Supreme Court E-Library

the accused-appellants *pro bono* yet with commendable zeal and skill.

IN VIEW WHEREOF, the decision appealed from is reversed. Accused-appellants are *ACQUITTED* because of reasonable doubt. They are ordered released from confinement immediately, unless they are being lawfully held for other reasons. The Director of Prisons shall inform this Court of the proper implementation of this Decision within ten (10) days from its receipt.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Kapunan, Pardo, and *Ynares-Santiago, JJ.*, concur.

THIRD DIVISION

[G.R. No. 131715. December 8, 1999]

PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, *petitioner, vs.* **ERNESTO PABION and LOUELLA RAMIRO,** *respondents.*

SYNOPSIS

Private respondents Ernesto Pabion and Louella Ramiro, claiming to be stockholders of the Philippine National Construction Company (PNCC), filed with the Securities and Exchange Commission a verified petition alleging that for a period of 12 years there had been no stockholders' meeting of the PNCC to elect the corporation's board of directors, enabling the incumbent directors to hold on to their position beyond their one-year term, in violation of the PNCC's By-Laws and the Corporation Code. In its answer, PNCC claimed that it is a government-owned and controlled corporation (GOCC) whose organizational and functional management, administration and

Supreme Court E-Library

supervision are governed by Administrative Order No. 59, issued by then President Corazon C. Aquino. PNCC asserted that its board of directors does not hold office by virtue of a stockholder's election but by appointment of the President of the Philippines. The hearing officer held in abeyance the proceedings and ordered the parties to secure a ruling/opinion from competent authority as to whether or not the PNCC is a government corporation or not, as the matter does not fall within the competence of the Commission to determine. On petition for *certiorari*, the Commission *en banc* ruled that the PNCC being incorporated under the Corporation Code, is, therefore, subject to Section 50 of the Corporation Code which requires the holding of regular stockholders' meeting. On appeal to the Court of Appeals, the appellate court upheld the ruling of the SEC *en banc*. Disagreeing with the appellate court, petitioner lodged the present petition. The issues raised are whether the SEC can determine the corporate status of PNCC, and whether the SEC has jurisdiction over government-owned and controlled corporations.

The Supreme Court denied the petition for lack of merit. The Court upheld the CA in holding that the SEC *en banc* can be trusted with competence to distinguish a private corporation from a GOCC. According to the Court, it is certainly absurd to say that the SEC is without jurisdiction to determine if PNCC is a GOCC simply because the latter claims to be one. The President does not determine whether a corporation is a GOCC or not. It is the law that does. The Court also ruled that the SEC can exercise jurisdiction over GOCCs established or organized under the Corporation Code. That the government may own the controlling shares does not diminish the fact that the latter owes its existence to the Corporation Code. The Court then concluded that the SEC can compel the PNCC to hold a stockholders' meeting for the purpose of electing members of the latter's board of directors. The SEC's action was also justified by its regulatory and administrative powers to implement the Corporation Code.

SYLLABUS

1. MERCANTILE LAW; SECURITIES AND EXCHANGE COMMISSION; HAS COMPETENCE TO DISTINGUISH A

Supreme Court E-Library

PRIVATE CORPORATION FROM A GOVERNMENT-OWNED AND CONTROLLED CORPORATION. — It is certainly absurd to say that SEC is without jurisdiction to determine if PNCC is a GOCC simply because the latter *claims* to be one. The President does not "determine" whether a corporation is a GOCC or not. It is the law that does. PNCC's status as GOCC can be ruled upon by SEC — as well as by other competent authorities for that matter — based on law, specifically the Revised Administrative Code of 1987. We agree with the CA that "the SEC *en banc* can be trusted with the competence to distinguish a private corporation from as a GOCC." Whether such determination is correct would be an altogether different matter.

2. ID.; ID.; ID.; A REVIEWING COURT OR AGENCY MAY DECIDE THE *LIS MOTA* OF A CASE ON ITS MERITS IF THERE ARE ENOUGH UNDISPUTED FACTS TO WARRANT SUCH RESOLUTION. — Petitioner argues that *certiorari*, which was used by private respondents to challenge the ruling of the hearing officer before the SEC *en banc,* is generally limited to determining whether or not there has been grave abuse of discretion committed by the officer below. It further claims that the SEC rule used by respondents was patterned after Rule 65 of the 1997 Rules of Court. Hence, the same principles governing the latter should apply to the former. It thus submits that SEC erred when it ruled not only on the issue of jurisdiction but also on the merits of the case. It contends that SEC *en banc* should have limited itself to the issue of grave abuse and thereafter remanded the case below for further proceedings. Again, we disagree. What petitioner invokes is a general rule that admits of exceptions. As the CA aptly pointed out, this general rule "is not cast in stone." Indeed, one chiseled exception arises when the court or administrative agency is in a position to resolve the dispute on the merits based on the records before it. That is, a reviewing court or agency may decide the *lis mota* of a case on its merits if there are enough undisputed facts to warrant such resolution.

