

**EDUARDO M. COJUANGCO, JR., MANUEL M. COJUANGCO AND
RAFAEL G. ABELLO, PETITIONERS, VS. ANTONIO J. ROXAS, JOSE L.
CUISIA, JR., OSCAR HILADO, PRESIDENTIAL COMMISSION ON GOOD
GOVERN...**

G.R. No. 91925. April 16, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The issue squarely presented by the petitioners is whether or not the Presidential Commission on Good Government (PCGG) may vote the sequestered shares of stock of San Miguel Corporation (SMC) and elect its members of the board of directors.

In G.R. No. 91925 the facts alleged are undisputed. Petitioners are stockholders of record of SMC as follows —

Stockholders

No. of Shares

Eduardo M. Cojuangco, Jr.

13,225

Manuel M. Cojuangco

5,750

Rafael G. Abello

5,750

On April 18, 1989, the annual meeting of shareholders of SMC was held. Among the matters taken up was the election of fifteen (15) members of the board of the directors for the ensuing year. Petitioners were among the twenty four (24) nominees to the board, namely —

- Mr. Rafael G. Abello
- Mr. Eduardo M. Cojuangco, Jr.
- Mr. Enrique M. Cojuangco
- Mr. Manuel M. Cojuangco
- Mr. Marcos O. Cojuangco
- Mr. Jose C. Concepcion

- Mr. Amado C. Mamuric
- Mr. Rodolfo M. Tinsay
- Mr. Danilo S. Ursua
- Mr. Eduardo De Los Angeles
- Mr. Feliciano Belmonte, Jr.
- Mr. Teodoro L. Locsin
- Mr. Domingo Lee
- Mr. Philip Ella Juico
- Mr. Patrick Pineda
- Mr. Adolfo Azcuna
- Mr. Edison Coseteng
- Mr. Jose L. Cuisia, Jr.
- Mr. Oscar Hilado
- Mr. Andres Soriano III
- Mr. Eduardo J. Soriano
- Mr. Francisco C. Eizmendi, Jr.
- Mr. Benigno P. Toda, Jr.
- Mr. Antonio J. Roxas

On the date of the annual meeting, there were 140,849,970 shares outstanding, of which 133,224,130 shares, or 94.58%, were present at the meeting, either in person or by proxy. Because of PCGG's claim that the shares of stock were under sequestration, PCGG was allowed to represent and vote the shares of stocks of the following shareholders —

STOCKHOLDER

NO. OF SHARES

PRIMAVERA FARMS, INC.

5,381,543

BLACK STALLION RANCH, INC.

3,587,695

MISTY MOUNTAINS AGRI'L CORP.

3,587,695

PASTORAL FARMS, INC.

3,587,695

MEADOW LARK PLANTATION, INC.

2,690,771

SILVER LEAF PLANTATION, INC.

2,690,771

LUCENA OIL FACTORY, INC.

169,174

PCY OIL FACTORY, INC.

167,867

METROPLEX COMMODITIES, INC.

167,777

KAUNLARAN AGRICULTURAL CORP.

145,475

REDDEE DEVELOPERS, INC.

169,071

AGR'L. CONSULTANCY SERV., INC.

167,907

FIRST UNITED TRANSPORT, INC.

168,963

VERDANT PLANTATIONS, INC.

145,475

CHRISTENSEN PLANTATIONS, INC.

168,920

NORTHERN CARRIERS CORPORATION

167,891

VESTA AGRICULTURAL CORP.

145,475

OCEAN SIDE MARITIME ENT., INC.

132,250

PURA ELECTRIC COMPANY, INC.

99,587

UNEXPLORED LAND DEVELOPERS, INC.

102,823

PUNONG-BAYAN HOUSING DEV'T., CORP.

132,250

HABAGAT REALTY DEVELOPMENT, INC.

145,822

SPADE ONE RESORTS CORP.

147,040

WINGS RESORTS CORPORATION

104,885

KALAWAKAN RESORTS, INC.

132,250

LABAYUG AIR TERMINALS, INC.

159,106

LANDAIR INT'L. MARKETING CORP.

168,965

SAN ESTEBAN DEVELOPMENT CORP.

167,679

PHILIPPINE TECHNOLOGIES, INC.

132,250

BALETE RANCH, INC.

166,395

DISCOVERY REALTY CORP.

169,203

ARCHIPELAGO REALTY CORP.

167,761

SOUTHERN SERVICE TRADERS, INC.

120,480

ORO VERDE SERVICES, INC.

132,250

NORTHEAST CONTRACT TRADERS, INC.

159,536

DREAM PASTURES, INC.

169,237

LHL CATTLE CORPORATION

169,216

RANCHO GRANDE, INC.

