

REPUBLIC OF THE PHILIPPINES (PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT), PETITIONER, VS. SANDIGANBAYAN, BIENVENIDO R. TANTOCO, JR. AND DOMINADOR R. SANTIAGO, RESPONDENTS.

G.R. No. 90478. November 21, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

Private respondents Bienvenido R. Tantoco, Jr. and Dominador R. Santiago -- together with Ferdinand E. Marcos, Imelda R. Marcos, Bienvenido R. Tantoco, Sr., Gliceria R. Tantoco, and Maria Lourdes Tantoco-Pineda -- are defendants in Civil Case No. 0008 of the Sandiganbayan. The case was commenced on July 21, 1987 by the Presidential Commission on Good Government (PCGG) in behalf of the Republic of the Philippines. The complaint which initiated the action was denominated one "for reconveyance, reversion, accounting, restitution and damages," and was avowedly filed pursuant to Executive Order No. 14 of President Corazon C. Aquino.

After having been served with summons, Tantoco, Jr. and Santiago, instead of filing their answer, jointly filed a "MOTION TO STRIKE OUT SOME PORTIONS OF THE COMPLAINT AND FOR BILL OF PARTICULARS OF OTHER PORTIONS" dated Nov. 3, 1987.[1] The PCGG filed an opposition thereto,[2] and the movants, a reply to the opposition.[3] By Order dated January 29, 1988, the Sandiganbayan, in order to expedite proceedings and accommodate the defendants, gave the PCGG forty-five (45) days to expand its complaint to make more specific certain allegations.[4]

Tantoco and Santiago then presented a "motion for leave to file interrogatories under Rule 25 of the Rules of Court" dated February 1, 1988, and "Interrogatories under Rule 25." [5] Basically, they sought an answer to the question: "Who were the Commissioners of the PCGG (aside from its Chairman, Hon. Ramon Diaz, who verified the complaint) who approved or authorized the inclusion of Messrs. Bienvenido R. Tantoco, Jr. and Dominador R. Santiago as defendants in the ** case?" [6] The PCGG responded by filing a motion dated February 9, 1988 to strike out said motion and interrogatories as being impertinent, "queer," "weird," or "procedurally bizarre as the purpose thereof lacks merit as it is improper, impertinent and irrelevant under any guise." [7]

On March 18, 1988, in compliance with the Order of January 29, 1988, the PCGG filed an Expanded Complaint.[8] As regards this expanded complaint, Tantoco and Santiago reiterated their motion for bill of particulars, through a Manifestation dated April 11, 1988.[9]

Afterwards, by Resolution dated July 4, 1988,[10] the Sandiganbayan denied the motion to strike out, for bill of particulars, and for leave to file interrogatories, holding them to be without legal and factual basis. Also denied was the PCGG's motion to strike out impertinent pleadings dated February 9, 1988. The Sandiganbayan declared inter alia the complaint to be "sufficiently definite and clear enough," "there are adequate allegations ** which clearly portray the supposed involvement and/or alleged participation of defendants-movants in the transactions described in detail in said Complaint," and "the other matters sought for particularization are evidentiary in nature

which should be ventilated in the pre-trial or trial proper ** ." It also opined that "(s)ervice of interrogatories before joinder of issue and without leave of court is premature * * (absent) any special or extraordinary circumstances * * which would justify * * (the same)."

Tantoco and Santiago then filed an Answer with Compulsory Counterclaim under date of July 18, 1988.[11] In response, the PCGG presented a "Reply to Answer with Motion to Dismiss Compulsory Counterclaim." [12]

The case was set for pre-trial on July 31, 1989.[13] On July 25, 1989, the PCGG submitted its PRE-TRIAL BRIEF.[14] The pre-trial was however reset to September 11, 1989, and all other parties were required to submit pre-trial briefs on or before that date.[15]

On July 27, 1989 Tantoco and Santiago filed with the Sandiganbayan a pleading denominated "Interrogatories to Plaintiff,"[16] and on August 2, 1989, an "Amended Interrogatories to Plaintiff"[17] as well as a Motion for Production and Inspection of Documents.[18]

The amended interrogatories chiefly sought factual details relative to specific averments of PCGG's amended complaint, through such questions, for instance, as -

"1. In connection with the allegations ** in paragraph 1 ** , what specific property or properties does the plaintiff claim it has the right to recover from defendants Tantoco, Jr. and Santiago for being 'ill-gotten'?"