3. ID.; ID.; ID.; THE SECURITIES AND EXCHANGE COMMISSION HAS JURISDICTION OVER GOVERNMENT-OWNED AND CONTROLLED CORPORATION ESTABLISHED OR ORGANIZED UNDER THE CORPORATION CODE. — We concede that SEC has no jurisdiction over corporations of the first type — GOCCs with original charter or created by special

Supreme Court E-Library

law — primarily because they are governed by their charters. But even this concession is not absolute, since the Corporation Code may apply suppletorily, either by operation of law or through express provisions in the charter. On the other hand, we have no doubt that over GOCCs established or organized under the Corporation Code, SEC can exercise jurisdiction. These GOCCs are regarded as *private* corporations despite common misconceptions. That the government may own the controlling shares in the corporation does not diminish the fact that the latter owes its existence to the Corporation Code. More pointedly, Section 143 of the Corporation Code gives SEC the authority and power to implement its provisions, specifically for the purpose of regulating the entities created pursuant to such provisions. These entities include corporations in which the controlling shares are owned by the government or its agencies.

4. ID.; ID.; ID.; THE SECURITIES AND EXCHANGE COMMISSION MAY LEGALLY COMPEL THE HOLDING OF STOCKHOLDERS' MEETING. — Prescinding from the above premises, it necessarily follows that SEC can compel PNCC to hold a stockholders' meeting for the purpose of electing members of the latter's board of directors. This is clearly provided for by Section 50 of the Corporation Code. As respondents point out, the SEC's action is also justified by its regulatory and administrative powers to implement the Corporation Code, specifically to compel the PNCC to hold a stockholders' meeting for election purposes.

5. ID.; ID.; ID.; PETITIONER CORPORATION IS AN ACQUIRED ASSET CORPORATION. — We agree with the respondents that PNCC falls under the exception carved out from Section 2 (a and b) above which removes an acquired asset corporation from the category of a GOCC. In the context of the entire administrative order and in relation to presidential issuances, these provisions clearly indicate that PNCC is indeed an acquired asset corporation. This is because PNCC is a corporation that is, to quote said AO, "under private ownership, the voting or outstanding shares of which (i) were conveyed to the government" financial institutions "in satisfaction of debts x x x."

6. ID.; ID.; ID.; ADMINISTRATIVE ORDER NO. 59 NOT INCONSISTENT WITH THE REVISED ADMINISTRATIVE CODE. — Contrary to respondent's assertion that PNCC is *not*

Supreme Court E-Library

a GOCC, we hold that it may be deemed so under EO 292. However, for purposes of AO 59, particularly in the application of Section 16 thereof, PNCC is an acquired asset corporation. In this light, the alleged inconsistency is more apparent than real. It should be emphasized that an acquired asset corporation is a GOCC set to be privatized pursuant to the government's policy as enunciated in Proclamation 50, which defines "assets" to include GOCCs. Under Section 5 of same Proclamation thereof, the Committee on Privatization is empowered to identify and transfer these assets for disposition to the private sector. The allusions to an implied repeal by EO 292 of Section 2 (a and b) of AO 59 deserves scant consideration. Suffice it to say that, as respondents pointed out, it would be absurd for an earlier law to impliedly repeal a subsequent one. In any case, implied repeal is generally not favored. Equally important, there is really no inconsistency.

7. ID.; ID.; ID.; SECTION 16 OF ADMINISTRATIVE ORDER NO. 59 IS INAPPLICABLE TO PETITIONER CORPORATION. — It is clear that PNCC is an acquired asset corporation under AO 59. Thus, Section 16 (1) of AO 59 is inapplicable. The alleged derogation of the President's power over GOCCs is without basis. We note, at this point, petitioner's admission that members of the PNCC board of directors are nominated by the GFIs in proportion to their equity ownership therein. Petitioner's vacillation in seeking to apply Section 16 (1) of AO 59 while at same time asserting the invalidity of Section 2 (a and b) thereof betrays the stark weakness of its position.

