

**REBECCO E. PANLILIO AND TRINIDAD DIAZ-ENRIQUEZ,
PETITIONERS, VS. SANDIGANBAYAN, SECOND DIVISION, AND
PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,
RESPONDENTS.**

G.R. No. 92276. June 26, 1992

Ponente: NOCON, J.

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NOCON, J.:

This petition for certiorari and prohibition questions the authority of respondent Presidential Commission on Good Government (PCGG) to investigate and/or reinvestigate ill-gotten wealth cases in view of the enactment of the Republic Act. No. 6770, otherwise known as the Ombudsman Act of 1989, and, assuming it has such authority, PCGG's lack of the "cold neutrality of an impartial judge" in conducting the reinvestigation of petitioners' case.

The facts are as follows: On August 10, 1989, the PCGG filed with respondent Sandiganbayan an information against petitioners Rebecca E. Panlilio and Trinidad Diaz-Enriquez for violation of Section 4 (b) of the Anti-Graft and Corrupt Practices Act, alleging that:

"x x x on or about and during the period from 1974 to 1980, both dated inclusive, in Ternate, Cavite and Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the accused as private individuals and capitalizing or taking advantage of their close personal relation with ex-President Ferdinand E. Marcos, did then and there willfully, unlawfully and knowingly induce, persuade or cause then President Ferdinand E. Marcos to violate section 3 (e) of R.A. 3019, by issuing several presidential directives and instructions geared towards the acquisition and titling of lands with the former U.S. Calumpang Naval Reservation and other lands adjoining thereof, in Ternate, Cavite, to form part of Puerto Azul complex, a property controlled and operated by the accused and causing the use of government funds, personnel and equipment in the constructions of internal road network and bridges within the said Puerto Azul complex, thereby giving to its owner/owners unwarranted benefits and advantage through manifest partiality and evident bad faith, to the damage and prejudice of the government.

"CONTRARY TO LAW."

The case was docketed as Criminal Case No. 13784.

After posting bail, petitioners filed a motion to quash the information on the grounds that (1) the facts charged do not constitute an offense; (2) respondent court has no jurisdiction over the persons of the accused, nor over the offense charged; (3) the preliminary investigation of PCGG I.S. No. 056 has not been terminated, and (4) the PCGG had no authority to file the information.

On November 2, 1989, the PCGG opposed the motion to quash. On November 8, 1989, petitioners filed a "Comment [on Opposition] and Supplement to Motion to Quash", requesting that the motion to quash be considered as and/or converted into a motion for reinvestigation, and praying that the Sandiganbayan order the

PCGG to reinvestigate case in order that they may submit controverting affidavits and evidence.

In a resolution promulgated on November 29, 1989, the Sandiganbayan denied petitioners' motion to quash but granted their prayer for reinvestigation, ordering (1) the PCGG to conduct the reinvestigation, (2) allow petitioners to submit their counter-affidavits and supporting evidence within a reasonable period under the circumstances, and (3) submit the proper resolution and/or manifestation as to the results thereof on January 4, 1990. The arraignment of petitioners scheduled on December 8, 1989 was reset to January 4, 1990 in the event of an adverse resolution.

In compliance with the aforementioned resolution, the PCGG served on petitioners the Order dated December 14, 1989 directing them to submit their respective counter-affidavits and supporting evidence to Prosecutor Gregorio S. Daproza on December 28, 1989 at 2:00 p.m., after which, the case would be deemed submitted for resolution.

On December 26, 1989, petitioners filed with the PCGG a "Motion for Extension of Time to Submit Counter-Affidavit" on several grounds, among which, petitioners would seek a clarification from the Sandiganbayan as to whether the PCGG had jurisdiction to reinvestigate the case in view of the enactment of Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989.

On January 2, 1990, petitioners filed a "Motion for Clarification" with the Sandiganbayan seeking to determine whether the PCGG had the jurisdiction to reinvestigate their case. In an Order dated January 4, 1990, the Sandiganbayan held that the PCGG retained the jurisdiction to file and prosecute the instant case, there being no showing that the Ombudsman had indicated its authority to take over the prosecution of the same pursuant to Section 15 (1) of the Ombudsman Act of 1989.

