Supreme Court E-Library

EN BANC

[G.R. No. 72553. December 2, 1986]

FELICITO R. QUIMPO, *petitioner, vs.* **TANODBAYAN (OMBUDSMAN), GREG DIMAANO and DANNY F. REMO,** *respondents.*

SYLLABUS

1. **CONSTITUTIONAL LAW; TANODBAYAN; JURISDICTION UNDER ART. VIII, 1973 CONSTITUTION.**— Sections 5 and 6, Article XIII of the 1973 Constitution, on the Sandiganbayan and Tanodbayan, adopted in the so-called Freedom Constitution, provide: "SEC. 6. The Batasang Pambansa shall create an office of the Ombudsman, to be known as *Tanodbayan*, which shall receive and investigate complaints relative to public office, *including those in government-owned controlled corporations*, make appropriate recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil, or administrative case before the proper court or body."

2. **ID.; ID.; POWERS UNDER P.D. 1630.**— Sections 10(a) and (f) of Presidential Decree No. 1630 also enumerate the powers of the Tanodbayan thus: "SEC. 10. Powers. — The Tanodbayan shall have the following powers "(a) He may investigate, on complaint by any person or on his own motion or initiative, any administrative act whether amounting to any criminal offense or not of any administrative agency *including any government owned or controlled corporation*; "(f) He may file and prosecute civil and administrative cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in *government-owned or controlled corporations*, in relation to their office."

3. **ID.; ID.; JURISDICTION; ANTI-GRAFT AND CORRUPT PRACTICES ACT; EMPLOYEES OF GOVERNMENT-OWNED AND CONTROLLED CORPORATION FALL WITHIN THE INVESTIGATORY AND PROSECUTORY JURISDICTION OF THE TANODBAYAN.**— Section 2(a) of the Anti-Graft and Corrupt Practices Act provides: "Sec. 2.

Supreme Court E-Library

Definition of terms — (a) 'Government' includes the national government, the local governments, the *government-owned and controlled corporations*, and all other instrumentalities or agencies of the Republic of the Philippines and their branches." Evident is the intent to include employees of government-owned or controlled corporation within the jurisdiction of the Tanodbayan and the Sandiganbayan. While it may be that PETROPHIL was not originally "created" as a government-owned or controlled corporation, after it was acquired by PNOC, which is a government-owned or controlled corporation, PETROHPIL became a subsidiary of PNOC and thus shed-off its private status. It is now funded and owned by the government as, in fact, it was acquired to perform functions related to government programs and policies on oil, a vital commodity in the economic life of the nation. It was acquired not temporarily but as a permanent adjunct to perform essential government or government-related functions. It should make no substantial difference that it was not originally "created" as a government-owned or controlled corporation. What is decisive is that it has since been acquired by the Government to perform functions related to government programs and policies on oil. The acquisition by the Government utilizing public funds of PETROPHIL, while retaining its own corporate existence, became a government-owned or controlled corporation within the Constitutional precept. Its employees, therefore, are public servants falling within the investigatory and prosecutory jurisdiction of the Tanodbayan for purposes of the Anti-Graft & Corrupt Practices Act.

4. **CORPORATION LAW; PRIVATE CORPORATIONS SUBSEQUENTLY ACQUIRED BY GOVERNMENT; CHARACTERISTICS, NOT DETERMINATIVE OF CORPORATE CLASSIFICATION; CASE AT BAR.**— PETROPHIL is possessed of unique characteristics, that endow it with all the vestiges of a private corporation, such as (1) its employees are not members of the Government Service Insurance System but of the Social Security System, which covers private corporations; (2) they are covered by the Labor Code and other labor laws and not by civil service rules; (3) PETROPHIL was never created pursuant to the express provisions of the PNOC charter; and (4) it is engaged in the highly competitive business of petroleum distribution/retail and its operation is profit-oriented. Assuming these to be so, they are internal matters not

Supreme Court E-Library

determinative of its real corporate classification. Besides, its exclusion from GSIS coverage is not by virtue its private character but by operation of law pursuant to Section 15 of P.D. No. 405, amending the PNOC charter.

APPEARANCES OF COUNSEL

Quimpo & Dingayan-Quimpo Law Office for petitioner.
Medel Arnaldo Belen for private respondents.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

This Petition for *Certiorari* addresses itself to the pivotal issue of whether or not PETROPHIL Corporation, a subsidiary of the Philippine National Oil Company (PNOC), is a government-owned or controlled corporation, whose employees fall under Tanodbayan jurisdiction.

The former Tanodbayan, in a Decision dated March 15, 1985, in TBP Case No. 84-01422 entitled "*Felicito R. Quimpo vs. Greg Dimaano and Danny F. Remo*" disowned its jurisdiction, a view shared by private respondents.

However, the incumbent Solicitor General, concurred in by the present Tanodbayan, and by petitioner, uphold the Tanodbayan jurisdiction.

The factual antecedents are aptly summarized as follows:

"On July 17, 1984, petitioner filed with respondent Tanodbayan a complaint against private respondents for violation of Republic Act No. 3091 (Anti-Graft and Corrupt Practices Act) approved on August 17, 1960.

