PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, OCEANIC WIRELESS NETWORK, INC., DAVID M. CASTRO, MAXIMO A. MACEREN, CAESAR PARLADE, MELQUIADES C. GUTIERREZ, EDUARDO M. VILLANUEVA, A...

G.R. Nos. 119609-10. September 21, 2001

Ponente: PARDO, J.

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PARDO, J.:

What is before the Court is a joint petition[1] to annul and set aside the decision[2] of the Sandiganbayan dismissing petitioners' complaint for injunction with damages against Victor A. Africa, Jose L. Africa,[+] Manuel H. Nieto, Jr. and Juan de Ocampo[3] and the resolution[4] denying petitioners' motion for reconsideration.

The Facts

On August 28, 1990, the Presidential Commission on Good Government (PCGG) sent Corporate Secretary Victor A. Africa of Oceanic Wireless Network, Inc. (OWNI), a letter dated August 3, 1990, directing him to send notices to all stockholders of record of OWNI for special stockholders' meeting to be held on September 17, 1990. He was required to issue one qualifying share each to PCGG Commissioners Maximo A. Maceren and David M. Castro from the unissued shares and to record the transfer in the stock and transfer book of OWNI. Failure to comply within five (5) days from receipt thereof, Assistant Solicitor General Ramon S. Desuasido would be designated as acting corporate secretary.

On September 17, 1990, during the special stockholders' meeting of OWNI, PCGG voted all the Class "A" shares in the election of directors and elected to the board of directors Commissioners Maximo A. Maceren, Cesar O. V. Parlade and Melquiades C. Gutierrez representing the Class "A" shares and Colin Brooker and Terry Miller representing Class "B" and "C" shares. The new board of directors then elected Commissioner Maximo A. Maceren as Chairman of the Board, Melquiades C. Gutierrez as President, Assistant Solicitor General Ramon S. Desuasido as Acting Corporate Secretary and Almario P. Velasco as Acting Treasurer. None of the registered Class "A" shareholders of OWNI was present in that special stockholders meeting.

PCGG sequestered the Class "A" shareholding in OWNI amounting to 63,573 shares out of the total 105,955 outstanding capital stock, or about 60% of the outstanding capital stock, and PCGG voted all the Class "A" shares by virtue of the following writs of sequestration, to wit:

> (a) The order of sequestration, dated April 11, 1986, which covers shares of Jose L. Africa,[+] Roberto S. Benedicto,[+] Andres L. Africa and Victor A. Africa in OWNI. PCGG Commissioner Mary Concepcion Bautista signed the sequestration order.
>
> (b) The writs of sequestration, dated June 15, 1988, were issued by the PCGG against Aerocom, Polygon on August 3, 1988 or one day after the constitutional deadline as provided in Section 26, Article XVIII of the 1987 Constitution. Furthermore, no court case has been filed against Aerocom, Polygon, Belgor Investment

Corp., Silangan Investors & Manages, Inc. and OWNI.

On October 9, 1990, Corporate Secretary Victor A. Africa wrote the Securities Exchange Commission questioning the election of PCGG nominees as directors of the OWNI board on the ground that they were not stockholders of OWNI.

Upon instruction of the Africa group, Atty. Victor A. Africa sent notices to all stockholders of OWNI advising them of a special stockholders' meeting of OWNI to be held on January 27, 1991, at the Holiday Inn, Manila, for the purpose of the election of directors and other matters.

On January 27, 1991, the special stockholders' meeting of OWNI took place. Stockholders owning 63,573 Class "A" shares were represented. Atty. Juan de Ocampo was designated as acting secretary to record the minutes of the meeting. An election of directors for Class "A" shares was held. Manuel H. Nieto, Jr., Jose L. Africa[+] and Andres L. Africa were elected as directors for Class "A" shares for 1991 until their successors are elected and qualified. Class "B" and "C" shareholders did not attend the meeting. No new directors for them were elected.

The stockholders directed the new officers to dig deeper to the reported OWNI-Digitel deal. Atty. Victor A. Africa, as corporate secretary, was directed to furnish all the banks with said resolution. The board formed an executive committee and appointed Manuel H. Nieto, Jr. as chairman, Jose L. Africa[+] as member and the incumbent directors representing Class "B" and "C" shares.