167,614

ECHO RANCH, INC.

167,897

FAR EAST RANCH, INC.

169,227

SOUTHERN STAR CATTLE CORP.
RADIO AUDIENCE DEVELOPERS

169,095

INTEGRATED ORGANIZATION, INC.

167,787

RADYO PILIPINO CORPORATION

167,777

EDUARDO M. COJUANGCO, JR.

13,225

TOTAL

27,211,770

The above shares are collectively referred to as "corporate shares" in the petition.

Representatives of the corporate shares present at the meeting claimed that the shares are not under sequestration; or that if they are under sequestration, the PCGG had no right to vote the same. They were overruled.

With PCGG voting the corporate shares, the following was the result of the election for members of the SMC board of directors:

Stockholder

No. of Votes

1. Mr. Eduardo De Los Angeles

135,115,521

2. Mr. Feliciano Belmonte, Jr.

132,312,254

3. Mr. Teodoro L. Locsin

132,309,520

4. Mr. Domingo Lee

132,308,355

5. Mr. Philip Ella Juico

132,301,569

6. Mr. Patrick Pineda

132,284,365

7. Mr. Adolfo Azcuna

132,284,364

8. Mr. Edison Coseteng

132,284,364

9. Mr. Andres Soriano III

132,182,000

10. Mr. Eduardo Soriano

132,173,943

11. Mr. Francisco C. Eizmendi, Jr.

132,164,470

12. Mr. Benigno P. Toda, Jr.

132,147,319

13. Mr. Antonio J. Roxas

132,146,107

14. Mr. Jose L. Cuisia, Jr.

132,141,775

15. Mr. Oscar Hilado

132,110,402

16. Mr. Eduardo M. Cojuangco, Jr.

2,280,618

17. Mr. Enrique M. Cojuangco

2,279,729

18. Mr. Manuel M. Cojuangco

2,279,719

19. Mr. Rafael G. Abello

2,278,863

20. Mr. Jose C. Concepcion

1,596

21. Mr. Marcos O. Cojuangco

875

22. Mr. Danilo S. Ursua

650

23. Mr. Rodolfo M. Tinsay

23

24. Mr. Amado C. Mamuric

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The fifteen individuals who received the highest number of votes were declared elected.

The PCGG claimed it represented 85,756,279 shares at the meeting including the corporate shares which corresponded to 1,286,744,185 votes which in turn were distributed equally among the fifteen (15) candidates who were declared elected.

Petitioners allege that the 27,211,770 shares or a total of 408,176,550 votes representing the corporate shares, were illegally cast by PCGG and should be counted in favor of petitioners so that the results of the election would

be as follows -

Stockholder

Votes

Originally

Credited

Add:

408,176,550

divided by 3

(136,058,850)

Resulting

Votes

1. Mr. Eduardo M.
Cojuangco, Jr.

2,280,618

136,058,850

138,339,468

2. Mr. Manuel M.
Cojuangco

2,279,719

136,058,850

138,338,569

3. Mr. Rafael G.
Abello

2,278,863

136,058,850

138,337,713

Stockholder

Votes

Originally

Credited

Less:

408,176,550

divided by 15

(27,211,770)

Resulting
Votes

4. Mr. Eduardo
Delos Angeles

135,115,521

27,211,770

107,903,751

5. Mr. Feliciano
Belmonte, Jr.

132,312,254

27,211,770

105,100,484

6. Mr. Teodoro
L. Locsin

132,309,520

27,211,770

105,097,750

7. Mr. Domingo
Lee

132,308,355

27,211,770

105,096,585

8. Mr. Philip
Ella Juico

132,301,569

27,211,770

105,089,799

9. Mr. Patrick
Pineda

132,284,365

27,211,770

105,072,595

10. Mr. Adolfo

Azcuna

132,284,364

27,211,770

105,072,594

11. Mr. Edison
Coseteng

132,284,364

27,211,770

105,072,594

12. Mr. Andres
Soriano III

132,182,000

27,211,770

104,970,230

13. Mr. Eduardo
Soriano

132,173,943

27,211,770

104,962,173

14. Mr. Francisco
C. Eizmendi, Jr.

132,164,470

27,211,770

104,952,700

15. Mr. Benigno
P. Toda, Jr.

132,147,319

27,211,770

104, 935,549

16. Mr. Antonio
J. Roxas

132,146,107

27,211,770

104,934,337

17. Mr. Jose L.
Cuisia, Jr.

132,141,775

27,211,770

104,930,005

18. Mr. Oscar
Hilado

132,110,402

27,211,770

104,898,632

19. Mr. Enrique
M. Cojuangco

2,279,729

20. Mr. Jose C.
Concepcion

1,596

21. Mr. Marcos
O. Cojuangco

875

22. Mr. Danilo
S. Ursua

650

23. Mr. Rodolfo
M. Tinsay

23

24. Mr. Amado
C. Mamuric

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The petitioners assert that if they were allowed to vote their corresponding shares accordingly, then they would obtain enough votes to be elected.