"3. In connection with the allegations ** in paragraph 10 (a) ** , what specific act or acts ** were committed by defendants Tantoco, Jr. and Santiago in 'concert with' defendant Ferdinand Marcos and in furtherance or pursuit, of the alleged systematic plan of said defendant Marcos to accumulate ill-gotten wealth?"

"5. In connection with ** paragraph 13 ** , what specific act or acts of the defendants Tantoco, Jr. and Santiago ** were committed by said defendants as part, or in furtherance, of the alleged plan to conceal assets of defendants Ferdinand and Imelda Marcos?"

"7. In connection with ** paragraph 15 (c) ** is it plaintiff's position or theory of the case that Tourist Duty Free Shops, Inc., including all the assets of said corporation, are beneficially owned by either or both defendants Ferdinand and Imelda Marcos and that the defendants Tantoco, Jr. and Santiago, as well as, the other stockholders of record of the same corporation are mere 'dummies' of said defendants Ferdinand and/or Imelda R. Marcos?"

On the other hand, the motion for production and inspection of documents prayed for examination and copying of ?

1) the "official records and other evidence" on the basis of which the verification of the Amended Complaint asserted that the allegations thereof are "true and correct;"

2) the documents listed in PCGG's Pre-Trial Brief as those "intended to be presented and ** marked as exhibits for the plaintiff;" and

3) "the minutes of the meeting of the PCGG which chronicles the discussion (if any) and the decision (of the Chairman and members) to file the complaint" in the case at bar.

By Resolutions dated August 21, 1989 and August 25, 1989, the Sandiganbayan admitted the Amended Interrogatories and granted the motion for production and inspection of documents (production being scheduled on September 14 and 15, 1989), respectively.

On September 1, 1989 the PCGG filed a Motion for Reconsideration of the Resolution of August 25, 1989 (allowing production and inspection of documents). It argued that

1) since the documents subject thereof would be marked as exhibits during the pre-trial on September 11, 1989 anyway, the order for "their production and inspection on September 14 and 15, are purposeless and unnecessary;"

2) movants already know of the existence and contents of the documents which "are clearly described ** (in) plaintiffs Pre-Trial Brief;"

3) the documents are "privileged in character" since they are intended to be used against the PCGG and/or its Commissioners in violation of Section 4, Executive Order No. 1, viz.:

"(a) 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.

(b) 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."

It also filed on September 4, 1989 an opposition to the Amended Interrogatories,[19] which the Sandiganbayan treated as a motion for reconsideration of the Resolution of August 21, 1989 (admitting the Amended Interrogatories). The opposition alleged that -

1) the interrogatories "are not specific and do not name the person to whom they are propounded ** ," or "who in the PCGG, in particular, ** (should) answer the interrogatories;"

2) the interrogatories delve into "factual matters which had already been decreed ** as part of the proof of the Complaint upon trial ** ;"

3) the interrogatories "are frivolous" since they inquire about "matters of fact ** which defendants ** sought to ** (extract) through their aborted Motion for Bill of Particulars;"

4) the interrogatories "are really in the nature of a deposition, which is prematurely filed and irregularly utilized ** (since) the order of trial calls for plaintiff to first present its evidence."

Tantoco and Santiago filed a reply and opposition on September 18, 1989.

After hearing, the Sandiganbayan promulgated two (2) Resolutions on September 29, 1989, the first, denying reconsideration (of the Resolution allowing production of documents), and the second, reiterating by implication the permission to serve the amended interrogatories on the plaintiff (PCGG).[20]

Hence, this petition for certiorari.

The PCGG contends that said orders, both dated September 29, 1989, should be nullified because rendered with grave abuse of discretion amounting to excess of jurisdiction. More particularly, it claims -

a) as regards the order allowing the amended interrogatories to the plaintiff PCGG:

1) that said interrogatories are not specific and do not name the particular individuals to whom they are propounded, being addressed only to the PCGG;

2) that the interrogatories deal with factual matters which the Sandiganbayan (in denying the movants' motion for bill of particulars) had already declared to be part of the PCGG's proof upon trial; and

3) that the interrogatories would make PCGG Commissioners and officers witnesses, in contravention of Executive Order No. 14 and related issuances;

and

b) as regards the order granting the motion for production of documents:

- 1) that movants had not shown any good cause therefor;
- 2) that some documents sought to be produced and inspected had already been presented in Court and marked preliminarily as PCGG's exhibits, and the movants had viewed, scrutinized and even offered objections thereto and made comments thereon; and
- 3) that the other documents sought to be produced are either -

(a) privileged in character or confidential in nature and their use is proscribed by the immunity provisions of Executive Order No. 1, or

(b) non-existent, or mere products of the movants' suspicion and fear.