On July 8, 1991, Manuel H. Nieto, Jr., in his capacity as OWNI president, wrote the National Telecommunications Commission (NTC), requesting the NTC to hold in abeyance the application, or if granted, to withdraw and recall OWNI's permit and frequency allocations as the same were made by an unauthorized board.

On July 10, 1991, Manuel H. Nieto, Jr. wrote Melquiades C. Gutierrez informing him of the new set of directors and requested for the turnover of the management of OWNI, including all corporate records to the new set of directors. Atty. Victor A. Africa, in compliance with the directive of the OWNI board, wrote Traders Royal Bank informing it of the new bank signatories.

On July 30, 1991, Manuel H. Nieto, Jr. and Jose L. Africa[+] circularized a letter to the staff and employees of OWNI informing them of the new set of board of directors.

On July 29, 1991, PCGG, acting for itself and in behalf of OWNI, filed with the Sandiganbayan a complaint for injunction with damages against Victor A. Africa, Jose L. Africa,[+] Manuel H. Nieto, Jr. and Juan de Ocampo.[5] PCGG sought to enjoin the defendants from interfering with PCGG's management of OWNI and/or representing themselves as directors.

On August 1, 1991, Jose L. Africa,[+] Manuel H. Nieto, Jr., Andres L. Africa, Aerocom, Polygon, Belgor, and Silangan, including OWNI itself, filed with the Sandiganbayan a separate petition for certiorari and prohibition, with prayer for temporary restraining order (TRO) and preliminary injunction, against the PCGG.[6]

By agreement of the parties, the Sandiganbayan jointly heard Civil Cases Nos. 0126 and 0127.

On April 25, 1994, the Sandiganbayan promulgated a decision, the dispositive portion of which reads:

"(1)

declaring as null and void the PCGG writs of sequestration, dated June 15, 1988 against Aerocom Investors & Managers Inc., Polygon Investors & Managers, Inc., Silangan Investors & Managers, Inc. and Belgor Investments, Inc. for the reason that the said writs of sequestration were deemed automatically lifted for failure

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of the PCGG to commence the necessary judicial action against the said corporations within the required six-month period pursuant to Section 26 of Article XVIII of the 1987 Constitution.

"(2)

declaring as null and void the order of sequestration, dated April 11, 1986, relative to the OWNI shares owned by Jose L. Africa and Victor A. Africa on the ground that the said order of sequestration was signed only by PCGG Commissioner Mary Concepcion Bautista in violation of Section 3 of the Rules & Regulations of the PCGG requiring the signatures of at least two Commissioners on such order of sequestration.

"(3)

declaring as null and void the acts and conduct of PCGG, its agents, nominees and representatives in reorganizing and taking over the Board of Directors and management of OWNI, including the acts of calling and holding a special stockholders' meeting of OWNI on September 17, 1990, the election therein of OWNI chairman and directors, president, acting secretary and acting treasurer and the appointment of PCGG nominees as corporate officers of OWNI;

"(4)

ordering all the PCGG nominees and representatives in the present Board of Directors and management of OWNI including but not limited to respondents Maximo A. Maceren, David M. Castro, Cesar Parlade, Melquiades C. Gutierrez, Eduardo M. Villanueva and Edilberto S. Alejandro as well as their replacements, if any, to vacate their positions in OWNI; and considering the interest of justice, respondents in Civil Case No. 0127 are hereby ordered to REFRAIN and DESIST;

(a) from further implementing /acting on the basis of the Writs of Sequestration such as operating, administering and managing the affairs and business of OWNI, or representing themselves as directors and officers of OWNI;

(b) from disbursing, utilizing, disposing and committing the funds and assets of OWNI and/or entering into any transactions for the benefit of Digitel;

(c) from excluding petitioners Jose L. Africa, Manuel H. Nieto, Jr. and Andres L. Africa as Chairman of the Board, President and Treasurer, respectively, of OWNI;

(d) from making any expenditures for the use and benefit of Digitel and pursuing any and all papers/communications filed by OWNI with the National Telecommunications Commission relative to the requirements of Digitel to comply with Digitel's franchise;

"(5)

ordering the respondents in Civil Case No. 0127 their officers, agents, representatives and other persons acting under their orders/instructions: (a) to vacate OWNI's office premises at the Electra House, Esteban St., Legaspi Village, Makati; (b) to turn over all the corporate records of OWNI to petitioner Jose L. Africa, et al.; and (c) render an accounting of all transactions undertaken by them in the name or in behalf of OWNI, including disbursement of corporate funds;

"(6)

dismissing the complaint as well as the compulsory counterclaims in Civil Case No. 0126, with costs against the petitioners therein, PCGG."

