

FIRST PHILIPPINE HOLDINGS CORPORATION, PETITIONER, VS. SANDIGANBAYAN, SECOND DIVISION, RESPONDENT.

G.R. No. 95197. September 30, 1991

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This is a petition filed by the First Philippine Holdings Corporation to compel the Sandiganbayan to "consent to the lifting of the sequestration" over 13.9 million shares of the Manila Electric Company effected by the Presidential Commission on Good Government, as a result of an agreement between the parties on the disposition thereof. The facts are as follows:

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It appears from the motion and supporting documents that Meralco Securities Corporation (MSC) held all the common shares totalling 23,143,505, and preferred shares numbering 5,377,002, of the capital stock of Manila Electric Rail and Light Company (MERALCO).

MSC was in turn owned by Benpres Corporation (BENPRES),¹ the Lopez group,² and more than 11,000 shareholders in the proportion of 27%, 20%, and 53% of the MSC capital stock, respectively.

After the declaration of martial law in 1972, Romualdez organized the Meralco Foundation, Inc. (MFI), with alleged initial contribution of P25,000.00. In 1974 MFI acquired all the 27% MSC shares of BENPRESS through "sinister strategies and underhanded maneuvers" and under "pay-when-able" terms. MFI also bought 17% of the MSC shares from individual shareholders payable in eight-year installments with assumption of subscription obligation. Thus MFI amassed a total of 44% of the capital stock of MSC.

In October 1977, MSC was allegedly coerced to sell, as it did sell, to MFI all its 23,143,505 MERALCO common shares at P35.00 per share or for P810,022,675 and all its 5,377,002 MERALCO preferred shares after conversion into 1,792,334 common shares at P35.00 per share also or for P62,731,690 or a total price of P872,754,365. MFI made a down payment of P204,000,000 which it borrowed from the Development Bank of the Philippines (DBP), using 11,700,000 MERALCO shares as collateral. The balance of P668,754,365.00 was payable in installments from 1980 to 1991, plus 10% interest per annum. The transfer of title over the MERALCO shares was effective February 6, 1978. It was stipulated that should there be two successive defaults in the payment of interest or a default in the payment of the principal, MSC would collect, as MFI's attorney-in-fact, dividends on the shares equal to the unpaid interest and/or principal. And if MFI failed to pay four successive interests or two successive installments on the principal, it would pledge to MSC such number of MERALCO shares as would be sufficient to cover the unpaid interests and installments.

In March 1979, MFI and MSC, which had changed its corporate name to First Philippine Holdings Corporation (FPHC), made some modification in their stock purchase transaction. FPHC was authorized to use the unpaid MERALCO shares as collateral for its own obligation. It was now agreed that should MFI default in the payment of the principal or interest, FPHC would have the option to partly rescind their transaction and MFI would immediately return back the unpaid MERALCO shares to FPHC.

Accordingly, FPHC pledged 16.2 million MERALCO shares to DBP as security for its loan of P434,000,000. As already stated, MFI had also borrowed from DBP P204,000,000 secured by 11,700,000 MERALCO shares.

In 1984, because of financial difficulties, MERALCO stopped paying dividends. Consequently, MFI could not pay FPHC and DBP, and FPHC could not also pay DBP. In 1986, after the EDSA revolution, MFI still owed DBP P181,900,000 collateralized with 11.7 million MERALCO shares already fully paid by MFI to FPHC, while FPHC still owed DBP 416,000,000 secured by 16.2 million MERALCO shares, 13.9 million of which had not yet been paid by MFI to FPHC. DBP transferred both loans to APT.