8. ID.; ID.; ID.; PETITIONER IS ESSENTIALLY A PRIVATE CORPORATION, NOTWITHSTANDING THE GOVERNMENT'S INTEREST THEREIN THROUGH THE DEBT-TO-EQUITY CONVERSION BY PRESIDENTIAL DECREE NO. 1295; AS SUCH IT IS SUBJECT TO THE REGULATION AND JURISDICTION OF THE SECURITIES AND EXCHANGE CORPORATION. — Lest the focus of our disposition of this case be lost in the maze of arguments strewn before us, we stress that PNCC is a corporation created in accordance with the general corporation statute. Hence, it is essentially a private corporation, notwithstanding the government's interest therein through the debt-to-equity conversion imposed by PD 1295. Being a private corporation, PNCC is subject to SEC regulation and jurisdiction.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioner.
The Solicitor General for public respondent.
Quisumbing Torres for private respondent.

D E C I S I O N

PANGANIBAN, *J.*:

The Securities and Exchange Commission (SEC) has jurisdiction over corporations organized pursuant to the Corporation Code, even if the majority or controlling shares are owned by the government. Hence, it can competently order the holding of a shareholders' meeting for the purpose of electing the corporate board of directors. While the SEC may not have authority over government corporations with original charters or those created by special law, it does have jurisdiction over "acquired asset corporations" as defined in AO 59. Specifically, the Philippine National Construction Company (PNCC) may be ordered by SEC to hold a shareholders' meeting to elect its board of directors in accordance with its Articles of Incorporation and By-Laws as well as with the Corporation Code. The chairman and the members of the PNCC Board of Directors hold office by virtue of their election by the shareholders, not by their appointment thereto by the President of the Republic.

The Case

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision of the Court of Appeals[1] (CA) promulgated on October 23, 1997, as well as its subsequent Resolution[2] dated December 2, 1997, denying petitioner's Motion for Reconsideration.

---

[1] Twelfth Division composed of Justices Cancio C. Garcia (chairman and ponente); Delilah Vidallon Magtolis and Marina L. Buzon (members), both concurring.

[2] *Rollo*, p. 87.

Supreme Court E-Library

The CA effectively affirmed[3] the October 2, 1996 Order issued by the Securities and Exchange Commission,[4] which disposed as follows:

"WHEREFORE premises considered this Petition is hereby GRANTED. The President or the Chairman of the PNCC is hereby ordered to call a special stockholder's meeting within thirty (30) days from receipt of this order for the purpose of electing the members of the Board to hold office up to March, 1997 or until the next stockholders' meeting will be held. Accordingly, the Corporate Secretary of PNCC is hereby directed to issue required notices to the stockholders."[5]

In a subsequent Resolution dated April 11, 1997,[6] SEC denied reconsideration, clarification and annulment of said Order.

The Facts

The Court of Appeals adequately narrates the facts in this wise:

"On September 16, 1994, private respondents *Ernesto Pabion* and *Louella Ramiro,* claiming to be stockholders of the *PNCC*, filed with the SEC a verified petition, therein alleging that since 1982 or for a period of twelve (12) years, there has been no stockholders' meeting of the PNCC to elect corporation's board of directors, thus enabling the incumbent directors to hold on to their position beyond their 1-year term, in violation of PNCC's By-Laws and the Corporation Code. *Pabion* and *Ramiro*, therefore, prayed the *SEC* to issue an order 'ordering the officers of PNCC or, in the alternative, authorizing petitioners, to call and hold a meeting of the stockholders x x x for the purpose of electing new directors x x x'. Docketed as SEC Case No. 09-94-4876, the verified petition was assigned to SEC Hearing Officer Manuel Perea.

---

[3] The CA Decision is found on pp. 71-85-A, *rollo*.

[4] Signed by Chairman Perfecto R. Yasay, Jr. and Associate Commissioners Fe Eloisa C. Gloria, Rosalinda U. Casiguran and Danilo L. Concepcion. Associate Commissioner Edijer A. Martinez "did not take part during the deliberations."

[5] SEC Order, pp. 5-6; *rollo*, pp. 69-70.

[6] Signed by Chairman Yasay, Commissioners Gloria, Martinez, Casiguran and Concepcion.