In a letter dated January 9, 1990, petitioner Panlilio requested the Office of the Ombudsman to conduct the reinvestigation of Criminal Case No. 13784 pursuant to Section 15 (1) of the Ombudsman Act. In its reply dated January 19, 1990, the Ombudsman denied the request, stating that the exercise of its authority over the aforementioned case is inappropriate.

On February 15, 1990, petitioners moved for the reconsideration of the Sandiganbayan Order dated January 4, 1990. During the hearing on petitioners' motion, the PCGG did not appear but asked time to react to the motion. On February 20, 1990, petitioners received a copy of PCGG's Order dated February 19, 1990 holding that for failure of petitioners to file their respective counter-affidavits, the reinvestigation of the case is deemed terminated.

During the scheduled arraignment of petitioners on February 22, 1990, they were served in open court a copy of the Sandiganbayan's resolution dated February 21, 1990 denying their motion for reconsideration. Petitioners then requested for an opportunity to elevate the matter to the Supreme Court and/or to refile their motion to quash. The Sandiganbayan denied the request and ordered the arraignment of the petitioner Panlilio. Petitioner Panlilio refused to enter a plea, thus the Sandiganbayan ordered a plea of "not guilty" be entered into the record in his behalf. As to petitioner Enriquez, who was sick at the time, her arraignment was rescheduled to March 7, 1990.

On March 6, 1990, petitioners filed the instant petition, averring that (1) the Ombudsman, and not the PCGG, has the primary jurisdiction to reinvestigate Criminal Case No. 13784; (2) PCGG does not possess "the cold neutrality of an impartial judge" and is incompetent in proceeding with the reinvestigation; and (3) petitioners did not waive their right to reinvestigation.

We find the petition meritorious.

Petitioners were, however, mistaken when they claim the incompetency of the PCGG to investigate their case in

view of the primary jurisdiction of the Ombudsman to investigate hidden wealth cases. While Section 15 (1) of Republic Act No. 6770 gave the Ombudsman the primary jurisdiction over cases cognizable by the Sandiganbayan it did not specifically revoke the PCGG's power of investigation. In *Cojuangco, Jr. vs. Presidential Commission on Good Government*,^[1] We held that said provision merely gave the Ombudsman concurrent authority to investigate offenses involving public officers or employees with similarly authorized agencies of the government, such as the PCGG, with the qualification that the Ombudsman may take over at any stage of such investigation in the exercise of its primary jurisdiction.^[2]

The authority of the PCGG to conduct preliminary investigation in ill-gotten wealth cases is provided for in Sections 2 (b) and 3 (a) Executive Order No. 1 and Sections 1 and 2 of Executive Order No. 14.^[3] In *Cojuangco, supra*, We have held that these provisions grant the PCGG -?

"x x x the power to investigate and prosecute such ill-gotten wealth cases of the former President, his relatives and associates, and graft and corruption cases that may be assigned by the President to the PCGG to be filed with the Sandiganbayan. No doubt, the authority to investigate extended to the PCGG includes the authority to conduct a preliminary investigation."^[4]

We also noted in the aforementioned case that under Section 15 (11) of Republic Act No. 6770, the Ombudsman was vested only with the power to investigate and to initiate the proper action for the recovery of ill-gotten wealth and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties therein, thereby implicitly maintaining the authority of the PCGG to conduct preliminary investigation of ill-gotten wealth and/or unexplained wealth amassed before February 25, 1986.^[5]

This does not mean, however, that the Ombudsman does not have primary jurisdiction over ill-gotten wealth and/or unexplained wealth amassed before February 25, 1986. It has, and We reiterate Our ruling in *Cojuangco*, that despite Section 15 (11) of Republic Act No. 6770, the Ombudsman has primary jurisdiction to investigate such cases.^[6] The Ombudsman, however, may decline in exercising its primary jurisdiction, as in the case at bar, thereby leaving the concurrent government agency concerned, the PCGG, the task of conducting the preliminary investigation.

Regarding the issue of whether PCGG possessed the "cold neutrality of an impartial judge," We find for the petitioners.

