

**REPUBLIC OF THE PHILIPPINES, (REPRESENTED HEREIN BY THE
PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT),
PETITIONERS, VS. THE HONORABLE SANDIGANBAYAN (SECOND
DIVISION) AND PETER A. ...**

G.R. No. 89553. April 07, 1993

Ponente: BIDIN, J.

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BIDIN, J.:

This petition seeks to annul and set aside the resolution of respondent Sandiganbayan dated June 22, 1989, in Civil Case No. 0024 entitled "Republic of the Philippines v. Peter Sabido, et al.," granting a writ of preliminary injunction enjoining the Presidential Commission on Good Government (PCGG) from proceeding with the projected turnover of Philippine Integrated Meat Corporation (PIMECO) to the GSIS/Meat Packaging Corporation of the Philippines (MPCP) or to interfere with its present management and as amended by its resolution dated July 31, 1989, also enjoins the PCGG from dismissing or replacing, among others, its own management team presently operating the PIMECO except for valid or serious grounds not attributable to their opposition to the said turnover.

The antecedent facts which gave rise to the instant petition are summarized by petitioner as follows:

"1. On March 17, 1986, PCGG, on the basis of prima facie evidence, issued an order sequestering Philippine Integrated Meat Corporation (PIMECO) x x x [Annex 'B', Petition];

"2. On July 29, 1987, the Republic of the Philippines, through the PCGG, and pursuant to E.O. No.14 and the Constitution, filed with respondent Sandiganbayan a Complaint, docketed as Civil Case No. 0024 (PCGG No. 25) against Ferdinand E. Marcos, Imelda R. Marcos, Peter Sabido, Roberto S. Benedicto, Luis D. Yulo, Nicolas Dehesa, Jose R. Tengco, Jr., Rafael Sison, Cesar C. Zalamea and Don M. Ferry for reconveyance, reversion, accounting, restitution and damages, involving, among others, the subject matter of the petition at bar, namely PIMECO, together with their assets, shares of stock, effects, evidence and records, which, based on documents in PCGG possession, were illegally acquired by said defendants in unlawful concert with one another and with gross abuse of power and authority x x x (Annex 'C', Petition).

"3. On May 6, 1988, respondent Sabido filed his Answer to the above complaint denying that he was a close business associate of Ferdinand E. Marcos and that he has not, directly or indirectly, singly or collectively with his co-defendants, participated in the plunder of the National Treasury and the other acts stated in the complaint.

"4. On April 28, 1989, Sabido filed with the Sandiganbayan an Urgent Manifestation and Motion stating among others, that:

x x x

'2. Defendant learned from newspaper reports, among them the April 27, 1989 issue of the 'The Journal' that the

plaintiff through the PCGG intends to turnover the management, control and possession of PIMECO to the Government Service Insurance System (GSIS) through its subsidiary Meat Packing Corporation of the Philippines (MPCP) x x x;

'3. Defendant learned from reliable sources that a resolution has been passed by the PCGG to implement the aforementioned turnover of PIMECO to MPCP.

'4. PIMECO being a sequestered asset, the approval of this Honorable Court of the projected turnover is indispensable specially in the matter of transfer, control and management of sequestered assets, the same being in custodia legis.

'5. Defendant does not know whether the foregoing are true or not and whether the PCGG intends to secure court approval for such turnover.

x x x

and praying that the Republic be ordered to either affirm or deny:

'a) whether or not the turnover and control of the PCGG (should be PIMECO) to the MPCP is true.

'b) whether or not a resolution has been passed to implement the same and to furnish a copy of the same to herein defendant x x x (Annex 'D', Petition).

"5. In an Order dated May 4, 1989, respondent Sandiganbayan required the PCGG to submit its comment specifically 'as to the veracity of the alleged turnover of the management, control and possession of PIMECO to the GSIS or Meat Packing Corporation of the Philippines, and if true, to furnish movant a copy of the PCGG resolution or order approving the same' x x x (Annex 'E', Petition).

"6. In a Manifestation with Motion dated May 15, 1989, PCGG requested a period of fifteen (15) days from date thereof within which to submit the required comment x x x (Annex 'F', Petition).

"7. Before PCGG could file its required comment, Sabido filed an Urgent Manifestation and Motion, informing respondent Sandiganbayan of a newspaper report 'that the PCGG has turned over the management and operation of PIMECO to the GSIS/MPCP and that henceforth, all transactions involving PIMECO must have the written approval of GSIS/MPCP.'