Supreme Court E-Library

"In due time, *PNCC* filed its answer. Therein, *PNCC* claimed that it is a government-owned corporation whose 'organizational and functional management, administration, and supervision' are governed by Administrative Order (AO) No. 59, issued by then President Corazon Aquino on February 16, 1988. *PNCC* asserts that its board of directors does not hold office by virtue of a stockholder's election but by appointment of the President of the Philippines, relying on Article IV, Section 16 [1], of AO No. 59, which reads:

> '(1) *Governing Boards. — GOCC (government-owned and/or controlled corporation) shall be governed by a Board of Directors or equivalent body composed of an appropriate number of members to be appointed by the President of the Philippines upon the recommendation of the Secretary of whose Department the GOCC is attached. The Chairman of the board shall likewise be appointed by the President upon the commendation of the Secretary'*

In the same answer, *PNCC* expressed the fear that if granted, the prayer in the verified petition would amount to a contravention of AO No. 59 and an interference with the President's power of control and appointment over government-owned and/or controlled corporations (GOCCs). PNCC added that under Executive Order No. 399, series of 1951, a GOCC is not required to hold a general meeting of stockholders but, instead, the general manager thereof is merely required to submit an annual report to the President of the Philippines.

In the ensuing pre-trial conference conducted by Hearing Officer Perea, the parties defined the issues, as follows:

> *'(a) Whether or not PNCC is a GOCC subject to and governed by LOI 1295 (1983), AO No. 59 (1988) and Executive Order No. 399 (1951), or by its articles-of-incorporation and by-laws only.*
>
> *(b) Whether or not PNCC is required to call a regular annual stockholder's meetings'*

on the basis of which the parties agreed to submit the case for resolution after they shall have filed their respective memoranda, which they did.

"It appears, however, that in a motion dated September 4, 1995, *Pabion* and *Ramiro* prayed for the re-opening of the pre-trial conference on the ground that the 'common assumption' on the 75%

Supreme Court E-Library

ownership by several government financial institutions (GFIs) in the PNCC was proved false by their discovery that the GFI[s] are merely a minority among the owners of PNCC. They, therefore, moved that a trial be conducted to determine the extent of ownership by the government in the PNCC.

"Acting on the aforementioned motion, SEC Hearing Officer Perea issued, on January 30, 1996, the following order:

> *'In view of the necessity of a prior determination of whether or not respondent Philippine National Construction Corporation (PNCC) is a government owned or controlled corporation before resolving the instant incident, either or both of the parties are hereby directed to secure a ruling/ opinion from competent authority as to whether or not the PNCC is a government corporation or not, as the matter does not fall within the competence of the Commission to determine.*
>
> *Unless said ruling/opinion is obtained by either or both parties, further proceedings should be held in abeyance.*
>
> *SO ORDERED.'*

"Their motion for reconsideration of the aforequoted order having been denied by the same Hearing Officer in his subsequent order of April 10, 1996, *Pabion* and *Ramiro* then went to the Commission *en banc via* a petition for *certiorari*. Thus came about *SEC-EB No. 495* wherein therein petitioners *Pabion* and *Ramiro* sought the nullification of Hearing Officer Perea's twin orders of January 30, 1996 and April 10, 1996 for having been allegedly issued with grave abuse of discretion amounting to lack or in excess of jurisdiction. In the same recourse, the two likewise asked the SEC *en banc* to direct Perea to proceed with the trial on the merits of SEC Case No. 09-94-4876.

"In its first assailed *order of October 2, 1996,* the SEC *en banc* declared Hearing Officer Perea to have acted with grave abuse of discretion in issuing his two (2) questioned orders. The Commission ruled that Perea should have conducted a trial on the merits to resolve the factual issue of whether PNCC is majority or only minority-owned by the government. Explains the Commission *en banc* in its challenged order:

> *'Sec. 5 [b] of P.D. # 902-A confers on SEC original and exclusive jurisdiction to hear and decide intra-corporate controversies. The main issue in the petition is clearly an intra-*

Supreme Court E-Library

corporate dispute as it is a controversy between the petitioners as stockholders of PNCC and respondent corporation PNCC regarding the holding of regular stockholder's meeting. This matter, therefore, falls within the scope of the jurisdiction of the SEC. In resolving the main issue of whether PNCC should hold regular stockholder's meetings, the hearing officer has jurisdiction to resolve the incidental issue of whether PNCC is a GOCC or not. Having validly acquired original and exclusive jurisdiction over the instant petition, the public respondent is mandated to hear and decide all the issues involved in the dispute.'