This Court issued a temporary restraining order on October 27, 1989, directing the Sandiganbayan to desist from enforcing its questioned resolutions of September 29, 1989 in Civil Case No. 0008.[21]

After the issues were delineated and argued at no little length by the parties, the Solicitor General withdrew "as counsel for plaintiff * * with the reservation, however, conformably with Presidential Decree No. 478, the provisions of Executive Order No. 292, as well as the decisional law of 'Orbos v. Civil Service Commission, et al.,' (G.R. No. 92561, September 12, 1990)[22] to submit his comment/observation on incidents/matters pending with this ** Court if called for by circumstances in the interest of the Government or if he is so required by the Court." [23] This, the Court allowed by Resolution dated January 21, 1991.[24]

Subsequently, PCGG Commissioner Maximo A. Maceren advised the Court that the cases from which the Solicitor General had withdrawn would henceforth be under his (Maceren's) charge "and/or any of the following private attorneys: Eliseo B. Alampay, Jr., Mario E. Ongkiko, Mario Jalandoni and such other attorneys as it may later authorize." [25]

The facts not being in dispute, and it appearing that the parties have fully ventilated their respective positions, the Court now proceeds to decide the case.

Involved in the present proceedings are two of the modes of discovery provided in the Rules of Court: interrogatories to parties,[26] and production and inspection of documents and things.[27] Now, it appears to the Court that among far too many lawyers (and not a few judges), there is, if not a regrettable unfamiliarity and even outright ignorance about the nature, purposes and operation of the modes of discovery, at least a strong yet unreasoned and unreasonable disinclination to resort to them -- which is a great pity for the intelligent and adequate use of the deposition-discovery mechanism, coupled with pre-trial procedure, could, as the experience of other jurisdictions convincingly demonstrates, effectively shorten the period of litigation and speed up adjudication.[28] Hence, a few words about these remedies is not at all inappropriate.

The resolution of controversies is, as everyone knows, the *raison d'être* of courts. This essential function is accomplished by first, the ascertainment of all the material and relevant facts from the pleadings and from the evidence adduced by the parties, and second, after that determination of the facts has been completed, by the application of the law thereto to the end that the controversy may be settled authoritatively, definitively and finally.

It is for this reason that a substantial part of the adjective law in this jurisdiction is occupied with assuring that all the facts are indeed presented to the Court; for obviously, to the extent that adjudication is made on the basis of incomplete facts, to that extent there is faultiness in the approximation of objective justice. It is thus the obligation of lawyers no less than of judges to see that this objective is attained; that is to say, that there be no suppression,

obscuration, misrepresentation or distortion of the facts; and that no party be unaware of any fact material and relevant to the action, or surprised by any factual detail suddenly brought to his attention during the trial.[29]

Seventy-one years ago, in *Alonso v. Villamor*,[30] this Court described the nature and object of litigation and in the process laid down the standards by which judicial contests are to be conducted in this jurisdiction. It said:

"A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done on the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested right in technicalities. * * ."

The message is plain. It is the duty of each contending party to lay before the court the facts in issue -- fully and fairly; i.e., to present to the court all the material and relevant facts known to him, suppressing or concealing nothing, nor preventing another party, by clever and adroit manipulation of the technical rules of pleading and evidence, from also presenting all the facts within his knowledge.

Initially, that undertaking of laying the facts before the court is accomplished by the pleadings filed by the parties; but that, only in a very general way. Only "ultimate facts" are set forth in the pleadings; hence, only the barest outline of the factual basis of a party's claims or defenses is limned in his pleadings. The law says that every pleading "shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts." [31]

Parenthetically, if this requirement is not observed, i.e., the ultimate facts are alleged too generally or "not averred with sufficient definiteness or particularity to enable ** (an adverse party) properly to prepare his responsive pleading or to prepare for trial," a bill of particulars seeking a "more definite statement" may be ordered by the court on motion of a party. The office of a bill of particulars is, however, limited to making more particular or definite the ultimate facts in a pleading. It is not its office to supply evidentiary matters. And the common perception is that said evidentiary details are made known to the parties and the court only during the trial, when proof is adduced on the issues of fact arising from the pleadings.