"Petitioner alleged that Admiral Adjusters and Surveyors, Inc. (AASI), of which he was the president, was engaged by Petrophil Corporation to render survey services for one (1) year from March 1, 1982 to February 28, 1983; that upon the expiration of the contract, it was renewed for another period of one (1) year, from March 1, 1983 to February 2, 1984; that sometime in October, 1983, private respondents Greg Dimaano and Danny Remo, as manager and analyst,

Supreme Court E-Library

respectively, of the Bulk Distribution Department and MPED of Petrophil Corporation, caused the withholding of the fees due AASI and required AASI to submit an explanation of the losses caused by leaking valves as reflected in AASI's survey reports; that despite AASI's explanation, private respondents still refused to release the payments and even threatened to forfeit AASI's performance bond and claim damages and losses from AASI; that despite AASI's submission of several explanations, private respondents refused to release the fees amounting to P147,300.00.

"Petitioner further alleged that private respondents favored Greater Marine Cargo Surveyors to enable it to win the bidding in January 1984."[1]

Private respondents moved to dismiss the Complaint alleging lack of jurisdiction of the Tanodbayan, which Motion was opposed by the petitioner.

On March 15, 1985, the Tanodbayan issued his questioned Decision maintaining that he had no jurisdiction over government-owned or controlled corporations created under the Corporation Law. He relied on Opinion No. 62, Series of 1976 of then Secretary of Justice, Vicente Abad Santos, holding that when Section 6, Article XIII of the 1973 Constitution mentions "government-owned or controlled corporations," "the intent is only to those created by special law."

Petitioner's Motion for Reconsideration of said Decision was denied by the Tanodbayan on October 7, 1985, hence, this Petition for Certiorari, to which we gave due course.

Sections 5 and 6, Article XIII of the 1975 Constitution, on the Sandiganbayan and Tanodbayan, adopted in the so-called Freedom Constitution, provide:

"SEC. 5. The Batasang Pambansa shall create a special court, to be known as *Sandiganbayan*, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, *including those in government-owned or controlled corporations*, in relation to their office as may be determined by law."

---

[1] pp. 1-2, Comment of Solicitor General.

Supreme Court E-Library

"SEC. 6. The Batasang Pambansa shall create an office of the Ombudsman, to be known as *Tanodbayan*, which shall receive and investigate complaints relative to public office, *including those in government-owned or controlled corporations,* make appropriate recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil, or administrative case before the proper court or body." (Italics supplied).

Sections 10(a) and (f) of Presidential Decree No. 1630 also enumerate the powers of the Tanodbayan thus:

"SEC. 10. Powers. — The Tanodbayan shall have the following powers:

"(a) He may investigate, on complaint by any person or on his own motion or initiative, any administrative act whether amounting to any criminal offense or not of any administrative agency *including any government owned or controlled corporation*;

x x x x x x x x x

"(f) He may file and prosecute civil and administrative cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those *in government-owned or controlled corporations*, in relation to their office"; (Italics supplied).

So does the definition of "Government" in Section 2(a) of the Anti-Graft and Corrupt Practices Act include government corporations:

"Sec. 2. Definition of terms. — (a) 'Government' includes the national government, the local governments, *the government-owned and controlled corporations,* and all other instrumentalities or agencies of the Republic of the Philippines and their branches." (Italics ours)

Evident is the intent to include employees of government-owned or controlled corporations within the jurisdiction of the Tanodbayan and the Sandiganbayan.

Is PETROPHIL a government-owned or controlled corporation whose employees fall within the jurisdictional purview of the Tanodbayan for purposes of the Anti-Graft and Corrupt Practices Act?

Supreme Court E-Library

We uphold the Tanodbayan jurisdiction.

It has to be conceded that PETROPHIL was not created by special law. As the incumbent Solicitor General has pointed out, it was originally created as a private corporation under the Corporation Law with the name Standard Vacuum Oil Company (STANVAC). STANVAC was taken over by Esso Philippines, which was, in turn, bought by Esso Eastern Standard. Eventually, Esso Eastern Standard was purchased by the Philippine National Oil Corporation (PNOC), and its corporate name was changed to Petrophil Corporation.

While it may be that PETROPHIL was not originally "created" as a government-owned or controlled corporation, after it was acquired by PNOC, which is a government-owned or controlled corporation, PETROPHIL became a subsidiary of PNOC and thus shed-off its private status. It is now funded and owned by the government as, in fact, it was acquired to perform functions related to government programs and policies on oil, a vital commodity in the economic life of the nation. It was acquired not temporarily but as a permanent adjunct to perform essential government or government-related functions, as the marketing arm of PNOC to assist the latter in selling and distributing oil and petroleum products to assure and maintain an adequate and stable domestic supply.

It should make no substantial difference that it was not originally "created" as a government-owned or controlled corporation. What is decisive is that it has since been acquired by the Government to perform functions related to government programs and policies on oil.

Opinion No. 62, Series of 1976 of the then Secretary of Justice must be deemed superseded by the doctrine laid down by this Court *en banc*, in the case of *National Housing vs. Juco,*[2] in *pari materia* to the case at bar, which held that.