"In the same order, the Commission *en banc*, instead of remanding the case to the Hearing Officer to resolve the question of whether PNCC is government-owned or controlled, itself resolved the issue by holding that PNCC, *'being incorporated under the Corporation Code, is, therefore, subject to Section 50 of the Corporation Code which requires the holding of regular stockholders' meeting for the purpose of selecting PNCC's Board of Directors'*, citing, as basis therefor the ruling in PNOC-EDC *vs.* NLRC, 20 SCRA 487, to the effect that the determination as to what law governs a corporation is the manner of its creation, adding that PNCC is an *'acquired asset corporation'* which, by express provision of Section 2 of AO No. 59, *'is not considered as a GOCC'*. And taking judicial notice of PNCC's by-laws thereunder the corporation's directors *'shall be elected at the annual meeting of the stockholders'*, the Commission *en banc* concluded that PNCC *'is, therefore, required to conduct a regular stockholder's meeting for the purpose of electing its Board of Directors, considering that the Corporation Code and its own By-Laws require the holding of such meeting'*.

x x x x x x x x x

"A timely motion for reconsideration was filed by the PNCC but the same was denied by the Commission *en banc* in its assailed *Resolution of April 11, 1997.*"[7] (citations omitted but bold types and italics found in original)

Ruling of the Court of Appeals

Upholding SEC, the Court of Appeals declared that PNCC, though majority-owned by government financial institutions

[7] CA Decision, pp. 2-6; *rollo*, pp. 77-81.

Supreme Court E-Library

(GFIs), retained its character as a private corporation. As such, PNCC was required under the Corporation Code to hold regular shareholders' meetings to elect its board of directors. The CA ruled:

"The petition lacks merit.

"Although the case reached the SEC *en banc* through a petition for *certiorari*, the said body is not helpless to resolve the controversy on its substantive merits. There are indications that PNCC is not a GOCC which the SEC *en banc* cannot ignore. A trial for the purpose of determining the status of PNCC is unnecessary since the issue can be resolved on the basis of records. A remand will only delay the resolution of the case and frustrate the ends of justice.

"It may be so, as pointed out by petitioner PNCC, that the rule which allows the SEC *en banc* to correct instances of grave abuse of discretion is patterned after Rule 65 of the 1997 Rules of Civil Procedure, and therefore, it is only proper that the SEC *en banc* adhere to the pronouncements of the Supreme Court on the proper treatment of petitions for review on *certiorari* under Rule 65. It is equally true, however, that the rule enunciated in several cases to the effect that the inquiry in a petition for *certiorari* is limited only to searching for traces of grave abuse [of] discretion is not cast in stone. For sure, the Supreme Court no less has resolved factual issues in *certiorari* cases on the basis of the records before it. If the Supreme Court can relax the restriction on the disposition of *certiorari* cases, We see no reason why a mere quasi-administrative body unsaddled by the stringent rules of procedure, like the SEC *en banc,* cannot follow the High Court's example, more so when, as rationalized by the same Court in *Gokongwei, Jr. vs. Securities and Exchange Commission, et al.,* 89 SCRA 336, 360, the underlying justification for the relaxation of the rule applies to the instant case as well. Says the High Court in that case:

> *'It is an accepted rule of procedure that the Supreme Court should always strive to settle the entire controversy in a single proceeding, leaving no root or branch to bear the seeds of future litigation. Thus, in Francisco v. City of Davao (12 SCRA 682), this Court resolved to decide the case on the merits instead of remanding it to the trial court for further proceedings since the ends of justice would not be subserved by the remand of the case. In Republic v. Security Credit and Acceptance*

Supreme Court E-Library

Corporation, et al. (19 SCRA 58), this Court, finding that the main issue is one of law, resolved to decide the case on the merits 'because public interest demands an early disposition of the case', and in Republic v. Central Surety and Insurance Company, (25 SCRA 641), this Court denied remand of the third-party complaint to the trial court for further proceedings, citing precedents where this Court, in similar situations, resolved to decide the cases on the merits, instead of remanding them to the trial court where (a) the ends of justice would not be subserved by the remand of the case; or (b) where public interest demand an early disposition of the case; or (c) where the trial court ha[s] already received all the evidence presented by both parties and the Supreme Court is now in a position, based upon said evidence, to decide the case on the merits. x x x'

"Moreover, it cannot be denied that the parties herein are embroiled in an intra-corporate controversy and the question on the identity of PNCC is only an incident of that controversy. *Pabion* and *Ramiro* are among the stockholders of PNCC, a circumstance which classifies the dispute as an intra-corporate controversy. The authority of the Commission to determine whether or not PNCC can be compelled to hold a stockholders' meeting is unquestioned as even PNCC itself concedes that the 'issues of the propriety of calling a stockholders' meeting is within the competence of the SEC'. The source of authority of the SEC over the present case can be found in Section 5(b) of Presidential Decree (PD) No. 902-A, as amended, which empowers the SEC to hear and resolve cases involving *'controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively, and between such corporation partnership or association and the State insofar as it concerns their individual franchise or right to exist as such entity.'*

"The finding of the SEC *en banc* that PNCC is not a GOCC was made in the exercise of its jurisdiction over an intra-corporate controversy. To disallow the Commission to determine the nature of petitioner PNCC is to deprive it of the power to resolve the intra-corporate controversy between the parties. The jurisdiction of the SEC over intra-corporate controversies emanates from law and PNCC cannot divest the Commission of that jurisdiction. As the body

Supreme Court E-Library

charged with exclusive authority over intra-corporate controversies, aside from being possessed under Section 3 of PD No. 902-A, as amended, with absolute jurisdiction over all corporations which are grantees of primary franchise from the government, the SEC *en banc* can be trusted with the competence to distinguish a private corporation from a GOCC.