"In the same Urgent Manifestation and Motion; Sabido urged the respondent Court to declare the alleged turnover of management, control and possession of PIMECO by the Republic to the GSIS to be null and void ab initio for having been done without the approval of the Court x x x (Annex 'G', Petition).

"8. On May 24, 1989, PCGG, in compliance with the respondent Court's Order dated May 4, 1989, filed with the Court a Motion to Strike Out in Lieu of Comment x x x (Annex 'H', Petition).

"9. Subsequently, the officials and board members of PIMECO labor union filed with the respondent Court on May 30, 1989 an undated formal communication wherein they appealed to the Court 'to issue certification or anything that could attest to the fact that the status quo is maintained, to enable PIMECO to continue doing business with its suppliers and distributors so that we could continue working and operating the plant and attain security of tenure and peace of mind pending resolution/decision of the above-stated case' x x x (Annex 'I', Petition).

"Acting on the above communication, respondent Court issued a Temporary Restraining Order on June 2, 1989 enjoining the PCGG 'to cease and desist from enforcing the contemplated turnover of the management, control and possession of PIMECO to the Meat Packing Corporation of the Philippines until further orders' x x x (Annex 'J', Petition).

“10. On June 13, 1989, PCGG filed its Comment on Sabido's Urgent Manifestation and Motion dated May 19, 1989. Therein, PCGG asserted that the transfer of operation, management and control of PIMECO to the GSIS/MPCP involves an exercise of PCGG's pure administrative judgment, as conferred on it by law, in respect of its mandated duty to preserve, conserve or otherwise prevent dissipation of the value of PIMECO, which it has provisionally taken over. Hence, there was nothing irregular in the projected transfer of PIMECO's management and operation to the GSIS/MPCP x x x (Annex 'K', Petition).

“11. At the scheduled hearing of the above incident on June 16, 1989, Sabido presented as witness, Mr. Ariston B. Gomez, Jr., the team leader of the PCGG management team at PIMECO who strongly objected to the projected turnover as there was allegedly no basis for such turnover.

“12. During the subsequent hearings that ensued, the undersigned Solicitor, upon instructions of the PCGG, informed the respondent Court that PCGG was 'exploring other alternatives short of turning over the management and operation of PIMECO to the GSIS.' Nevertheless, Sabido moved for the issuance of a writ of preliminary injunction. However, the Court required him to submit a formal motion to that effect.

“13. Thus, in a motion dated June 21, 1989, Sabido prayed for the issuance of a writ of preliminary injunction that would enjoin the PCGG from transferring the management, control and possession of PIMECO to the GSIS/MPCP x x x (Annex 'L'. Petition).

“14. On June 22, 1989, the respondent Court issued a Resolution, the dispositive portion reading:

'WHEREFORE, finding the verified application for issuance of a writ of preliminary injunction to be sufficient in form and substance and that after due hearing, it appears that great and irreparable injury will be caused not only to defendant-applicant but also to PIMECO should the acts sought to be enjoined will be allowed to be done or performed, accordingly, upon defendant-applicant's posting of a bond of P50,000.00, let the corresponding writ of preliminary injunction issue commanding the Presidential Commission on Good Government, its officers, representatives, nominees or agents from proceeding or consummating the projected turnover of PIMECO to the GSIS/MPCP or to interfere with its present management and operations, until further orders of this Court.

'SO ORDERED.'" (Annex 'A', Petition; Rollo, pp. 6-13).

On Motion for reconsideration, respondent Sandiganbayan issued another resolution reconsidering its earlier resolution dated June 22, 1989, the disposition of which reads:

"WHEREFORE, premises considered, plaintiffs Motion for Reconsideration (Re: Resolution dated June 22, 1989) dated July 3, 1989 is hereby GRANTED, and the dispositive portion of Our Resolution of June 22, 1989, ordered amended to read as follows:

'WHEREFORE, finding the verified application for issuance of a writ of preliminary injunction to be sufficient in form and substance and that after due hearing, it appears that great and irreparable injury will be caused not only to defendant-applicant but also to PIMECO should the acts sought to be enjoined will be allowed to be done or performed, accordingly, upon defendant-applicant's posting of a bond of P50,000.00, let the corresponding writ of preliminary injunction issue commanding the Presidential Commission on Good Government, its officers, representatives, nominees or agents from proceeding or consummating the projected turnover of PIMECO to the GSIS/MPCP or to interfere with its present management and operations, until further orders of this Court and from replacing, dismissing, demoting, reassigning, grounding, or otherwise prejudicing the present members of the PCGG management team in PIMECO, except for valid and serious reasons not attributable to or arising from their objection or opposition to or activities or statements against the said turnover.'