The truth is that "evidentiary matters" may be inquired into and learned by the parties before the trial. Indeed, it is the purpose and policy of the law that the parties -- before the trial if not indeed even before the pre-trial -- should discover or inform themselves of all the facts relevant to the action, not only those known to them individually, but also those known to their adversaries; in other words, the desideratum is that civil trials should not be carried on in the dark; and the Rules of Court make this ideal possible through the deposition-discovery mechanism set forth in Rules 24 to 29. The experience in other jurisdictions has been that ample discovery before trial, under proper regulation, accomplished one of the most necessary ends of modern procedure: it not only eliminates unessential issues from trials thereby shortening them considerably, but also requires parties to play the game with the cards on the table so that the possibility of fair settlement before trial is measurably increased. * * ."[32]

As just intimated, the deposition-discovery procedure was designed to remedy the conceded inadequacy and cumbersomeness of the pre-trial functions of notice-giving, issue-formulation and fact revelation theretofore performed primarily by the pleadings.

The various modes or instruments of discovery are meant to serve (1) as a device, along with the pre-trial hearing under Rule 20, to narrow and clarify the basic issues between the parties, and (2) as a device for ascertaining the

facts relative to those issues. The evident purpose is, to repeat, to enable the parties, consistent with recognized privileges, to obtain the fullest possible knowledge of the issues and facts before civil trials and thus prevent that said trials are carried on in the dark.[33]

To this end, the field of inquiry that may be covered by depositions or interrogatories is as broad as when the interrogated party is called as a witness to testify orally at trial. The inquiry extends to all facts which are relevant, whether they be ultimate or evidentiary, excepting only those matters which are privileged. The objective is as much to give every party the fullest possible information of all the relevant facts before the trial as to obtain evidence for use upon said trial. The principle is reflected in Section 2, Rule 24 (governing depositions)[34] which generally allows the examination of a deponent ?

1) "regarding any matter, not privileged, which is relevant to the subject of the pending action, whether relating to the claim or defense of any other party;"

2) as well as:

a) "the existence, description, nature, custody, condition and location of any books, documents, or other tangible things" and

b) "the identity and location of persons having knowledge of relevant facts."

What is chiefly contemplated is the discovery of every bit of information which may be useful in the preparation for trial, such as the identity and location of persons having knowledge of relevant facts; those relevant facts themselves; and the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things. Hence, "the deposition-discovery rules are to be accorded a broad and liberal treatment. No longer can the time-honored cry of 'fishing expedition' serve to preclude a party from inquiring into the facts underlying his opponent's case. Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. The deposition-discovery procedure simply advances the stage at which the disclosure can be compelled from the time of trial to the period preceding it, thus reducing the possibility of surprise. * * . "[35]

In line with this principle of according liberal treatment to the deposition-discovery mechanism, such modes of discovery as (a) depositions (whether by oral examination or written interrogatories) under Rule 24, (b) interrogatories to parties under Rule 25, and (c) requests for admissions under Rule 26, may be availed of without leave of court, and generally, without court intervention. The Rules of Court explicitly provide that leave of court is not necessary to avail of said modes of discovery after an answer to the complaint has been served.[36] It is only when an answer has not yet been filed (but after jurisdiction has been obtained over the defendant or property subject of the action) that prior leave of court is needed to avail of these modes of discovery, the reason being that at that time the issues are not yet joined and the disputed facts are not clear.[37]

On the other hand, leave of court is required as regards discovery by (a) production or inspection of documents or things in accordance with Rule 27, or (b) physical and mental examination of persons under Rule 28, which may be granted upon due application and a showing of due cause.

To ensure that availment of the modes of discovery is otherwise untrammelled and efficacious, the law imposes serious sanctions on the party who refuses to make discovery, such as dismissing the action or proceeding or part thereof, or rendering judgment by default against the disobedient party; contempt of court, or arrest of the party or agent of the party; payment of the amount of reasonable expenses incurred in obtaining a court order to compel discovery; taking the matters inquired into as established in accordance with the claim of the party seeking discovery; refusal to allow the disobedient party support or oppose designated claims or defenses; striking out

pleadings or parts thereof; staying further proceedings.[38]

Of course, there are limitations to discovery, even when permitted to be undertaken without leave and without judicial intervention. "As indicated by (the) Rules * *, limitations inevitably arise when it can be shown that the examination is being conducted in bad faith or in such a manner as to annoy, embarrass, or oppress the person subject to the inquiry.[39] And * * further limitations come into existence when the inquiry touches upon the irrelevant or encroaches upon the recognized domains of privilege." [40]

In fine, the liberty of a party to make discovery is well nigh unrestricted if the matters inquired into are otherwise relevant and not privileged, and the inquiry is made in good faith and within the bounds of the law.