On May 31, 1989, petitioners filed with the Sandiganbayan a petition for quo warranto impleading as respondents the fifteen (15) candidates who were declared elected members of the board of directors of SMC for the year 1989-1990. Summons was issued only as to respondents Antonio J. Roxas, Jose L. Cuisia, Jr. and Oscar T. Hilado whose election will be affected by the claim of petitioners if the same were upheld.

In due course, a resolution was rendered by the Sandiganbayan on November 16, 1989, affirming its jurisdiction over the petition but dismissing it for lack of cause of action on the ground that the PCGG has the right to vote the sequestered shares.

Hence, this petition for certiorari, the main thrust of which is that the right to vote sequestered shares of stock is vested in the actual shareholders not in the PCGG.

Respondents were required to comment on the petition while petitioners were required to comment on the motion to dismiss filed by respondent SMC. The required comments and consolidated reply thereto have all now been submitted.

In G.R. No. 93005, the facts alleged are substantially similar in nature. Petitioners are stockholders of SMC as follows -

STOCKHOLDER

NO. OF SHARES

ENDUARDO M. COJUANGCO, JR.

52,900

ENRIQUE M. COJUANGCO

23,000

MANUEL M. COJUANGCO

23,000

On April 17, 1990, the annual meeting of the SMC shareholders was held. Among the matters taken up was the election of the fifteen (15) members of the board of directors of SMC for the ensuing year. Petitioners were among the twenty (20) nominees to the board, namely -

- Mr. Andres Soriano III

- Mr. Francisco C. Eizmendi, Jr.

- Mr. Eduardo J. Soriano
- Mr. Antonio J. Roxas
- Mr. Benigno P. Toda, Jr.
- Mr. Eduardo De Los Angeles
- Mr. Feliciano Belmonte, Jr.
- Mr. Renato Valencia
- Mr. Domingo Lee
- Mr. Teodoro L. Locsin
- Mr. Oscar Hilado
- Mr. Philip Ella Juico
- Mr. Adolfo Azcuna
- Mr. Edison Coseteng
- Mr. Patricio Pineda
- Mr. Eduardo M. Cojuangco, Jr.
- Mr. Marcos O. Cojuangco
- Mr. Rafael G. Abello
- Mr. Enrique M. Cojuangco
- Mr. Manuel M. Cojuangco

On the date of the meeting, there were 565,916,550 shares outstanding, of which 531,598,051 shares, or 93.58%, were present at the meeting, either in person or by proxy.[1] The PCGG was allowed to represent and vote the following shares of stock under sequestration:

STOCKHOLDER

NO. OF SHARES

NORTHEAST CONTRACT TRADERS, INC.

638,144

LABAYUG AIR TERMINALS, INC.

636,416

SPADE ONE RESORTS CORP.

588,160

HABAGAT REALTY DEVELOPMENT, INC.

583,280

PUNONG-BAYAN HOUSING DEV'T. CORP.

529,000

OCEAN SIDE MARITIME ENT., INC.

529,000

PHILIPPINE TECHNOLOGIES, INC.

529,000

SOUTHERN SERVICE TRADERS, INC.

481,916

WINGS RESORTS CORPORATION

419,536

UNEXPLORED LAND DEVELOPERS, INC.

411,288

PURA ELECTRIC COMPANY, INC.

398,336

PRIMAVERA FARMS, INC.

21,526,164

BLACK STALLION RANCH, INC.

14,350,772

MISTY MOUNTAIN AGRI'L. CORP.

14,350,772

PASTORAL FARMS, INC.

14,350,772

MEADOW LARK PLANTATION, INC.

10,763,080

SILVER LEAF PLANTATION, INC.

10,763,080

PCY OIL MANUFACTURING CORP.

671,464

METROPLEX COMMODITIES, INC.

671,104

LUCENA OIL FACTORY, INC.

676,696

DISCOVERY REALTY CORP.

676,808

DREAM PASTURES, INC.

676,948

FAR EAST RANCH, INC.

676,908

LHL CATTLE CORPORATION

676,860

ARCHIPELAGO REALTY CORP.

671,040

SOUTHERN STAR CATTLE CORP.

676,376

REDDEE DEVELOPERS, INC.

676,280

LANDAIR INT'L. MARKETING CORP.