"The second assigned error must likewise fall.

"Administrative Order No. 59 does not consider the so-called acquired asset corporations, although majority owned by the government, as GOCCs. The salient provisions of AO No. 59 read, as follows:

> *SEC. 2. Definition of Terms. — As used in this Administrative Order, the following terms shall mean:*
>
> *(a) Government-owned and/or controlled corporation, hereinafter referred to as GOCC or government corporation, is a corporation which is created by special law or organized under the Corporation Code in which the government directly or indirectly, has ownership of the majority of the capital or has voting control; Provided, That an acquired asset corporation as defined in the next paragraph shall not be considered as GOCC or government corporation.*
>
> *(b) Acquired asset corporation is a corporation (1) which is under private ownership, the voting or outstanding shares of which (i) were conveyed to the government agency, instrumentality or corporation in satisfaction of debts whether by foreclosure or otherwise, or (ii) were duly acquired by the government through final judgment in a sequestration proceeding, or (2) which is a subsidiary of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith, and which in any case by law or by enunciated policy is required to be disposed of to private ownership within a specified period of time.'*

"In order to be considered as an *acquired asset corporation*, the aforequoted provision requires, among other things, that the

Supreme Court E-Library

corporation's conveyance of its outstanding shares to the government must be aimed at the satisfaction of its debts. While, on one breath, petitioner admits that the GFIs gained majority ownership of PNCC by converting their loans into equity, on another breath, petitioner denies that the debt-to-equity conversion resulted in the satisfaction of the outstanding debts of PNCC because it did not pay the loans. If the loans remained unpaid as maintained by PNCC, what then was the effect on its debt when the GFIs converted their loans into equity? It would be the height of irresponsibility for PNCC to surrender majority ownership of its voting or outstanding shares without getting something in return. When PNCC ceded the majority ownership to the GFIs, there could be no other motivation behind the action than PNCC's desire to satisfy its obligation to the creditors. PNCC's effort to ward off the exclusionary proviso of AO No. 59 only produces incongruity in its position.

"The case of *Quimpo vs. Tanodbayan*, 146 SCRA 137, cannot assist the petitioner's cause. There, the Supreme Court's inquiry centered on whether or not Petrophil Corporation is a GOCC because an affirmative answer will affirm the Tanodbayan's jurisdiction over the Petrophil employees pursuant to the provisions of the Anti-Graft and Corrupt Practices Act. In declaring that Petrophil is a GOCC, the Supreme Court deemed it crucial to its conclusion that Petrophil was purchased by the government through the Philippine National Oil Corporation, itself a GOCC. The situation of Petrophil bears no parallelism with that of PNCC because the latter was not purchased by the GFIs. The GFIs became majority owners of PNCC because they converted their loans into equity. The manner of partial acquisition of PNCC by the GFIs fits the condition set forth in Section 2, paragraph (b), subparagraph, (1) (i) of AO no. 59. *supra*.

"PNCC's position that it cannot be considered as an acquired asset corporation in the absence of law or "enunciated policy" mandating its privatization within a definite period can only be a product of strained interpretation of AO No. 59. The Administrative Order shows that there are only two (2) classes of acquired asset corporations. Although the description of each class is compressed in a single paragraph, the disjunctive word "or" separates the first class from the second class which connotes a variance in their characteristics. The word "or" is a disjunctive term signifying disassociation and independence of one thing from each of the other things enumerated. It should, as a rule, be construed in the sense in which it ordinarily implies, as a disjunctive word. Each class has its own set of

Supreme Court E-Library

conditions. The conversion by the GFIs of their loans into equity in PNOC is sufficient to transform it as an acquired asset corporation. The requirement for a pretender for the status of an acquired asset corporation to be subject to a law or policy that commands its privatization applies to another class of acquired asset corporations which does not include PNCC."[8] (citations omitted, italics supplied)

The Issues

Disagreeing with the appellate court, petitioner lodged this recourse before us[9] and presents these issues:

"1. WHETHER OR NOT PNCC IS A GOCC;