It is in light of these broad principles underlying the deposition-discovery mechanism, in relation of course to the particular rules directly involved, that the issues in this case will now be resolved.

The petitioner's objections to the interrogatories served on it in accordance with Rule 25 of the Rules of Court cannot be sustained.

It should initially be pointed out -- as regards the private respondents' "Motion for Leave to File Interrogatories" dated February 1, 1988[41] -- that it was correct for them to seek leave to serve interrogatories, because discovery was being availed of before an answer had been served. In such a situation, i.e., "after jurisdiction has been obtained over any defendant or over property subject of the action" but before answer, Section 1 of Rule 24 (treating of depositions), in relation to Section 1 of Rule 25 (dealing with interrogatories to parties) explicitly requires "leave of court." [42] But there was no need for the private respondents to seek such leave to serve their "Amended Interrogatories to Plaintiff" (dated August 2, 1989[43]) after they had filed their answer to the PCGG's complaint, just as there was no need for the Sandiganbayan to act thereon.

1. The petitioner's first contention -- that the interrogatories in question are defective because they (a) do not name the particular individuals to whom they are propounded, being addressed only to the PCGG, and (b) are "fundamentally the same matters ** (private respondents) sought to be clarified through their aborted Motion ** for Bill of Particulars" -- are untenable and quickly disposed of.

The first part of petitioner's submission is adequately confuted by Section 1, Rule 25 which states that if the party served with interrogatories is a juridical entity such as "a public or private corporation or a partnership or association," the same shall be "answered ** by any officer thereof competent to testify in its behalf." There is absolutely no reason why this proposition should not be applied by analogy to the interrogatories served on the PCGG. That the interrogatories are addressed only to the PCGG, without naming any specific commissioner or officer thereof, is utterly of no consequence, and may not be invoked as a reason to refuse to answer. As the rule states, the interrogatories shall be answered "by any officer thereof competent to testify in its behalf."

That the matters on which discovery is desired are the same matters subject of a prior motion for bill of particulars addressed to the PCGG's amended complaint -- and denied for lack of merit -- is beside the point. Indeed, as already pointed out above, a bill of particulars may elicit only ultimate facts, not so-called evidentiary facts. The latter are without doubt proper subject of discovery.[44]

Neither may it be validly argued that the amended interrogatories lack specificity. The merest glance at them disproves the argument. The interrogatories are made to relate to individual paragraphs of the PCGG's expanded complaint and inquire about details of the ultimate facts therein alleged. What the PCGG may properly do is to object to specific items of the interrogatories, on the ground of lack of relevancy, or privilege, or that the inquiries are being made in bad faith, or simply to embarrass or oppress it.[45] But until such an objection is presented and sustained, the obligation to answer subsists.

2. That the interrogatories deal with factual matters which will be part of the PCGG's proof upon trial, is not ground for suppressing them, either. As already pointed out, it is the precise purpose of discovery to ensure mutual knowledge of all the relevant facts on the part of all parties even before trial, this being deemed essential to proper litigation. This is why either party may compel the other to disgorge whatever facts he has in his possession; and the stage at which disclosure of evidence is made is advanced from the time of trial to the period preceding it.

3. Also unmeritorious is the objection that the interrogatories would make PCGG Commissioners and officers witnesses, in contravention of Executive Order No. 14 and related issuances. In the first place, there is nothing at all wrong in a party's making his adversary his witness.[46] This is expressly allowed by Section 6, Rule 132 of the Rules of Court, viz.:

"SEC. 6. Direct examination of unwilling or hostile witnesses. -? A party may * * call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject-matter of his examination in chief."

The PCGG insinuates that the private respondents are engaged on a "fishing expedition," apart from the fact that the information sought is immaterial since they are evidently meant to establish a claim against PCGG officers who are not parties to the action. It suffices to point out that "fishing expeditions" are precisely permitted through the modes of discovery.[47] Moreover, a defendant who files a counterclaim against the plaintiff is allowed by the Rules to implead persons (theretofore strangers to the action) as additional defendants on said counterclaim. This may be done pursuant to Section 14, Rule 6 of the Rules, to wit:

"SEC. 14. Bringing new parties. --When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants, if jurisdiction over them can be obtained."