"SO ORDERED." (Rollo, pp. 44-45)

Hence, this petition.

Petitioner argues, among others, that PCGG's, selection of the men who should manage PIMECO involves the exercise of its purely administrative functions or managerial prerogatives which may not be interfered with by the Court.

Petitioner further assails the jurisdiction of respondent court in rendering the assailed resolution since this is a clear violation of the time-honored constitutional rule of separation of powers.

We do not agree that the resolution issued by respondent court is tantamount to an encroachment of a purely administrative or executive function. While the PCGG is ordinarily allowed a free hand in the exercise of its administrative or executive function, respondent Sandiganbayan is empowered to determine in an appropriate case, if in the exercise of such functions, the PCGG has gravely abused its discretion or has overstepped the boundaries of the power conferred upon it by law. Any act or order transgressing the parameter of the objectives for which the PCGG was created, if tainted with abuse of discretion, is subject to a remedial action by the Sandiganbayan, the court vested with exclusive and original jurisdiction over cases involving the PCGG (PCGG v. Peña, 159 SCRA 556 [1988]; PCGG v. Securities and Exchange Commission, G.R. No. 82188, June 30, 1988) including cases filed by those who challenge PCGG's acts or orders (Holiday Inn [Phil.] v. Sandiganbayan, 186 SCRA 447 [1990]). Settled is the rule that when a law confers jurisdiction upon a court, it is deemed to have all the incidental powers necessary to render the exercise of such jurisdiction effective (Zuñiga v. Court of Appeals, 95 SCRA 740 [1980]).

Coming now to the real issue at hand, we find that the projected transfer of management of PIMECO to MPCP is unwarranted and was effected or done by petitioner beyond the scope of the powers vested upon it by law. Such turnover made by the PCGG is equivalent to the performance of an act of ownership which PCGG cannot exercise. We have invariably ruled that the PCGG is merely a conservator or caretaker which can exercise only powers of administration over property sequestered, frozen or provisionally taken over (Bataan Shipyard and Engineering Company Inc., v. Presidential Commission on Good Government, 150 SCRA 181 [1987]; Cojuangco, Jr., v. Roxas, 195 SCRA 797 [1991]). In the exercise of its functions, it must consistently bear in mind that it can only do acts and things necessary to fulfill its mission to conserve and preserve sequestered assets.

The extent of the powers conferred upon the PCGG as conservator was extensively discussed and/or circumscribed in the case of BASECO (supra), as follows:

"Now, in the special instance of a business enterprise shown by evidence to have been 'taken over by the government of the Marcos administration or by entities or persons close to former President Marcos', the PCGG is given power and authority, as already adverted to, to 'provisionally take (it) over in the public interest or to prevent x x x (its) disposal or dissipation;' and since the term is obviously employed in reference to going concerns, or business enterprise in operation, something more than mere physical custody is connoted, the PCGG may in this case exercise some measure of control in the operation, running, or management of the business itself. But even in this special situation, the intrusion into management should be restricted to the minimum degree necessary to accomplish the legislative will, which is 'to prevent the disposal or dissipation' of the business enterprise. There should be no hasty, indiscriminate, unreasoned replacement or substitution of management officials or change of policies, particularly in respect of viable establishments. In fact, such a replacement or substitution should be avoided if at all possible, and undertaken only when justified by demonstrably tenable grounds and in line with the stated objectives of the PCGG. And it goes without saying that where replacement of management officers may be called for, the greatest prudence, circumspection, care and attention should accompany that undertaking to the end that truly competent, experienced and honest managers may be recruited. There should be no role to be played in this area by rank amateurs, no matter how well the meaning. The road to hell, it has been said, is paved with good intentions. The business is not to be

experimented or played around with, not run into the ground, not driven to bankruptcy, not fleeced, not ruined. Sight should never be lost of the ultimate objective of the whole exercise, which is to turn over to the Republic, once judicially established to be 'ill-gotten wealth.' Reason dictates that it is only under these conditions and circumstances that the supervision, administration and control of business enterprises provisionally taken over may legitimately be exercised."

Lastly, petitioner argues that its relationship with the management team of PIMECO is that of a principal and agent. As such, it concludes, it has absolute control over the latter.