We agree with the petitioners that it is impossible for the PCGG to possess the cold neutrality of an impartial judge in conducting the preliminary investigation of I.S. No. 056 when the PCGG itself gathered the evidence in said case and filed the complaint against petitioners. It cannot both be a prosecutor and a judge at the same time.^[7]

Moreover, the PCGG has already shown a marked bias against petitioners when it abruptly terminated the preliminary investigation and resolved the case against them without even notifying petitioners of its adverse resolution, thereby preventing petitioners from filing a motion for reconsideration or moving that they be given additional time to file counter-affidavits and supporting evidence. This is the primary reason why the Sandiganbayan granted the petitioners' request for the reinvestigation of the case against them.

Therefore, to ensure a just and fair administration of justice, the PCGG should be disqualified from conducting a reinvestigation of PCGG I.S. No. 056 and should transmit the records of the same to the Ombudsman.

On the issue of whether petitioners had waived their right to a preliminary investigation, We likewise find for the petitioners.

The Sandiganbayan erred in considering that the petitioners have waived their right to a preliminary investigation

for their failure to submit their counter-affidavits on December 28, 1989. Petitioners' failure to submit their counter-affidavits was because of the pendency of their "Motion for Clarification" with the Sandiganbayan at the time. When said motion was denied by the Sandiganbayan in its Order dated January 4, 1990, the petitioners went directly to the Ombudsman to ask for its intervention. It was only when the Ombudsman declined, did the petitioners seek a reconsideration of the Sandiganbayan's Order of January 4, 1990. During all this time, petitioners repeatedly told the PCGG Prosecutor that they would submit their counter-affidavits and supporting evidence once the issue of the Ombudsman's jurisdiction over the case had been determined with finality. Clearly, there is no waiver of petitioners' right to a preliminary investigation.

WHEREFORE, the petition is hereby GRANTED. The preliminary investigation conducted by the PCGG, including the information filed in Criminal Case No. 13784, are hereby declared null and void. The PCGG is ordered to transmit the records of PCGG I.S. No. 056 to the Ombudsman for appropriate action. Cost de officio.

SO ORDERED.

Gutierrez, Jr., Cruz, Paras, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Romero, and Bellosillo, JJ., concur.

Narvasa, C.J., joins J. Davide, Jr., in his concurring and dissenting opinion.

Feliciano, J., no part.

[1] 190 SCRA 226 (1990).

[2] Id., at 241.

[3] Sections 2 and 3, Executive Order No. 1 provide:

"SECTION 2. - The Commission shall be charged with the task of assisting the President in regard to the following matters:

"(a) The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.

"(b) The investigation of such cases of graft and corruption as the President may assign to the Commission from time to time.

"(c) The adoption of safeguards to ensure that the above practices shall not be repeated in any manner under the new government, and the institution of adequate measures to prevent the occurrence of corruption.

"SECTION 3. - The Commission shall have the power and authority:

"(a) To conduct investigations as may be necessary in order to accomplish and carry out the purposes of this order. (Emphasis supplied)."

Sections 1 and 2, Executive Order No. 14 provide:

"SECTION 1. Any provision of the law to the contrary notwithstanding, the Presidential Commission on Good Government with the assistance of the Office of the Solicitor General and other government agencies, is hereby empowered to file and prosecute all cases investigated by it under Executive Order No. 1, dated February 28,

1986 and Executive Order No. 2, dated March 12, 1986, as may be warranted by its findings.

"Section 2, The Presidential Commission on Good Government shall file all such cases, whether civil or criminal, with the Sandiganbayan, which shall have exclusive and original jurisdiction thereof. (Emphasis supplied)."

[4] 190 SCRA, at 238.

[5] Id., at 241-242.

[6] Id., at 242.

[7] Id., at 254.

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CONCURRING AND DISSENTING OPINION

DAVIDE, JR., J.:

I concur with the conclusion that although Section 15(1) of R.A. No. 6770 gives the Ombudsman primary jurisdiction over cases cognizable by the Sandiganbayan, it does not revoke the PCGG's power of investigation. The Ombudsman may, however, take over at any stage of such investigation in the exercise of such primary jurisdiction; it may likewise decline to exercise it and leave the investigation to the PCGG.

In the instant case, the Office of the Ombudsman denied petitioner's request of 9 January 1990 for it to conduct a reinvestigation of Criminal Case No. 13784 pursuant to the aforesaid Section 15 (1) of R.A. No. 6770.