In 1987, MFI and FPHC, under new sets of directors and officers appointed by the Aquino government, proposed, and APT approved, a cash settlement in which MFI and FPHC would pay APT P181,900,000 and P416,000,000, respectively, plus 12% yearly interest from June 30, 1986. In support of their proposals, MFI and FPHC sought the financial assistance of the Bank of the Philippine Islands (BPI) and J.P. Morgan Trust Co. (Morgan). On August 28, 1987, MFI and FPHC signed an agreement with BPI/Morgan under which:

(a) BPI/Morgan would pay APT P480,000,000 on behalf of FPHC and P210,000,000 on behalf of MFI;

(b) APT would release the 13.9 million MERALCO shares to FPHC and 14 million MERALCO shares to MFI, free from the pledge;

(c) FPHC would in turn deliver the 13.9 million shares to BPI/Morgan, and MFI would also deliver to BPI/Morgan 6 million of the 14 million shares;

(d) BPI/Morgan would sell the 19.9 million shares over a period of four years to spread ownership of MERALCO as widely as possible, and after BPI/Morgan had recovered its investment, the profit would be split equally between it and FPHC/MFI.

On September 10, 1987, FPHC and MFI made the 10% deposit to APT as required in the agreement.

However, four days later, FPHC was informed that the Presidential Commission on Good Government (PCGG) had sequestered in August 1987, all the MERALCO common shares in the name of MFI, including the 19.9 million shares pledged to APT, as alleged ill-gotten wealth of Romualdez. On May 25, 1988, the PCGG lifted the sequestration upon the request of the Ad-hoc Committee which reviewed the transaction. But on July 20, 1988, PCGG re-sequestered the 19.9 million shares pledged to APT pending another review.

Coincidentally, on the same day, MFI reconveyed to FPHC 13,900,431 MERALCO common shares pursuant to their modified stock purchase agreement that in case of default of MFI in the payment of the MERALCO shares, the unpaid shares would be reverted to FPHC. Upon request for opinions, Secretary of Justice Sedfrey A. Ordonez and former Chief Justice Claudio Teehankee separately opined that it was but fair and just that the unpaid MERALCO shares should be reconveyed to FPHC.

After the second review by the Committee on Government Financial Institution (GFI) and in accordance with the instruction of President Corazon A. Aquino, APT re-opened negotiations with FPHC, MFI, and BPI/Morgan. It was agreed that the profit from the sale of 19.9 million MERALCO shares would be divided as follows: 30% to APT, 35% to FPHC/MFI, and 35% to BPI/Morgan. The 30% share donated to APT was in lieu of additional interest on the loans to FPHC and MFI and would be used in the implementation of the Comprehensive Land Reform Program (CARP).

On May 10, 1989, the PCGG, acting on the petition of APT to lift the sequestration of the 19.9 million MERALCO shares, issued a resolution, the dispositive portion of which reads:

Wherefore, the Commission resolves, as it does hereby resolve, to lift the sequestration of the Meralco shares held by Meralco Foundation [MFI], First Holding [FPHC], and/or APT, and are [sic] covered by the petition, to allow their redemption from mortgage and their subsequent transfer to the Syndicate [BPI/Morgan] for

resale, under the following conditions:

"1) Prior to or simultaneously with that redemption and transfer, Meralco Foundation shall divest itself of all of its holdings of Meralco shares and transfer them unconditionally to the government.

"If such transfer may not be done under its charter, then Meralco Foundation must either

"a) dissolve itself so as to allow the transfer in liquidation of all its Meralco shares to the government, or

"b) amend its articles of incorporation to empower its trustees to transfer all of its Meralco shares as above stated to purge itself of the ill-gotten wealth that it now possesses.

"2) The share pertaining to Meralco Foundation in the profit expected from the sale of the Meralco shares by the Syndicate under the proposed arrangement to release mortgage shall be retained by the Foundation but devoted by it for the promotion of its objectives which are akin to or in furtherance of the purposes of the Comprehensive Agrarian Reform Program.

"3) Meralco Foundation, First Holding, Development Bank of the Philippines and/or Meralco shall obtain the consent of Sandigan [sic] to this lifting of sequestration.

"On receiving notice of compliance with the foregoing conditions, the Commission shall issued the necessary lift order.

"We make no determination herein on the status of First Philippine Holding, Inc."

Meanwhile on July 31, 1987, the plaintiff instituted the present action against Romualdez and many other defendants (Record, pp. 1-44). It alleged that he and his co-defendants, acting in unlawful concert with each other and taking advantage of the public position of one of them, amassed ill-gotten wealth, such as the MERALCO shares, and held the same in the names of dummy corporations, like MFI. It prayed the properties they so acquired be reconveyed to it, plus damages.