2. WHETHER OR NOT THE SEC HAS JURISDICTION TO ORDER PNCC TO HOLD A STOCKHOLDERS' MEETING FOR THE PURPOSE OF ELECTING THE MEMBERS OF ITS BOARD OF DIRECTORS;

3. WHETHER OR NOT PNCC IS REQUIRED UNDER THE LAW TO HOLD A STOCKHOLDERS' MEETING FOR THIS PURPOSE; AND

4. WHETHER OR NOT THE SEC, IN *CERTIORARI* PROCEEDINGS, CAN RULE ON THE MERITS OF A CASE EVEN BEFORE THE HEARING OFFICER HAS RECEIVED EVIDENCE."[10]

We shall take up the above issues in the following sequence: 1) whether SEC can determine the corporate status of PNCC, 2) whether SEC has jurisdiction over GOCCs, and 3) whether PNCC is an acquired asset corporation.

---

[8] CA Decision, pp. 6-11; *rollo*, pp. 81-85A.

[9] This case was deemed submitted for resolution on September 22, 1999, upon receipt by the Court of the OSG's Memorandum, which was signed by ASG Carlos N. Ortega, ASG Magdangal M. De Leon and Solicitor Bernardo G. Hernandez. Significantly, the OSG sides with private respondents. On November 19, 1999, the Court received a Motion for Leave to File Petition-in-Intervention filed by the Assets Privatization Trust, it was denied in a separate Resolution for having been filed late.

[10] Petitioner's Memorandum, p. 11; *rollo*, p. 510. This was signed by Attys. Roberto N. Dio and Abner C. Gener Jr. of Castillo Laman Tan Pantaleon and San Jose.

Supreme Court E-Library

The Court's Ruling

The Petition has no merit. Simply stated, PNCC claims that SEC has no jurisdiction over it and that members of the corporation's board of directors hold office, not by virtue of a shareholders' election but by appointment of the President of the Philippines. We hold that SEC has authority over PNCC and that the latter's directors owe their offices to their shareholders and not to presidential fiat. To justify these plain conclusions, we need to wade through rather complicated legal processes and reasoning in resolving *seriatim* the legal issues raised by petitioners.

First Issue:
May SEC Determine
Whether PNCC Is a GOCC?

Underlying this confusing controversy is the misconception that government owned and/or controlled corporations (GOCCs) are beyond the jurisdiction of SEC. From this broad and sweeping assumption, petitioner asserts that SEC is without competence to determine whether PNCC is a GOCC.[11] It insists that such a determination falls solely upon the President of Philippines and is therefore beyond SEC's jurisdiction.

We disagree. It is certainly absurd to say that SEC is without jurisdiction to determine if PNCC is a GOCC simply because the latter *claims* to be one. The President does not "determine" whether a corporation is a GOCC or not. It is the law that does. PNCC's status a GOCC can be ruled upon by SEC — as well as by other competent authorities for that matter — based on law, specifically the Revised Administrative Code of 1987[12] which provides *inter alia* as follows:

"Sec. 2. *General Terms Defined.* — Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:

---

[11] Petition, pp. 17-18; *rollo*, pp. 25-26.

[12] Executive Order (EO) 292, "The Administrative Code of 1987," November 24, 1988.

Supreme Court E-Library

x x x x x x x x x

(13) *Government-owned or controlled corporation* — refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: Provided, That government owned or controlled corporations *may be further categorized* by the Department of Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations." (italics supplied)

Thus, we agree with the CA that "the SEC *en banc* can be trusted with the competence to distinguish a private corporation from a GOCC."[13] Whether such determination is correct would be an altogether different matter.

SEC Ruled on the Merits

Petitioner argues that *certiorari*, which was used by private respondents to challenge the ruling of the hearing officer before the SEC *en banc*, is generally limited to determining whether or not there has been grave abuse of discretion committed by the officer below. It further claims that the SEC rule[14] used by respondents was patterned after Rule 65 of the 1997 Rules of

---

[13] CA Decision, p. 8; *rollo*, p. 83.

[14] Sec. 1, Rule XV of the SEC Revised Rules and Procedure, provides:

"SECTION 1. *Petition for Review on Certiorari.* — When any Hearing Officer, or panel of Hearing Officers of the Commission, has acted without or in excess of its jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy, adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition with the commission *En Banc* alleging the fact with certainty and praying that judgment be rendered annulling or modifying the proceedings, order or ruling, as the law requires, of such Hearing Officer or Panel of Hearing Officers.

x x x x x x x x x

Supreme Court E-Library

Court.[15] Hence, the same principles governing the latter should apply to the former. It thus submits that SEC erred when it ruled not only on the issue of jurisdiction but also on the merits of the case. It contends that SEC *en banc* should have limited itself to the issue of grave abuse and thereafter remanded the case below for further proceedings.

