enjoined were the supposedly illegal corporate acts of these individuals. Conveniently omitted are the information that certain stocks of the corporation are under sequestration by the PCGG and that some individually named respondents are PCGG nominees or designees. The lone reference to PCGG is found in paragraph 5 of the complaint alleging the receipt by Victor Africa of a letter from PCGG Chairman Ramon A. Diaz ordering a stockholders meeting on the 29th of January, 1988 at 2:00 P.M. at the principal office of the Corporation and the allegation that this notice was in violation of the provision in the corporation's By-laws regarding notice of meetings. By this clever presentation of the antecedent facts, the SEC was misled into taking cognizance of the complaint, and in view of the forthcoming special stockholders meeting being sought to be enjoined, the Hearing Panel was constrained to issue the assailed temporary restraining order if only to maintain the status quo and thus prevent the case from becoming moot and academic.

Under these circumstances, the issuance of the temporary restraining order would have been legal and proper. What, to our mind, taints the same with grave abuse of discretion was the fact that at the time of the issuance of the assailed temporary restraining order, there were certain information already within the knowledge of the Hearing Panel. For it must be remembered that as early as February 26, 1988, the Office of the Solicitor General had filed a motion for intervention and for dismissal of the case for lack of jurisdiction. If on the basis of the complaint filed by respondents Victor Africa and Rafael Valdez, it was not readily discernible that it was the legality of the PCGG's resolution of January 29, 1988 that has to be determined as the order which gave rise to the chain of events sought to be nullified or enjoined, the disclosure in the motion to intervene that some of the individual respondents in SEC Case No. 3297 are PCGG nominees or designees should have made it clear to the Hearing Panel that the PCGG was the real party-in-interest. The Hearing Panel should have then realized that there exists an element in the case which effectively removes it from the jurisdiction of the Commission, i.e., the presence of the PCGG, which as another quasi-judicial body is a co-equal entity over which actions the SEC has no power of control.

In one of the valedictory decisions of Mr. Chief Justice Claudio Teehankee, this Court finally laid to rest the question of the proper forum before which actions to challenge the PCGG's acts or orders in sequestration cases may be instituted. Thus:

"x x x Executive Order No. 14 x x x specifically provides in Section 2 that 'The Presidential Commission on Good Government shall file 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 case must seek recourse in the same court, the Sandiganbayan, which is vested exclusive and original jurisdiction. The Sandiganbayan's decisions and final orders are in turn subject to review on certiorari exclusively by this Court." [4]

The root cause of the SEC controversy being undeniably the PCGG's resolution calling for a stockholders meeting of the partially sequestered ETPI, the challenge thereto is properly cognizable by the Sandiganbayan. The other respondents in this petition, Messrs. Jose Africa and Manuel H. Nieto, Jr., were in a sense more perceptive in filing a motion for injunction in Civil Case No. 0009 pending before the Sandiganbayan.

In the face of this glaring lack of jurisdiction, it follows that had the temporary restraining order issued in SEC Case No. 3297 not lost its effectivity *functus officio*, the same would have been set aside. But, as earlier

intimated, the case does not end here. SEC Case No. 3297 should further be ordered dismissed for lack of jurisdiction.

We come now to the second assailed temporary restraining order dated March 4, 1988 issued by the Sandiganbayan in Civil Case No. 0009, which was replaced on March 29, 1988 with a writ of preliminary injunction, and which injunction was reiterated on May 2, 1988.[5] The main objection interposed by the PCGG to the issuance of these orders is that they were in effect an intervention by the Sandiganbayan with the PCGG's discretionary executive and administrative jurisdiction.

Verily, the PCGG is vested with executive and administrative jurisdiction over sequestered corporations, business enterprises and properties. The powers granted to the PCGG, no matter how broad they appear, however, must be exercised pursuant to its pronounced objective of "provisionally taking over in the public interest or to prevent its disposal or dissipation business enterprises and properties taken over by the government of the Marcos administration or entities or persons close to the former President Marcos x x x[6]" It is with this objective in mind that in the leading case of BASECO vs. PCGG, supra this Court laid down certain guidelines on what acts may or may not be done by the PCGG with regard to said sequestered properties or businesses. We tried to cover as wide a range of activities in said case as possible but We realize that We cannot even attempt to encompass all situations. Each case must be decided on the basis of its factual antecedents and merits, but always with reference to the objectives for which the PCGG was created. In like manner should the PCGG's acts and orders be measured. Acts or orders transgressing this parameter are certainly tainted with abuse of discretion which the Sandiganbayan, the court vested with exclusive and original jurisdiction over case involving the PCGG, may correct. Otherwise, PCGG would be above the law.