To obtain Our consent to the lifting of the sequestration of 13.9 million MERALCO shares that was reconveyed by MFI to FPHC and are now pledged to APT, as required in the PCGG resolution quoted earlier, FPHC filed the instant motion. Significantly, MFI has not filed a similar motion, either jointly with or separately from FPHC, for the lifting, as required by the PCGG, of the sequestration of 6 million MERALCO shares that are now also mortgaged to APT.[1]

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The Sandiganbayan denied the petitioner's motion to obtain its consent, on the grounds as follows:

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But the second condition imposed by PCGG hold Us back. The reason is that the condition and/or compliance therewith by MFI assume that the 14 million MERALCO shares fully paid by MFI to FPHC are really illegal wealth of the defendants, particularly Romualdez, and that MFI is their dummy holding the shares for them. Whether the assumption is correct or not is precisely a crucial issue in this case to be resolved with binding effect and finality not by PCGG and/or MFI, but by the Sandiganbayan, in the first instance, and the Supreme Court, on appeal. Undoubtedly, until we shall have determined the question in the affirmative after hearing the parties concerned in the trial on the merits, it would be premature and unfair to request the defendants, particularly Romualdez, and MFI, their alleged dummy, to divest themselves of the 14 million fully paid MERALCO shares and cede them to the plaintiff. And we cannot go to the trial on the merits at the present stage of the proceedings. We still have to acquire jurisdiction over Romualdez and five other defendants.

This is not to mention other matters which may arise in connection with the incident on which Romualdez may

have the right to be heard.[2]

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The petitioner argues that the Sandiganbayan is guilty of a grave abuse of discretion because it does not allegedly matter who the present (rightful) owner of the shares in question is, the Meralco Foundation, Inc., or Benjamin Romualdez; either way, it, the petitioner, is entitled thereto as agreed upon. The Solicitor General agrees, and adds that Mr. Romualdez need not be notified, since he is not even claiming ownership of the shares.

The sole issue is whether or not the Sandiganbayan may deny the request for its consent when the parties have agreed on the disposition of the property subject of controversy.

After deliberating on the petition, as well as the comments of the Solicitor General and the Asset Privatization Trust, the Court resolved to give due course to the petition and grant the same, on concerns that: (1) compromises are encouraged in civil cases; (2) the Republic of the Philippines has agreed to settle the controversy; and (3) the agreement will not in any way prejudice the rights of possible third persons, Benjamin Romualdes included.

In the case of Republic v. Sandiganbayan[3] this Court held that the Presidential Commission on Good Government may compromise its (civil) cases,[4] and there seems to be no question that the agreement embodied in the Commission's Resolution dated May 10, 1989, we quote:

"1987

— At the time of the Honasan coup attempt, JP Morgan and BPI (the Syndicate) packaged a deal for the redemption of the mortgaged shares as follows:

a) The Syndicate would pay to APT P480,000,000 in behalf of First Holding, and P210,000,000 in behalf of Meralco Foundation;

b) APT would deliver 13.9 million Meralco shares to First Holding, all released from mortgage;

c) First Holding would deliver the 13.9 million Meralco shares to the Syndicate;

d) Of the 14 million Meralco shares it would receive from APT, Meralco Foundation would deliver 6 million to the Syndicate, and retain 8 million.

The resulting stockholder distribution would be as follows:

Meralco Foundation -

22,222,846 shares

-51%

Syndicate -

19,923,574 shares

-46.4%

First Holding -

34,410 shares

-0.08%

Others -

711,939 shares

-1.66%

Part of the deal is the undertaking by the Syndicate to sell, within a period of four years, the 16.9 million shares that Meralco Foundation and First Holding will turn over to it. The sale will aim to disperse the stockholding as widely as possible, with emphasis on sale to Meralco's residential customers. The profit on the sale, net of expenses, will be shared as follows:

30% to APT

35% to First Holding/Meralco Foundation

35% to Syndicate

All Meralco shares were sequestered in July 1987, but the sequestration was lifted in May 1988 to allow the sale of enough of them to satisfy the mortgage debt. They, however, were re-sequestered to give the government time to re-examine the transaction. The petition now before the Commission is the result of a compromise agreement following that re-examination."^[5]

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is in the nature of a compromise agreement.