675,856

FIRST UNITED TRANSPORT, INC.

675,848

CHRISTENSEN PLANTATION COMPANY

675,680

AGR'L. CONSULTANRY SERV., INC.

671,624

ECHO RANCH, INC.

671,584

NORTHERN CARRIERS CORPORATION

RADIO AUDIENCE DEVELOPERS

671,560

INTEGRATED ORGANIZATION, INC.

671,148

RADYO PILIPINO CORPORATION

671,104

SAN ESTEBAN DEVELOPMENT CORP.

670,716

RANCHO GRANDE, INC.

670,452

BALETE RANCH, INC.

665,576

VERDANT PLANTATIONS, INC.

581,900

KAUNLARAN AGRICULTURAL CORP.

581,900

VESTA AGRICULTURAL CORP.

581,900

ORO VERDE SERVICES, INC.

529,000

KALAWAKAN RESORTS, INC.

529,000

EDUARDO M. COJUANGCO, JR.

52,900

TOTAL

108,846,948

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The above shares are once again referred to as "corporate shares" in the petition. At the meeting, a representative of the corporate shares maintained that they are not under sequestration; or if they are under sequestration, the PCGG had no authority to vote them. Nevertheless, the PCGG was allowed to vote the corporate shares and the result of the election was as follows —

Stockholder

No. of Votes

1. Andres Soriano III

549,648,661

2. Francisco C. Eizmendi, Jr.

549,105,318

3. Eduardo J. Soriano

548,864,733

4. Antonio J. Roxas

548,809,271

5. Benigno Toda, Jr.

548,751,713

6. Eduardo De Los Angeles

522,678,527

7. Feliciano Belmonte

517,170,373

8. Renato Valencia

517,048,521

9. Domingo Lee

517,014,895

10. Teodoro L. Locsin, Jr.

516,361,120

11. Oscar Hilado

516,197,450

12. Philip Ella Juico

516,118,723

13. Adolfo S. Azcuna

516,105,147

14. Edison Coseteng

516,047,825

15. Patricio Pineda

515,990,250

16. Eduardo M. Cojuangco, Jr.

37,335,365

17. Marcos O. Cojuangco

73,404

18. Rafael G. Abello

40,404

19. Enrique M. Cojuangco

34,950

20. Manuel M. Cojuangco

30,955

Uncast votes

3,150,231

Invalid votes

381,865

TOTAL

7,956,960,120

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The fifteen individuals who received the highest number of votes were declared elected.

Representatives of the corporate shares manifested that if they were allowed to vote their shares, the votes corresponding to their shares, a total of 108,846,948 shares, amounting to 1,632,704,220 votes, would have been cast equally, or 544,234,740 votes each for petitioners Eduardo Cojuangco, Jr., Enrique M. Cojuangco and Manuel M. Cojuangco, all of whom would have been among those who received 15 highest number of votes, and that respondents Adolfo S. Azcuna, Edison Coseteng and Patricio Pineda would not be included therein, and should thus be ousted from the board of directors.

As the petition under G.R. No. 91925 which was decided adversely by the Sandiganbayan is now before this Court, and since time is of the essence as petitioners have been denied the right to vote since 1986, instead of seeking relief from the Sandiganbayan, the petitioners filed this petition for quo warranto (G.R. No. 93005), the issues in which are the same as those raised in G.R. No. 91925.

The petitions are impressed with merit.

Nothing is more settled than the ruling of this Court in *BASECO vs. PCGG*,^[2] that the PCGG cannot exercise acts of dominion over property sequestered. It may not vote sequestered shares of stock or elect the members of the board of directors of the corporation concerned --

a. PCGG May Not Exercise Acts of Ownership.

One thing is certain, and should be stated at the outset; the PCGG cannot exercise acts of dominion over property sequestered, frozen or provisionally taken over. As already earlier stressed with no little insistence, the act of sequestration, freezing or provisional takeover of property does not import or bring about a divestment of title over said property; does not make the PCGG the owner thereof. In relation to the property sequestered, frozen or provisionally taken over, the PCGG is a conservator, not an owner. Therefore, it can not perform acts of strict ownership; and this is specially true in the situations contemplated by the sequestration rules where, unlike cases of receivership, for example, no court exercises effective supervision or can upon due application and hearing, grant authority for the performance of acts of dominion.