The PCGG's assertion that it or its members are not amenable to any civil action "for anything done or omitted in the discharge of the task contemplated by * * (Executive) Order (No. 1)," is not a ground to refuse to answer the interrogatories. The disclosure of facts relevant to the action and which are not self-incriminatory or otherwise privileged is one thing; the matter of whether or not liability may arise from the facts disclosed in light of Executive Order No. 1, is another. No doubt, the latter proposition may properly be set up by way of defense in the action.

The apprehension has been expressed that the answers to the interrogatories may be utilized as foundation for a counterclaim against the PCGG or its members and officers. They will be. The private respondents have made no secret that this is in fact their intention. Withal, the Court is unable to uphold the proposition that while the PCGG obviously feels itself at liberty to bring actions on the basis of its study and appreciation of the evidence in its possession, the parties sued should not be free to file counterclaims in the same actions against the PCGG or its officers for gross neglect or ignorance, if not downright bad faith or malice in the commencement or initiation of such judicial proceedings, or that in the actions that it may bring, the PCGG may opt not to be bound by rules applicable to the parties it has sued, e.g., the rules of discovery.

So, too, the PCGG's postulation that none of its members may be "required to testify or produce evidence in any judicial * * proceeding concerning matters within its official cognizance," has no application to a judicial proceeding it has itself initiated. As just suggested, the act of bringing suit must entail a waiver of the exemption from giving evidence; by bringing suit it brings itself within the operation and scope of all the rules governing

civil actions, including the rights and duties under the rules of discovery. Otherwise, the absurd would have to be conceded, that while the parties it has impleaded as defendants may be required to "disgorge all the facts" within their knowledge and in their possession, it may not itself be subject to a like compulsion.

The State is, of course, immune from suit in the sense that it cannot, as a rule, be sued without its consent. But it is axiomatic that in filing an action, it divests itself of its sovereign character and sheds its immunity from suit, descending to the level of an ordinary litigant. The PCGG cannot claim a superior or preferred status to the State, even while assuming to represent or act for the State.[48]

The suggestion[49] that the State makes no implied waiver of immunity by filing suit except when in so doing it acts in, or in matters concerning, its proprietary or non-governmental capacity, is unacceptable; it attempts a distinction without support in principle or precedent. On the contrary -

"The consent of the State to be sued may be given expressly or impliedly. Express consent may be manifested either through a general law or a special law. Implied consent is given when the State itself commences litigation or when it enters into a contract."[50]

"The immunity of the state from suits does not deprive it of the right to sue private parties in its own courts. The state as plaintiff may avail itself of the different forms of actions open to private litigants. In short, by taking the initiative in an action against the private parties, the state surrenders its privileged position and comes down to the level of the defendant. The latter automatically acquires, within certain limits, the right to set up whatever claims and other defenses he might have against the state. * * * (Sinco, Philippine Political Law, Tenth Ed., pp. 36-37, citing U.S. vs. Ringgold, 8 Pet. 150, 8 L. ed. 899)"[51]

It can hardly be doubted that in exercising the right of eminent domain, the State exercises its *jus imperii*, as distinguished from its proprietary rights or *jus gestionis*. Yet, even in that area, it has been held that where private property has been taken in expropriation without just compensation being paid, the defense of immunity from suit cannot be set up by the State against an action for payment by the owner.[52]

The Court also finds itself unable to sustain the PCGG's other principal contention, of the nullity of the Sandiganbayan's Order for the production and inspection of specified documents and things allegedly in its possession.

The Court gives short shrift to the argument that some documents sought to be produced and inspected had already been presented in Court and marked preliminarily as PCGG's exhibits, the movants having in fact viewed, scrutinized and even offered objections thereto and made comments thereon. Obviously, there is nothing secret or confidential about these documents. No serious objection can therefore be presented to the desire of the private respondents to have copies of those documents in order to study them some more or otherwise use them during the trial for any purpose allowed by law.

The PCGG says that some of the documents are non-existent. This it can allege in response to the corresponding question in the interrogatories, and it will incur no sanction for doing so unless it is subsequently established that the denial is false.

The claim that use of the documents is proscribed by Executive Order No. 1 has already been dealt with. The PCGG is however at liberty to allege and prove that said documents fall within some other privilege, constitutional or statutory.

The Court finally finds that contrary to the petitioner's theory, there is good cause for the production and inspection of the documents subject of the motion dated August 3, 1989.[53] Some of the documents are, according to the verification of the amended complaint, the basis of several of the material allegations of said

complaint. Others, admittedly, are to be used in evidence by the plaintiff. It is matters such as these into which inquiry is precisely allowed by the rules of discovery, to the end that the parties may adequately prepare for pre-trial and trial. The only other documents sought to be produced are needed in relation to the allegations of the counterclaim. Their relevance is indisputable; their disclosure may not be opposed.