"for purposes of coverage in the Civil Service, employees of government-owned or controlled corporation whether created by special

---

[2] 134 SCRA 172 [1985].

Supreme Court E-Library

law or formed as subsidiaries are covered by the Civil Service Law, not the Labor Code, and the fact that private corporations owned or controlled by the government may be created by special charter does not mean that such corporation not created by special law are not covered by the Civil Service."

The meaning thus given to "government-owned or controlled corporations" for purposes of the civil service provision should likewise apply for purposes of the Tanodbayan and Sandiganbayan provisions, otherwise, incongruity would result, and a government-owned corporation could create as many subsidiary corporations under the Corporation Code as it wishes, which would then be free from strict accountability and could escape the liabilities and responsibilities provided for by law. This device was liberally made use of during the past regime to the detriment of budgetary restraints and of fiscal accountability by "private" corporations thus created. As well explained in the *National Housing* case:

"The infirmity of the respondents' position lies in its permitting a circumvention or emasculation of Section I, Article XII-B of the Constitution. It would be possible for a regular ministry of government to create a host of subsidiary corporations under the Corporation Code funded by a willing legislature. A government-owned corporation could create several subsidiary corporations. These subsidiary corporations would enjoy the best of two worlds. Their officials and employees would be privileged individuals, free from the strict accountability required by the Civil Service Decree and the regulations of the Commission on Audit. Their income would not be subject to the competitive restraints of the open market not to the terms and conditions of civil service employment. Conceivably, *all* government-owned or controlled corporations could be created, no longer by special charters, but through incorporation under the general law. The constitutional amendment including such corporations in the embrace of the civil service would cease to have application. Certainly, such a situation cannot be allowed to exist. (*NHC vs. NLRC*, p. 8)"

It is true that the *National Housing* case held that the Decision therein "refers to a corporation *created* as a government-owned or controlled entity and does not cover cases involving private firms taken over by the government in foreclosure or similar

Supreme Court E-Library

proceedings" judgment on which is reserved "until the appropriate controversy is brought to the Court." In the case of PETROPHIL, however, it is clear that it was acquired by *purchase* precisely, as explained above, to assist a government-owned or controlled corporation, the PNOC, in the performance of its government-related functions. The acquisition was not simply to recover the government's financial exposure as in "foreclosure or similar proceedings."

Private respondents allege, however, that PETROPHIL is possessed of unique characteristics that endow it with all the vestiges of a private corporation, such as (1) its employees are not members of the Government Service Insurance System but of the Social Security System, which covers private corporations; (2) they are covered by the Labor Code and other labor laws and not by civil service rules; (3) PETROPHIL was never created pursuant to the express provisions of the PNOC charter; and (4) it is engaged in the highly competitive business of petroleum distribution/retail and its operation is profit-oriented. Assuming these to be so, they are internal matters not determinative of its real corporate classification. Besides, its exclusion from GSIS coverage is not by virtue of its private character but by operation of law pursuant to Section 15 of P.D. No. 405, amending the PNOC charter, specifically providing that, "PNOC subsidiaries organized to undertake purely business ventures shall not, as a matter of right, be subject to the provisions of the Government Service Insurance System, as provided for under R.A. No. 186, as amended, as well as to any law, executive orders and decrees relating to leave of absences, retirement privileges, regular working hours, and other government employee benefits." And even granting that it is profit-oriented, the fact remains that it was acquired with capital belonging to the Government and Government money is utilized in its operations.

In other words, there can be no gainsaying that as of the date of its acquisition by the Government utilizing public funds, PETROPHIL, while retaining its own corporate existence, became a government-owned or controlled corporation within the Constitutional precept. Its employees, therefore, are public servants falling within the investigatory and prosecutory

Supreme Court E-Library

jurisdiction of the Tanodbayan for purposes of the Anti-Graft & Corrupt Practices Act.

Otherwise, a major policy of Government, which is to eradicate, or at the very least minimize, the graft and corruption that has permeated the fabric of the public service, like a malignant social cancer, would be seriously undermined. In fact, Section 1 of the Anti-Graft and Corrupt Practices Act seeks to repress not only certain acts of public officers but also of "*private persons* alike, which constitute graft or corrupt practices or which may lead thereto."

WHEREFORE, judgment is hereby rendered setting aside the Tanodbayan Decision, dated March 15, 1985, and its Order of October 7, 1985, and requiring the incumbent Tanodbayan to investigate and act on petitioner's complaint against private respondents Greg Dimaano and Danny Remo.

No costs.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Alampay, Gutierrez, Jr., Cruz, Paras, and *Feliciano, JJ.*, concur.

EN BANC

[Adm. Matter No. R-252-P. December 12, 1986]

ROMULO G. DINSAY, *complainant, vs.* **LEOPOLDO D. CIOCO and RENATO M. BELLEZA,** *respondents.*

[G.R. No. 71784. December 12, 1986]

ROMULO G. DINSAY and PLANTERS MACHINERY CORPORATION (PLAMACOR), *petitioners, vs.* **THE**