"Equally evident is that the resort to the provisional remedies in question should entail the least possible interference with business operations or activities so that, in the event that the accusation of the business enterprise being 'ill-gotten' be not proven, it may be returned to its rightful owner as far as possible in the same condition as it was at the time of sequestration.

b. PCGG Has Only Powers of Administration

The PCGG may thus exercise only powers of administration over the property or business sequestered or provisionally taken over, much like a court-appointed receiver, such as to bring and defend actions in its own name; receive rents; collect debts due; pay outstanding debts; and generally do such other acts and things as may be necessary to fulfill its mission as conservator and administrator. In this context, it may in addition enjoin or restrain any actual or threatened commission of acts by any person or entity that may render moot and academic, or frustrate or otherwise make ineffectual its efforts to carry out its task; punish for direct or indirect contempt in accordance with the Rules of Court; and seek and secure the assistance of any office, agency or instrumentality of the government. In the case of sequestered businesses generally, (i.e., going concerns, businesses in current operation), as in the case of sequestered objects, its essential role, as already discussed, is that of conservator, caretaker, 'watchdog' or overseer, it is not that of manager, or innovator, much less an owner.

c. Powers over Business Enterprises Taken Over by Marcos or Entities or Persons Close to him; Limitations Thereon

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 * * * (its) disposal or dissipation;' and since the term is obviously employed in reference to going concerns, or business enterprises 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 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 sight of the ultimate objective of the whole exercise, which is to turn over the business to the Republic, once judicially established to be 'ill-gotten.' 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.

d. Voting of Sequestered Stock; Conditions Therefor

So, too, it is within the parameters of these conditions and circumstances that the PCGG may properly exercise the prerogative to vote sequestered stock of corporations, granted to it by the President of the Philippines through a memorandum dated June 26, 1986. That memorandum authorizes the PCGG, 'pending the outcome of proceedings to determine the ownership of * * *(sequestered) shares of stock,' 'to vote such shares of stock as it may have sequestered in corporations at all stockholders' meetings called for the election of directors, declaration of dividends, amendment of the articles of Incorporation, etc.' The Memorandum should be construed in such a manner as to be consistent with, and not contradictory of the Executive Orders earlier promulgated on the same matter. There should be no exercise of the right to vote simply because the right exists, or because the stocks sequestered constitute the controlling or a substantial part of the corporate voting power. The stock is not to be voted to replace directors, or revise the articles or by-laws, or otherwise bring about substantial changes in policy, program or practice of the corporation except for demonstrably weighty and defensible grounds, and always in the context of the stated purposes of sequestration or provisional takeover, i.e., to prevent the dispersion or undue disposal of the corporate assets. Directors are not to be voted out simply because the power to do so exists. Substitution of directors is not to be done without reason or rhyme, should indeed be shunned if at all possible, and undertaken only when essential to prevent disappearance or wastage of corporate property, and always under such circumstances as to assure that the replacements are truly possessed of competence, experience and probity.

In the case at bar, there was adequate justification to vote the incumbent directors out of office and elect others in their stead because the evidence showed *prima facie* that the former were just tools of President Marcos and were no longer owners of any stock in the firm, if they ever were at all. This is why, in its Resolution of October 28, 1986; this Court declared that —

'Petitioner has failed to make out a case of grave abuse or excess of jurisdiction in respondents' calling and holding of a stockholders' meeting for the election of directors as authorized by the Memorandum of the President * * * (to the PCGG) dated June 26, 1986, particularly, where as in this case, the government can, through its designated directors, properly exercise control and management over what appear to be properties

and assets owned and belonging to the government itself and over which the persons who appear in this case on behalf of BASECO have failed to show any right or even any shareholding in said corporation.'

It must however be emphasized that the conduct of the PCGG nominees in the BASECO Board in the management of the company's affairs should henceforth be guided and governed by the norms herein laid down. They should never for a moment allow themselves to forget that they are conservators, not owners of the business; they are fiduciaries, trustees, of whom the highest degree of diligence and rectitude is, in the premises, required."^[3]

In BASECO, Mr. Justice Padilla, in his concurring opinion,^[4] asserted that the removal and election of members of the board of directors are clear acts of ownership on the part of the shareholders of the corporation, a right that should be denied the PCGG under ordinary circumstances. Of course, in BASECO, wherein it appears that Mr. Marcos took possession and control of 95% of the total ownership thereof which he could not have acquired out of his lawfully gotten wealth, the PCGG was allowed by the Court to vote the sequestered shares.