One last word. Due no doubt to the deplorable unfamiliarity respecting the nature, purposes and operation of the modes of discovery earlier mentioned,[54] there also appears to be a widely entertained idea that application of said modes is a complicated matter, unduly expensive and dilatory. Nothing could be farther from the truth. For example, as will already have been noted from the preceding discussion, all that is entailed to activate or put in motion the process of discovery by interrogatories to parties under Rule 25 of the Rules of Court, is simply the delivery directly to a party of a letter setting forth a list of questions with the request that they be answered individually.[55] That is all. The service of such a communication on the party has the effect of imposing on him the obligation of answering the questions "separately and fully in writing under oath," and serving "a copy of the answers on the party submitting the interrogatories within fifteen (15) days after service of the interrogatories **." [56] The sanctions for refusing to make discovery have already been mentioned.[57] So, too, discovery under Rule 26 is begun by nothing more complex than the service on a party of a letter or other written communication containing a request that specific facts therein set forth and/or particular documents copies of which are thereto appended, be admitted in writing.[58] That is all. Again, the receipt of such a communication by the party has the effect of imposing on him the obligation of serving the party requesting admission with "a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters," failing in which "(e)ach of the matters of which admission is requested shall be deemed admitted." [59] The taking of depositions in accordance with Rule 24 (either on oral examination or by written interrogatories) while somewhat less simple, is nonetheless by no means as complicated as seems to be the lamentably extensive notion.

WHEREFORE, the petition is DENIED, without pronounce-ment as to costs. The temporary restraining order issued on October 27, 1989 is hereby LIFTED AND SET ASIDE.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Cruz, J., see concurring opinion.

Melencio-Herrera, J., joins J. Cruz in his concurring opinion.

Romero, J., no part.

[1] Petition, Annex D

[2] Id., Annex E

[3] Id., Annex F

[4] Rollo, p. 7

[5] Id., pp. 7, 145

[6] Id., p. 7

[7] Petition, Annex G

- [8] Rollo, pp. 56-87
- [9] Petition, Annex H
- [10] Id., Annex I
- [11] Id., Annex J
- [12] Id., Annex K
- [13] Rollo, p. 9
- [14] Petition, Annex L
- [15] Id., Annex M
- [16] Rollo, p. 9
- [17] Petition, Annex N
- [18] Id., Annex O
- [19] Petition, Annex R; Rollo, p. 220
- [20] Id., Annexes A and B; Rollo, p. 11
- [21] Rollo, pp. 244, 245, 245-A

[22] 189 SCRA 459

[23] Id., p. 317. The Solicitor General also withdrew his appearance in other cases involving the PCGG, to wit: G.R. Nos. 74302 (Tourist Duty-Free Shops, Inc. v. PCGG); 86949 (Placido L. Mapa v. Hon. Sandiganbayan, et al.); 86926 (Cesar E. A. Virata v. Hon. Sandiganbayan, et al.); 89425 (Republic, etc., et al. v. Sandiganbayan **, et al.); 90478 (Republic v. Hon. Sandiganbayan, etc., et al.); 93694 (Philippine Coconut Producers Federation, etc., et al. v. PCGG, et al.)

[24] Id., p. 320

[25] Id., pp. 328 et seq

[26] Governed by Rule 25

[27] Governed by Rule 27

[28] Moran (Comments on the Rules of Court, 1979 ed., Vol. 2, pp. 5-6), for instance, points out -- citing the recommendations of the committee of the American Judicature Society that drafted the Model Rules of Civil Procedure -- that "The English and Canadian experience has been of more value than any other single procedural device, in bringing parties to a settlement who otherwise would have fought their way through to trial."

N.B. Actions could very well be ended by summary judgments (Rule 34) on the basis of the results of discovery.

[29] Surprises, it has been observed, are "most dangerous weapons" in a "judicial duel" (Moran, Comments on the Rules of Court, 1963 ed., Vol. 2, p. 6).