On May 6, 1994, petitioners filed with the Sandiganbayan a motion for reconsideration[7] of the decision; however, on March 30, 1995, the Sandiganbayan denied the motion.[8]

Hence, this joint petition with prayer for consolidation.[9]

On August 21, 1995, we granted the consolidation.[10]

Petitioners contend that:

First: the OWNI board was dormant and inactive necessitating the PCGG takeover. And in reorganizing the OWNI board on September 17, 1990, PCGG merely performed its duty of preventing further dissipation of the assets of OWNI in light of a 5.7 million peso payroll anomaly committed by the former Finance Manager of OWNI;

Second: the Sandiganbayan erred in declaring null and void the writs of sequestration against respondents Polygon Investors and Managers, Inc., Aerocom Investors and Managers, Inc., and Silangan Investors and Managers, Inc., for failure of the PCGG to file the required cases against these companies, as said ruling runs counter to the recent decision of the Supreme Court in the PCGG sequestration cases;

Third: the Sandiganbayan decided on non-issues or issues that were not involved in the application for injunction, and compounded this mistake when it granted the main reliefs prayed for in Case No. 0127, although the hearings were only in connection with prayer for the issuance of a writ of preliminary injunction.

Fourth: the Sandiganbayan erred in ordering the ouster of non-PCGG respondents from the positions they were holding in OWNI without first putting in place the safeguards required by the case of Cojuangco v. Roxas.[11]

The Issue

The main issue raised is whether or not the PCGG's takeover of OWNI is legal.

The Court's Ruling

The petition must fail.

Petitioner PCGG explained that prior to September 17, 1990, OWNI was a dormant and inactive corporation. There was no functioning board which made possible the Finance Manager's embezzlement of company funds. And in the exercise of their powers pursuant to Executive Order Nos. 1, 2, 14 and 14-A, PCGG sequestered a majority of shares of stocks of OWNI. PCGG was only consistent with its mission of preventing dissipation of assets of sequestered corporations or businesses when it took over control of OWNI.

In Presidential Commission on Good Government v. Cojuanco, Jr.,[12] the Court ruled that who should vote the sequestered shares requires the determination of the ill-gotten character of those shares and consequently the rightful ownership thereof. The issue was still pending in the main case in the Sandiganbayan. This is only an incident of the main case and is limited to the stockholders' meeting held on September 17, 1990. This is without prejudice to the final disposition of the merits of the main suit. The ownership of the shares is still under litigation. It is not known whether the shares are part of the ill-gotten wealth of former President Marcos and his "cronies."

In Bataan Shipyard & Engineering Co., Inc. v. PCGG,[13] we declared the scope and extent of the powers that the PCGG may exercise with regard to the property of businesses sequestered:

> "x x x 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

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> court exercises effective supervision or can upon due application and hearing, grant authority for the performance of acts of dominion."

Petitioners contend that the Sandiganbayan should not have nullified the writs of sequestration because there was no need to file a separate action against OWNI, Polygon, Aerocom and Silangan since they had been included in the list of the ill-gotten wealth of defendants Jose L. Africa[+] and Manuel H. Nieto, Jr. in Civil Case No. 0009. Petitioners cited Republic v. Sandiganbayan (First Division),[14] in which the Court held:

> "1) Section 26, Article XVIII of the Constitution does not, by its terms or any fair interpretation thereof, require that corporations or business enterprises alleged to be repositories of "ill-gotten wealth," as the term is used in said provision, be actually and formally impleaded in the actions for the recovery thereof, in order to maintain in effect existing sequestrations thereof;
>
> "2) complaints for the recovery of ill-gotten wealth which merely identify and/or allege said corporations or enterprises to be the instruments, repositories or the fruits of ill-gotten wealth, without more, come within the meaning of the phrase "corresponding judicial action or proceeding" contemplated by the constitutional provision referred to; the more so, that normally, said corporations, as distinguished from their stockholders or members, are not generally suable for the latter's illegal or criminal actuations in the acquisition of the assets invested by them in the former;
>
> "3) even assuming the impleading of said corporations to be necessary and proper so that judgment may comprehensively and effectively be rendered in the actions, amendment of the complaints to implead them as defendants may, under existing rules of procedure, be done at any time during the pendency of the actions thereby initiated, and even during the pendency of an appeal to the Supreme Court--a procedure that, in any case, is not inconsistent with or proscribed by the constitutional time limits to the filing of the corresponding complaints "for"--i.e., with regard or in relation to, in respect of, or in connection with, or concerning--orders of sequestration, freezing, or provisional takeover."