Madame Justice Melencio-Herrera in a concurring opinion which in turn was concurred in by Justice Feliciano, stated that she has no objection to according the right to vote sequestered stock in case of a take-over of business actually belonging to the government and whose capitalization comes from public funds but which, somehow, landed in the hands of private persons, as in the case of BASECO. She advised caution and prudence in the case of sequestered shares of an on-going private business enterprise, specially the sensitive ones, since the true and real ownership of said shares is yet to be determined and proved more conclusively before the courts.^[5]

Mr. Justice Gutierrez, in a concurring and dissenting opinion, reiterated that the election of the board of directors is distinctly and unqualifiedly an act of ownership. He would disallow the voting of shares by the PCGG on the ground that the same is authoritarian and ultra vires.^[6]

Mr. Justice Cruz also dissented, He asserted that the acts of voting the shares and reorganizing the board of directors are acts of ownership which clash with the implacable principles of a free society, foremost of which is due process.^[7]

The Solicitor General, however, contends in these two cases that if the purpose of sequestration is to "help prevent the dissipation of the corporation's assets" or to "preserve" the said assets, the PCGG may resort to "acts of strict ownership," such as voting the sequestered shares.^[8]

There is no proof or indications showing that the petitioners seek to exercise their right as stockholders to dissipate, dispose, conceal, destroy, transfer or encumber their sequestered shares. On the other hand, there is no doubt that petitioners have the right to vote their shares at the shareholders meeting even if they are sequestered and that they as stockholders have a right to be voted for as members of the board of directors of SMC.^[9]

Besides, there are other means by which the said shares may be preserved and their dissipation prevented. The PCGG may restrain their sale, encumbrance, assignment or any other disposition during the period of sequestration. It may monitor the business operations of petitioners as to said shares. It need not vote the shares in order to accomplish its role as conservator.

The rule in this jurisdiction is, therefore, clear. The PCGG cannot perform acts of strict ownership of sequestered property. It is a mere conservator. It may not vote the shares in a corporation and elect the members of the board of directors. The only conceivable exception is in a case of a takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands as in BASECO.

The constitutional right against deprivation of life, liberty and property without due process of law is so well-known and too precious so that the hand of the PCGG must be stayed in its indiscriminate takeover of and

voting of shares allegedly ill-gotten in these cases. It is only after appropriate judicial proceedings when a clear determination is made that said shares are truly ill-gotten when such a takeover and exercise of acts of strict ownership by the PCGG are justified.

It is true that in G.R. No. 91925 the term of office of the assailed members of the board of directors, private respondents therein, for 1989-1990 had expired. To this extent said petition may be considered moot and academic. However, the issue of whether public respondent Sandiganbayan committed a grave abuse of discretion in rendering the resolution dated November 16, 1989, which affects all subsequent shareholders' meetings and elections of the members of the board of directors of SMC, is a justiciable controversy that must be resolved.

As to G.R. No. 93005 the term of office of private respondents as members of the SMC board of directors will expire on or after another election is held in April 1991.

Thus, the issue raised in G.R. No. 93005 relating to the election of the members of the board for 1990-1991 pursuant to sequestered shares of stock is a justiciable issue which should be determined once and for all.

In the Light of the foregoing discussion, the Court finds and so holds that the PCGG has no right to vote the sequestered shares of petitioners including the sequestered corporate shares. Only their owners, duly authorized representatives or proxies may vote the said shares. Consequently, the election of private respondents Adolfo Azcuna, Edison Coseteng and Patricio Pineda as members of the board of directors of SMC for 1990-91 should be set aside.

However, petitioners cannot be declared duly elected members of the board of directors thereby. An election for the purpose should be held where the questioned shares may be voted by their owners and/or their proxies. Such election may be held at the next shareholders' meeting in April 1991 or at such date as may be set under the by-laws of SMC.

Private respondents in both cases are hereby declared to be de facto officers who in good faith assumed their duties and responsibilities as duly elected members of the board of directors of the SMC. They are thereby legally entitled to the emoluments of the office including salary, fees and other compensation attached to the office until they vacate the same.[10]

Nevertheless, the right of the Government, represented by the PCGG, as conservator of sequestered assets must be adequately protected.

The important rights of stockholders are the following:

- a) the right to vote;
- b) the right to receive dividends;
- c) the right to receive distributions upon liquidation of the corporation; and
- d) the right to inspect the books of the corporation.

It is through the right to vote that the stockholder participates in the management of the corporation. The right to vote, unlike the rights to receive dividends and liquidating distributions, is not a passive thing because management or administration is, under the Corporation Code, vested in the board of directors, with certain reserved powers residing in the stockholders directly. The board of directors and executive committee (or management committee) and the corporate officers selected by the board may make it very difficult if not impossible for the PCGG to carry out its duties as conservator if the Board or officers do not cooperate, are hostile or antagonistic to the conservator's objectives.

Thus, it is necessary to achieve a balancing of or reconciliation between the stockholder's right to vote and the conservator's statutory duty to recover and in the process thereof, to conserve assets, thought to be ill-gotten wealth, until final judicial determination of the character of such assets or until a final compromise agreement between the parties is reached.