In the case at bar, the stockholders meeting enjoined by the SEC and the Sandiganbayan was called specifically for the purpose of ratifying the proposed amendment to delete from ETPI's Articles of Incorporation and By-Laws the "right of first refusal" clause. The question that must now be resolved is whether the PCGG may be permitted to vote the sequestered shares to effect this change.

The "right of first refusal" is primarily an attribute of ownership. Conversely, a waiver thereof is an act of ownership. To allow the PCGG to vote the sequestered shares for this purpose would be sanctioning its exercise of an act of strict ownership. To our mind, though, it is not so much the nature of the act proposed to be done by the PCGG that is essential, but rather, the purpose for doing so. The prime consideration should be: is the act proposed to be done by the PCGG merely an act of administration or an act of strict ownership essential to the pursuit of its objectives? For it cannot be totally discounted that situations may arise wherein only through an act of strict ownership can the PCGG be able to prevent the dissipation of the assets of the sequestered corporation or business. Fortunately, this is not one of them. For while We commend the purported objective of the PCGG for trying to amend the "right of first refusal" clause to enable it to sell the sequestered shares to the public, We cannot see our way clear as to how this move could help prevent the dissipation of the corporation's assets, particularly when it has its own representatives in the Board of Directors, who can effectively provide such measures and safeguards to prevent such dissipation. Moreover, to sell the sequestered shares at this time when the issue of ownership is still pending before the Sandiganbayan and the exact equity proportion thereof is still uncertain, would not only be premature, but would also expose the would-be buyers to great risks.

But while We find the Sandiganbayan to have acted properly in enjoining the PCGG from holding the stockholders meeting for the specified purpose of amending the "right of first refusal" clause in ETPI's Articles of Incorporation and By-Laws, We find the general injunction imposed by it on the PCGG to desist and refrain from calling a stockholders meeting for the purpose of electing a new Board of Directors of effecting substantial changes in the policy, program or practice of the corporation to be too broad as to taint said order with grave

abuse of discretion. Said order completely ties the hands of the PCGG, rendering it virtually helpless in the exercise of its power of conserving and preserving the assets of the corporation. Indeed, of what use is the PCGG if it cannot even do this? The injunction issued by the Sandiganbayan must be lifted with qualifications as it was lifted in our resolution dated May 24, 1988.

As to the charge of forum-shopping imputed to private respondents, We give the latter the benefit of the doubt considering that there are two separate sets of petitioners in the SEC and Sandiganbayan cases and the lack of a definite ruling, at the time of the filing of the petitions in SEC and Sandiganbayan, as to which is the proper forum in cases of this nature.

WHEREFORE, the temporary restraining order issued in SEC Case No. 3297 is hereby declared a nullity and SEC Case No. 3297 is ordered dismissed for lack of jurisdiction. The writs of preliminary injunction dated March 25 and May 2, 1988 issued by the Sandiganbayan in Civil Case No. 0009 are lifted except in so far as they enjoin petitioners from holding a stockholders meeting for the purpose of deleting from ETPI's Articles of Incorporation and By-Laws the "right of first refusal" clause. No pronouncement as to costs.

SO ORDERED.

Yap, C. J., Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, and Medialdea, JJ., concur.

Gutierrez, Jr., J., on leave.

[1] Annex "U", Petition, p. 192, Rollo.

[2] Annex "B", Petitioners Urgent Manifestation and Motion dated March 29, 1988.

[3] p. 190, Rollo,

[4] Presidential Commission on Good Government v. Hon. Emmanuel Pena, etc., et al, G.R. No. 77663, April 12, 1988.

[5] Annex A, Third Urgent Motion to Resolve Urgent Consolidated Petition.

[6] Sec. 3[b], Executive Order No. 1.

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