I cannot, however, join the majority in its view that the PCGG should be divested of its power to conduct the reinvestigation because it does not possess "the cold neutrality of an impartial judge." The opinion in *Cojuangco, Jr. vs. PCGG* (190 SCRA 226) cannot be relied upon. In that case, petitioner Cojuangco succeeded in demonstrating that the criminal cases involve transactions covered by Civil Case No. 0033 which the PCGG filed on 31 July 1987 against him and others. It further appears that in connection with said case, the PCGG, "as law enforcer, gathered evidence as to the alleged ill-gotten wealth of petitioner and intervenors and, after satisfying itself that there is a prima facie case, sequestered and issued a freeze order for all the properties of petitioner."

It was upon these facts that this Court ruled that:

"The Court cannot close its eyes to the glaring fact that in earlier instances, the PCGG had already found a prima facie case against the petitioner and intervenors when, acting like a judge, it caused the sequestration of the properties and the issuance of the freeze order of the properties of petitioner. Thereafter, acting as a law enforcer, in collaboration with the Solicitor General, the PCGG gathered the evidence and upon finding cogent basis therefor filed the aforestated civil complaint. Consequently the Solicitor General filed a series of criminal complaints.

It is difficult to imagine how in the conduct of such preliminary investigation the PCGG could even make a turn about and take a position contradictory to its earlier findings of a prima facie case against petitioner and intervenors. This was demonstrated in the undue haste with which I.S. Nos. 74 and 75 was (sic) investigated and the informations were filed in court even as the petitioner and intervenors questioned its authority, invoked the denial of due process and promptly informed the PCGG of the filing of this petition.

In our criminal justice system, the law enforcer who conducted the criminal investigation, gathered the evidence and thereafter filed the complaint for the purpose of preliminary investigation cannot be allowed to conduct the preliminary investigation of his own complaint. It is to say the least arbitrary and unjust.

It is in such instances that We say one cannot be a prosecutor and 'a prosecutor and a judge at the same time.' Having gathered the evidence and filed the complaint as a law enforcer, he cannot be expected to handle with impartiality the preliminary investigation of his own complaint, this time as a public prosecutor.

The circumstances of the instant petition are even worse. To repeat, the PCGG and the Solicitor General finding a prima facie basis filed a civil complaint against petitioner and intervenors alleging substantially the same illegal or criminal acts subject of the subsequent criminal complaints the Solicitor General filed with the PCGG for preliminary investigation. While ostensibly, it is only the Solicitor General who is the complainant in the criminal cases filed with the PCGG, in reality the PCGG is an unidentified co-complainant.

Moreover, when the PCGG issued the sequestration and freeze orders against petitioner's properties, it was on the basis of a prima facie finding that the same were ill-gotten and/or were acquired in relation to the illegal disposition of coconut levy funds. Thus, the Court finds that the PCGG cannot possibly conduct the preliminary investigation of said criminal complaints with the 'cold neutrality of an impartial judge,' as it has prejudged the matter. Add to this the fact that there are many suits filed by petitioner and the intervenors against the PCGG and vice versa."

Similar or at least substantially similar facts have not been shown to exist in this case. Neither can a conclusion of bias on the part of the PCGG be drawn from the fact that it or red the termination of the investigation for, to my mind, petitioners resorted to all possible but patently unnecessary legal maneuvers to delay the proceedings, such as: (a) the filing of a motion for clarification with the Sandiganbayan seeking the determination of whether the PCGG had the jurisdiction to investigate the case, despite the Sandiganbayan's unequivocal Resolution of 29 November 1989 directing the PCGG to conduct the reinvestigation and allowing petitioners to submit their counter-affidavits and supporting evidence before the PCGG, (b) the sending of a letter to the Ombudsman requiring it to conduct the reinvestigation despite the equally unequivocal Order of 4 January 1990 of the Sandiganbayan holding that the PCGG retained its jurisdiction to file and prosecute the case and (c) the filing of a motion to reconsider the said order. The PCGG merely performed its duty. It should not be faulted for frustrating attempts to further delay the preliminary investigation of the case. The performance of its official duty enjoys the presumption of regularity. Only clear and convincing evidence to the contrary -- not mere speculation or self-serving conclusions, as in this case -- can rebut it.

Accordingly, I vote to deny the petition.

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