There are, in the main, two (2) types of situations that need to be addressed. The first situation arises where the sequestered shares of stock constitute a distinct minority of the voting shares of the corporation involved, such that the registered owners of such sequestered shares would in any case be able to vote in only a minority of the Board of Directors of the corporation. The second situation arises where the sequestered shares of stock constitute a majority of the voting shares of the corporation concerned, such that the registered owners of such shares of stock would in any case be entitled to elect a majority of the Board of Directors of the corporation involved.

Turning to the first situation, the Court considers and so holds that in order to enable the PCGG to perform its functions as conservator of the sequestered shares of stock pending final determination by the courts as to whether or not the same constitute ill-gotten wealth or a final compromise agreement between the parties, the PCGG must be represented in the Board of Directors of the corporation and of its majority-owned subsidiaries or affiliates and in the Executive Committee (or its equivalent) and the Audit Committee thereof, in at least an ex officio (i.e., non-voting) capacity. The PCGG representative must have a right of full access to and inspection of (including the right to obtain copies of) the books, records and all other papers of the corporation relating to its business, as well as a right to receive copies of reports to the Board of Directors, its Executive (or equivalent) and Audit Committees. By such representation and rights of full access, the PCGG must be able so to observe and monitor the carrying out of the business of the corporation as to discover in a timely manner any move or effort on the part of the registered owners of the sequestered stocks, alone or in concert with other shareholders, to conceal, waste and dissipate the assets of the corporation, or the sequestered shares themselves, and seasonably to bring such move or effort to the attention of the Sandiganbayan for appropriate action.

In the second situation above referred to, the Court considers and so holds that the following minimum safeguards must be set in place and carefully maintained until final judicial resolution of the question of whether or not the sequestered shares of stock (or, in a proper case, the underlying assets of the corporation concerned) constitute ill-gotten wealth or until a final compromise agreement between the parties is reached:

- An independent comptroller must be appointed by the Board of Directors upon nomination of the PCGG as conservator. The comptroller shall not be removable (nor shall his position be abolished or his compensation changed) without the consent of the conservator. The comptroller shall, in addition to his other functions as such, have charge of internal audit.
- The corporate secretary must be acceptable to the conservator. If the corporate secretary ceases to be acceptable to the conservator, a new one must be appointed by the Board of Directors upon nomination of the conservator.
- The external auditors of the corporation must be independent and must be acceptable to the conservator. The independent external auditors shall not be changed without the consent of the conservator.
- The conservator must be represented in the Board of Directors and in the Executive (or equivalent) and Audit Committees of the corporation involved and of its majority-owned subsidiaries or affiliates. The representative of the conservator must be a full director (not merely an honorary or ex officio director) with the right to vote and all other rights and duties of a member of the Board of Directors under the Corporation Code. The conservator's representative shall not be removed from the Board of Directors (or the mentioned Committees) without the consent of the conservator. The conservator shall, however, have the right to remove and change its representative at any time, and the new representative shall be promptly elected to the Board and its mentioned

Committees.

- All transactions involving the disbursement of corporate funds in excess of P5 million must have the prior approval of the director representing the conservator, in order to be valid and effective.
- The incurring of debt by the corporation, whether in the form of bonds, debentures, commercial paper or any other form, in excess of P5 million, must have the prior approval of the director representing the conservator, in order to be valid and effective.
- The disposition of a substantial part of assets of the corporation (substantial meaning in excess of P5 million) shall require the prior approval of the director representing the conservator, in order to be valid and effective.
- The above safeguards must be written into the articles of incorporation and by-laws of the company involved. In other words, the articles of incorporation and by-laws of the company must be amended so as to incorporate the above safeguards.
- Any amendment of the articles of incorporation or by-laws of the company that will modify in any way any of the above safeguards, shall need the prior approval of the director representing the conservator.

The amount of P5,000,000.00 referred to in paragraphs (e), (f) and (g) above is intended merely to be indicative. The precise amount may differ depending upon the size of the corporation involved and the reasonable operating requirements of its business.

Whether a particular case falls within the first or the second type of situation described above, the following safeguards are indispensably necessary:

- The sequestered shares and any stock dividends pertaining to such shares, may not be sold, transferred, alienated, mortgaged, or otherwise disposed of and no such sale, transfer or other disposition shall be registered in the books of the corporation, pending final judicial resolution of the question of ill-gotten wealth or a final compromise agreement between the parties; and
- Dividend and liquidating distributions shall not be delivered to the registered stockholders of the sequestered shares, including stock dividends pertaining to such shares, but shall instead be deposited in an escrow, interest-bearing, account in a first class bank or banks, acceptable to the Sandiganbayan, to be held by such banks for the benefit of whoever is held by final judicial decision or final compromise agreement, to be entitled to the shares involved.