In this case, the PCGG's complaint[15] for "Reconveyance, Reversion, Accounting, Restitution and Damages" against Jose L. Africa,[+] Manuel H. Nieto, Jr., the Marcos Spouses, Ferdinand Marcos, Jr., Roberto S. Benedicto,[+] Juan Ponce Enrile, Potenciano Ilusorio[+] was filed on July 22, 1987. In the complaint, Polygon, Silangan, Aerocom and OWNI were included in the list of property as part of the defendants' ill-gotten wealth.

We find the writ of sequestration issued against OWNI not valid because the suit in Civil Case No. 0009 against Manuel H. Nieto and Jose L. Africa[+] as shareholders in OWNI is not a suit against OWNI. This Court has held that "failure to implead these corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would in effect be disregarding their distinct and separate personality without a hearing."[16]

Furthermore, PCGG issued the writs of sequestration on August 3, 1988, which was beyond the period set by the Constitution.

Article XVIII, Section 26, of the 1987 Constitution provides:

> "Sec. 26. The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the Congress may extend said period.
>
> "A sequestration or freeze order shall be issued only upon showing of a prima facie case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall

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> be commenced within six months from the issuance thereof.
>
> "The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided."

The sequestration orders issued against respondents shall be deemed automatically lifted due to the failure of PCGG to commence the proper judicial action or to implead the respondents therein within the period prescribed by Article XVIII, Section 26 of the 1987 Constitution.

The lifting of the writs of sequestration will not necessarily be fatal to the main case since the lifting of the subject orders does not ipso facto mean that the sequestered property are not ill-gotten. The effect of the lifting of the sequestration against OWNI will merely be the termination of the role of the government as conservator thereof. In other words, the PCGG may no longer exercise administrative or housekeeping powers[17] and its nominees may no longer vote the sequestered shares to enable them to sit on the corporate board of the subject firm.

The Fallo

WHEREFORE, the petitions are hereby DENIED. The decision and resolution of the Sandiganbayan are hereby AFFIRMED.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, and Ynares-Santiago, JJ., concur.
Puno, J., on official leave.

[+] Deceased.

[+] Deceased.

[1] Under Rule 45 of the 1964 Revised Rules of Court.

[2] In Civil Cases Nos. 0126 and 0127, promulgated on April 25, 1994. De Leon, Jr., J., ponente, Hermosisima and Del Rosario, JJ., concurring. G.R. Nos. 119609-10, Rollo, 44-69.

[+] Deceased.

[3] Civil Case No. 0126.

[4] Promulgated on March 30, 1995, G.R. Nos. 119609-10, Rollo, pp. 70-85.

[+] Deceased.

[+] Deceased.

[+] Deceased.

[+] Deceased.

[+] Deceased.

[+] Deceased.

[5] Civil Case No. 0126.

[+] Deceased.

[6] Civil Case No. 0127.

[7] Rollo, pp. 205-226.

[8] Joint Petition, Annex "B", Rollo, pp. 70-85.

[9] Filed on May 19, 1995, Joint Petition, Rollo, pp. 8-43. On June 05, 1995, in G.R. No. 119609, we required the respondents to comment on the petition within ten (10) days from notice (Rollo, p. 259).

[10] G.R. Nos. 119623-24, Rollo, p. 322.

[11] 195 SCRA 797 [1991].

[12] 361 Phil. 892, 899 [1999].

[13] 150 SCRA 181, 236 [1987].

[+] Deceased.

[14] 310 Phil. 401, 516-517 [1995].

[15] Docketed as Case No. 0009.

[+] Deceased

[+] Deceased

[+] Deceased.

[+] Deceased

[16] PCGG v. Sandiganbayan, 353 Phil. 80, 91-92 [1998], citing Republic v. Sandiganbayan, 325 Phil. 762 [1996].

[17] Republic v. Sandiganbayan, 355 Phil. 181, 207 [1998], citing Baseco v. PCGG, supra, Note 12, at pp. 236-239, on the scope of the powers of PCGG over properties sequestered, frozen or provisionally taken over.

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