[30] 16 Phil. 315, 322 (July 26, 1910): italics supplied

[31] Section 1, Rule 8, Rules of Court

- [32] Moran, Comments on the Rules of Court, 1979 ed., Vol. 2, pp. 5-6; see footnote 28, supra
- [33] SEE Hickman v. Taylor, et al., U.S. Sup. Ct. Rpts., 91 Law Ed., 451, 455, cited in Feria, Civil Procedure, 1969 ed., p. 435; 35A CJS Sec. 527, pp. 785-786; 23 Am Jur 2d, Sec. 156, p. 493
- [34] Sec. 5, Rule 25 ("Interrogatories to Parties") also allows inquiry as "to any matters that can be inquired into under section 2 of Rule 24 ** "
- [35] Feria, op. cit., p. 436, citing Hickman v. Taylor, et al., supra; SEE 23 Am Jur 2d., Sec. 150, pp. 484-487
- [36] Sec. 1, Rule 24; Sec. 1, Rule 25; Sec. 1, Rule 26
- [37] SEE Everett v. Asia Banking Corp., 49 Phil. 512.
- [38] Rule 29
- [39] SEE Secs. 16 and 18, Rule 24
- [40] Hickman v. Taylor, et al., supra, cited in Feria, op. cit., p. 436
- [41] SEE footnote 5, supra
- [42] Cf. Uy Chao v. de la Rama Steamship Co., Inc., 6 SCRA 69
- [43] SEE footnote 17, supra
- [44] SEE discussion at page 8, and footnote 30 and related text, supra
- [45] Cf. Lopez, etc., et al. v. Maceren, etc., et al. 95 Phil. 754; Cojuangco v. Caluag, 97 Phil. 982 (unrep.); Villalon v. Ysip, 98 Phil. 997; Caguiat v. Torres, 30 SCRA 109-110; Jacinto v. Amparo, 93 Phil. 693
- [46] SEE Cason v. San Pedro, 9 SCRA 925, where such objections as that the interrogatories transferred the onus probandi from plaintiffs to defendants, or the latter were being made to prove the former's case, or that anyway, the facts may be proven by plaintiffs through their own evidence, were overruled
- [47] SEE Tan Chico v. Concepcion, 43 Phil. 141 (1922)
- [48] It should be pointed out that the rulings in PCGG v. Peña, 159 SCRA 556 (1988) and PCGG v. Nepomuceno, etc., et al., G.R. No. 78750, April 20, 1990 are not inconsistent with that in this proceeding, the facts and basic issues therein involved being quite distinct from those in the case at bar. Unlike the present case, where the PCGG instituted a civil action against Tantoco, et al. in the Sandiganbayan, neither Peña nor Nepomuceno involved any suit filed by the PCGG, the acts therein challenged being simply its extrajudicial orders of sequestration; and in both said cases, the Regional Trial Courts issued writs of preliminary injunction prohibiting enforcement and implementation of the sequestration orders. This Court nullified those injunctive writs on the ground that the PCGG, as an agency possessed of primary administrative jurisdiction (particularly concerning sequestration) and exercising quasi-judicial functions, was co-equal to a Regional Trial Court which therefore had no jurisdiction to review or otherwise restrain or interfere with its acts, that power being exclusively lodged in the Sandiganbayan, subject only to review by this Court. In Nepomuceno, it was additionally ruled that there was prima facie basis for the challenged order of sequestration; that the take-over of the property in question by the PCGG fiscal agents was necessitated as much by the resistance and defiance of the holders thereof to the PCGG's authority as by the desire of the PCGG to preserve said property; and that since the power to seize property to conserve it pending the institution of suit for its recovery was sanctioned by the Freedom Constitution and the 1987 Constitution, the PCGG must be deemed immune from any suit which would render that authority inutile or ineffectual.

[49] Of the Solicitor General in his Reply to Answer, etc.: Rollo, pp. 168-169

[50] Mr. Justice Isagani A. Cruz, Philippine Political Law, 1991 ed., p. 33.

SEC. 5, Act No. 3083 (eff., March 16, 1923) provides that, "When the Government of the Philippine Islands is plaintiff in an action instituted in any court of original jurisdiction, the defendant shall have the right to assert therein, by way of set-off or counterclaim in a similar action between private parties."

[51] Froilan vs. Pan Oriental Shipping Co., 95 Phil. 905, 912

[52] Ministerio vs. City of Cebu, 40 SCRA 464, cited with approval in Santiago vs. Republic, 87 SCRA 294.

[53] Petition, Annex O, pp. 206-208

[54] At page 6, last paragraph, supra

[55] Sec. 1, Rule 25, Rules of Court

[56] Sec. 2, Rule 25

[57] SEE footnote 38 and related text

[58] Sec. 1, Rule 26

[59] Sec. 2, Rule 25; see also footnote 38 and related text, supra

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