The Court is aware that implementation of some of the above safeguards may require agreement between the registered stockholders and the PCGG as well as action on the part of the Securities and Exchange Commission. The Court, therefore, directs petitioners and the PCGG to effect the implementation of this decision under the supervision and control of the Sandiganbayan so that the right to vote the sequestered shares and the installation and operation of the safeguards above-specified may be exercised and effected in a substantially contemporaneous manner and with all deliberate dispatch.

WHEREFORE, the Petitions are GIVEN DUE COURSE and GRANTED. Private respondents Adolfo Azcuna, Edison Coseteng and Patricio Pineda are hereby DIRECTED to vacate their respective offices as members of the Board of Directors of the SMC as soon as this decision is implemented. Contemporaneously with the installation of the safeguards above-required to enable the PCGG to perform its statutory role as conservator of the sequestered shares of stock or assets, the respondent SMC is hereby ORDERED to allow the petitioners to vote their shares in person or by proxy and to be voted for as members of the Board of Directors of the SMC and otherwise to enjoy the rights and privileges of shareholders; and the PCGG is hereby ENJOINED from voting the sequestered shares of stock except as otherwise authorized in the safeguards above-required. The questioned order

of the Sandiganbayan dated 16 November 1989 is hereby SET ASIDE; however, the implementation of this decision shall be carried out under the supervision and control of the Sandiganbayan. The Court makes no pronouncement as to costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Bidin, Griño-Aquino, Regalado, and Davide, Jr., JJ., concur.

Padilla, J., see separate statement.

Sarmiento, J., No part. I was a Director of SMC immediately before I joined the Court.

Medialdea, J., no part.

[1] Certification dated April 20, 1990 issued Mr. Jose Y. Feria, Corporate Secretary of SMC; attached as Annex A to Petition.

[2] 150 SCRA 181 (1987).

[3] Ibid, pages 236 to 240; Emphasis supplied.

[4] Ibid, page 252.

[5] Ibid, pages 252 to 253.

[6] Ibid, pages 254 to 258.

[7] Ibid, pages 258 to 259.

[8] Citing PCGG vs. SEC, G.R. No. 82188, June 30, 1988.

[9] Section 24 of the Corporation Code (Batas Pambansa Blg. 68) provides as follows:

SEC. 24. Election of directors or trustees. -- At all elections of directors or trustees, there must be present, either in person or by representative authorized to act by written proxy, the owners of the majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote. The election must be by ballot if requested by any voting stockholder or member. In stock corporations, every stockholder entitled to vote shall have the right to vote in person or by proxy the number of shares of stock standing, at the time fixed in the by-laws, in his own name on the stock books of the corporation, or where the by-laws are silent, at the time of the election; and said stockholder may vote such number of shares for as many persons as there are directors to be elected or he may cumulate said shares and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares shall equal, or he may distribute them on the same principle among as many candidates as he shall see fit: Provided, that the total number of votes cast by him shall not exceed the number of shares owned by him as shown in the books of the corporation multiplied by the whole number of directors to be elected: Provided, however, That no delinquent stock shall be voted. Unless otherwise provided in the articles of incorporation or in the by-laws, members of corporations which have no capital stock may cast as many votes as there are trustees to be elected but may not cast more than one vote for one candidate. Candidates receiving the highest number of votes shall be declared elected. Any meeting of the stockholders or members called for an election may adjourn from day to day or from time to time but not since die or indefinitely if, for any reason, no election is held, or if there are not present or represented by proxy, at the meeting, the owners of a majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote. (Emphasis supplied.)

Under Section 24 thereof, a director must own at least one share in his name.

[10] Civil Liberties Union vs. The Executive Secretary and Anti-Graft League of the Philippines vs. The Executive Secretary, G.R. Nos. 83896 and 83815, February 22, 1991.

SEPARATE STATEMENT

PADILLA, J.:

In all cases (en banc and division) involving San Miguel Corporation (SMC), I take no part because of personal equity interest in said corporation. I am taking no part in this case for the same reason even if the real party-respondents in the case are the PCGG and its nominees to the SMC board of directors, and SMC itself appears to be only a nominal party in the case.

At the same time, I will be less than candid if I did not state on this occasion that in earlier decisions of this Court, I have expressed my views on sequestration and its implicitness. I refer particularly to my concurring opinion in BASECO vs. PCGG, 150 SCRA 252 (cited on page 14 of the present ponencia of Mr. Justice Gancayco) and to my dissenting opinion in Eduardo M. Cojuangco, Jr. vs. Republic of the Philippines, et al., G.R. No. 93278, 4 March 1991.

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