Under the Civil Code, the Court may reject a compromise only if it is covered by the following prohibition:

Art. 2035. No compromise upon the following questions shall be valid:

- The civil status of persons;
- The validity of a marriage or a legal separation;
- Any ground for legal separation;
- Future support;
- The jurisdiction of courts;

- Future legitime.

Art. 2036. A compromise comprises only those objects which are definitely stated therein, or which by necessary implication from its terms should be deemed to have been included in the same.

A general renunciation of rights is understood to refer only to those that are connected with the dispute which was the subject of the compromise.[6]

or if it is, in general, contrary to "law, morals, good customs, public order or public policy." [7] The Court sees nothing objectionable in the terms and conditions set forth by the parties.

On the contrary, it seems clear that it is in the best interest of the Republic, the claimant, to consummate the agreement. According to the Solicitor General:

Under the compromise agreement, the Syndicate in behalf of the FPHC would pay APT P480,000,000 and in behalf of MFI P210,000. APT will share in the profit of the sale of the 16.9 million MERALCO shares by the Syndicate to the extent of 30% while FPHC and MFI will each share 35%. The retained profit of the Syndicate will only be 35% of the total profit.

All the 22,222,846 MERALCO shares of MFI, which represent 51.81% of all MERALCO shares, would be voluntarily and unconditionally transferred to the Government, either by MFI dissolving itself or by MFI amending its articles of incorporation to purge itself of the ill-gotten wealth that it now possesses. The 35% share in the profits of MFI on the sale of MERALCO shares, that it will turn over to the Syndicate, shall be retained by MFI but devoted by it for the promotion of its objectives which are akin to or in furtherance of the purposes of the Comprehensive Agrarian Reform Program. And the status of FPHC, which would now own 34,410 MERALCO shares or 0.08% of the entire MERALCO shares, is still subject to the determination by the PCGG and the respondent Court.[8]

The Sandiganbayan can not rightfully raise the pendency of Civil Case No. 0035 as a deterrent to the parties' agreement--and the dropping of the case insofar as the Meralco Foundation, Inc. vis-a-vis Benjamin Romualdez is concerned. Precisely, the agreement is in the nature of a waiver on the part of the Government, and that the assets in question (the shares of stock) do not constitute, after all, "ill-gotten wealth" or that if they are, the Government is returning them to the rightful owner. Of course, none of that will absolve Mr. Romualdez if he is guilty, from criminal liability.[9] Civilly, however, the Government has all the right to desist from prosecuting its cases.

As a compromise, however, the Resolution dated May 10, 1989 requires the approval of the Sandiganbayan. Under Article 2037 of the Civil Code, "there shall be no execution except in compliance with a judicial compromise." The Sandiganbayan can not on the other hand refuse to grant its approval, if the same is not otherwise contrary, as we said, to law, morals, or public policy.[10] We do not see how the Presidential Commission on Good Government's Resolution can offend law, morals, or public policy.

WHEREFORE, the petition is GRANTED. The Sandiganbayan is ORDERED to APPROVE the Resolution dated May 10, 1989 of the Presidential Commission on Good Government. IT IS SO ORDERED.

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

Padilla, J., no part, former director and counsel of Bank of P.I., and co-member of syndicate.

[1] Rollo, 21-28, the Sandiganbayan proceeding involved refers to Civil Case No. 0035 thereof.

[2] Id., 29.

[3] G.R. No. 84895, May 4, 1989, 175 SCRA 72.

[4] Although the author would have the Presidential Commission on Good Government satisfy first the Sandiganbayan that the Republic "is not getting a raw deal." Supra, 89.

[5] Rollo, 249-250.

[6] CIVIL CODE, art. 2035.

[7] Supra, art. 1409 (1); also art. 1347.

[8] Rollo, id., 248.

[9] CIVIL CODE, supra, art. 2034.

[10] Under Article 2029. "[t]he court shall endeavour to persuade the litigants in a civil case to agree upon some fair compromise."

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