On this score, PCGG should be reminded of its mandated task that insofar as sequestered assets are concerned, the fact remains that it is merely a conservator and not the owner who exercises power of dominion over the sequestered property. Its power to sequester ill-gotten wealth is akin to the provisional remedy of preliminary attachment which is always subject to the control of the respondent Sandiganbayan (BASECO, supra; Republic v. Sandiganbayan, 192 SCRA 743 [1990]).

PCGG's power to manage sequestered properties must be exercised to prevent the dissipation or wastage of the corporate property and not to diminish or lessen the value thereof.

In issuing the writ of preliminary injunction prayed for by private respondent, the Sandiganbayan found that there is no proof showing that the members of the management team at PIMECO have mismanaged the business or exercised any act prejudicial to all the parties concerned. On the contrary, it found that from an inoperative business concern prior to the takeover by the PCGG, PIMECO was revived and emerged to become one of the top 1,000 corporations in the country for the years 1987 and 1988 and was the recipient of an award for being the best-managed PCGG sequestered firm in 1988 (Rollo, pp. 43-44). Indeed, the auspicious performance of PIMECO's management team deserves commendation and recognition and not consigned to oblivion.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

Narvasa, C.J., Cruz, Padilla, Griño-Aquino, Regalado, Nocon, Bellosillo, Melo, Campos, Jr., and Quiason, JJ., concur.

Feliciano, J., join J. Davide, Jr., in his dissenting opinion.

Romero, J., no part.

Gutierrez, Jr., J., retired.

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DISSENTING OPINION

DAVIDE, JR., J.:

The respondent Sandiganbayan's authority to issue writs of preliminary injunction is beyond dispute. I respectfully submit, however, that it gravely abused its discretion in promulgating the challenged Resolution of 22 June 1989[1] in Civil Case No. 0024 the dispositive portion of which, as subsequently amended by the Resolution promulgated on 3 August 1989,[2] reads as follows:

"WHEREFORE, finding the verified application for issuance of a writ of preliminary injunction to be sufficient in form and substance and that after due hearing, it appears that great and irreparable injury will be caused not only to defendant-applicant but also to PIMECO should the acts sought to be enjoined be allowed to

be done or performed, accordingly, upon defendant-applicant's posting of a bond of P50,000.00, let the corresponding writ of preliminary injunction issue commanding the Presidential Commission on Good Government, its officers, representatives, nominees or agents from proceeding or consummating the projected turnover of PIMECO to the GSIS-MPCP until further orders of this Court and from replacing, dismissing, demoting, reassigning, grounding, or otherwise prejudicing the present members of the PCGG management team in PIMECO, except for valid and serious reasons not attributable to or arising from their objection or opposition to or activities or statements against the said turnover."

The 22 June 1989 Resolution was issued a day after defendant (now private respondent) Peter Sabido filed a motion for the issuance of a writ of preliminary injunction[3] on 21 June 1989 during the continuation of the hearing of his (a) 27 April 1989 Urgent Manifestation and Motion,[4] wherein he prays for the issuance of an order requiring the plaintiff (now petitioner) to affirm or deny whether the "turnover and control of the PCGG to the MPCP (GSIS) is true" and whether a "resolution has been passed to implement the same"[5] and (b) 19 May 1989 Urgent Manifestation and Motion[6] wherein he urges the Sandiganbayan to declare the alleged turnover of management, control and possession of PIMECO to the GSIS to be null and void for having been done without its (Sandiganbayan's) approval. Earlier, by way of resolution of the undated and unverified communication[7] filed on 30 May 1989 by the officials and board members of the PIMECO labor union[8] who requested the Sandiganbayan "to issue a certification or anything that could attest to the fact the (sic) status quo is maintained, to enable PIMECO to continue doing businesses (sic) with its suppliers and distributor" and so that they "could continue working and operating the plant and attain security of tenure and peace of mind pending resolution/decision"[9] of the case, the Sandiganbayan issued a Temporary Restraining Order on 2 June 1989[10] directing the PCGG to cease and desist from enforcing the contemplated turnover of the management, control and possession of PIMECO to the Meat Packing Corporation of the Philippines (MPCP) until further orders.

Since the said officials and board members of the PIMECO labor union are not parties in Civil Case No. 0024 and have not formally intervened, therein, the Sandiganbayan should not have issued the temporary restraining order in their favor. Besides, even if we are to concede momentarily that the filing of the undated communication may be liberally considered as intervention, the Sandiganbayan would still not be able to validly issue a temporary restraining order on the basis thereof because of Sections 4 and 5, Rule 58 of the Revised Rules of Court; the said communication, it is to be noted, is unverified.

It appears that the Sandiganbayan precipitously promulgated the 22 June 1989 Order issuing a writ of preliminary injunction. Since the application for the writ was filed only a day earlier -- or on 21 June 1989 during the hearing of the abovementioned motions of Sabido -- there could have been no proper hearing thereon. Without the parties agreeing to consider as reproduced, for purposes of the application for the writ, the evidence earlier adduced in connection with the Sabido motions, the Sandiganbayan cannot, *motu proprio*, adopt the same for such purpose or decide the application on the basis thereof. Moreover, said application should not have been acted upon by the Sandiganbayan in the first place for it is fatally defective and a mere scrap of paper. An examination thereof reveals that it does not contain a notice of hearing to the adverse party, much less a request, addressed to the Clerk of Court, that it be calendared for hearing on a particular date and at a specific hour. The rule is settled that a motion without notice of hearing is a mere scrap of paper.[11]

In any event, as shown in the summary of antecedent facts quoted in the ponencia, the Solicitor who appeared for the petitioner during the hearing of Sabido's 28 April 1989 and 19 May 1989 motions manifested to the Sandiganbayan that:

"12. x x x upon instructions of the PCGG, [he] informed the respondent Court that PCGG was 'exploring other alternatives short of turning over the management and operation of PIMECO to the GSIS.' x x x"[12]

In view of the petitioner's stand on the matter, announced by a responsible government official, I fail to see the so-called "great and irreparable injury" which "will be caused not only to defendant-applicant but also to PIMECO should the acts sought to be enjoined be allowed to be done or performed," upon which the challenged 22 June 1989 Resolution, as amended by the 3 August 1989 Resolution, is made to rest. I am likewise unable to discern the justification for its hasty issuance.

Furthermore, the amendment of the dispositive portion of the 22 June 1989 Resolution which expanded the scope of the preliminary injunction sought by private respondent Sabido by enjoining the PCGG "from replacing, dismissing, demoting, reassigning, grounding, or otherwise prejudicing the present members of the PCGG management team in PIMECO, except for valid and serious reasons not attributable to or arising from their objection or opposition to or activities or statements against the said turnover,"[13] constitutes an undue interference with the prerogative of the PCGG over its own subordinates. In the first place, the management of the PCGG has not filed any formal pleading before the Sandiganbayan in connection with the Sabido motions. Secondly, Sabido has not disputed the petitioner's claim in its Reply to Defendant Peter A. Sabido's Opposition to Plaintiff's Motion for Reconsideration[14] that:

"3. The members of the PCGG management team at PIMECO do not have any fixed term (sic) of office but simply serve at the pleasure of the appointing power which is the PCGG. Accordingly, PCGG, in the exercise of its best discretion, may replace them at any time, if this action is perceived by it to be necessary for the best interests of the enterprise."[15]

Finally, the only issue brought before Us concerns the propriety of the issuance of the writ of preliminary injunction. For this Court then to rule that the "projected transfer of management of PIMECO to MPCP is unwarranted and was effected or done by petitioner beyond the scope of the powers vested upon it by law"[16] is to prejudge the issue which is still pending determination before the Sandiganbayan and which Sabido's 27 April 1989 Urgent Manifestation and Motion and 19 May 1989 Urgent Manifestation and Motion have precisely raised. There is no showing that the said motions have been finally resolved. It should be remembered that respondent Sabido was still in the process of presenting his evidence in support thereof when the challenged writ of preliminary injunction was issued. It is, as well, unclear if indeed the PCGG had pursued the, transfer of management.

I therefore vote to grant the petition.

[1] Rollo, 32-37.

[2] Id., 38-45.

[3] Annex "L" of Petition; Rollo, 131-134.

[4] Id., 75-77.

[5] Id., 76.

[6] Id., 83-87.

[7] Id., 103-104.

[8] Demokratikong Samahan ng Nagkakaisang Manggagawa ng PIMECO.

[9] Rollo, op. cit., 104.

[10] Rollo, 33.

[11] Bank of the Philippine Islands vs. Far East Molasses Corp., 198 SCRA 689 [1991].

[12] Bottom of page 5 of ponencia; see Rollo, 11-12.

[13] Supra., footnote no. 2.

[14] Annex "O" of Petition; Rollo, 145-150.

[15] Id., 146.

[16] Ponencia, 8-9.

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