Again, we disagree. What petitioner invokes is a general rule that admits of exceptions.[16] As the CA aptly pointed out, this general rule "is not cast in stone."[17] Indeed, one chiseled exception arises when the court or administrative agency is in a position to resolve the dispute on the merits based on the records before it.[18] That is, a reviewing court or agency may decide the *lis mota* of a case on its merits if there are enough undisputed facts to warrant such resolution.

Here we stress that SEC's ruling was factually based on the judicial admission of petitioner that there was a debt-to-equity conversion of PNCC's obligations to several government financial institutions (GFIs) pursuant to LOI 1295.[19] PNCC

---

[15] Rule 65, Sec. 1 of the 1997 Rules of Civil Procedure, provides:

"SECTION 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

x x x x x x x x x

[16] See *Quisumbing v. CA*, 207 Phil. 607, June 23, 1983; *Republic v. Central Surety & Ins. Co.*, 25 SCRA 641.

[17] CA Decision, p. 6; *rollo*, p. 81.

[18] See *Liangga Bay Logging Co., Inc. v. CA,* 157 SCRA 359, January 28, 1988; cited by both petitioner and respondent.

[19] The questioned Order of the SEC *en banc* reads in part:

"Moreover, under AO 59, PNCC is an acquired asset corporation which, by express provision of Section 2 thereof, is not considered as a GOCC." (SEC Case No. 495, p. 5, October 2, 1996)

Supreme Court E-Library

admits that at least 76.48 percent of its equity is owned by GFI's.[20] Thus, in view of such admission extant on the records, SEC *en banc* was in a position to validly dispose of the controversy directly, without need of remanding the matter to the hearing officer. It aptly based its actions on the fact that PNCC was organized pursuant to the general corporation law and is thus subject to SEC regulation.

We agree with SEC because a remand would have merely delayed unnecessarily the resolution of the question. As we have said before and say so again:

"A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is, rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities."[21]

Indeed, justice unnecessarily delayed is justice necessarily denied.

The questioned Resolution, on the other hand, provides:

By applying the provision of law, PNCC is not a GOCC, even assuming that the GFIs hold 75% of its outstanding capital stock. This is because it is an acquired asset under Administrative Order No. 59. Section 2(b) of said AO defines an acquired asset corporation as x x x By PNCC's own admission, the GFIs became its stockholders by converting their loans to PNCC equity. Hence, PNCC clearly falls within the aforequoted definition."

[20] Petitioner's Memorandum, pp. 17-18; *rollo*, pp. 516-517. *Cf.* DOJ Opinion No. 56, s. 1998, wherein both the APT and PNCC admit that LOI 1295 was not fully implemented in that the debt to equity conversion was incomplete.

[21] *Lim Tong Lim v. Philippine Fishing Gear Industries, Inc.*, G.R. No. 136448, November 3, 1999, at p. 21, per Panganiban, *J.*, quoting *Alonzo v. Villamor*, 16 Phil. 315, July 26, 1910. See also *Leonor v. CA*, 256 SCRA 69, April 2, 1996.

Supreme Court E-Library

Second Issue:
Does SEC Have Jurisdiction over GOCCs?

As adverted to above, petitioner proceeds from the erroneous proposition that SEC's "jurisdiction does not extend to x x x [a] government-owned and controlled corporation or GOCC x x x"[22] This is an inaccurate generalization. GOCCs may either be (1) with original character or created by special law; or (2) incorporated under general law,[23] *via* either the Old Corporation Code[24] or the New Corporation Code.[25]

We concede that SEC has no jurisdiction over corporations of the first type — GOCCs with original charter or created by special law — primarily because they are governed by their charters.[26] But even this concession is not absolute, since the Corporation Code may apply suppletorily, either by operation of law[27] or through express provisions in the charter.[28]

On the other hand, we have no doubt that over GOCCs established or organized under the Corporation Code, SEC can exercise jurisdiction. These GOCCs are regarded as *private*

---

[22] Petition, p. 14; *rollo*, p. 22.

[23] Section 16, Article XII of the 1987 Constitution, provides:

"Section 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability."

[24] Act No. 1459, April 1, 1906.

[25] Batas Pambansa Blg. 68, May 1, 1980.

[26] See Sec. 4, BP Blg. 68. See also *Camporedondo v. NLRC*, G.R. No. 129049, August 6, 1999.

[27] *Ibid.*

[28] An example would be the National Coal Company, created by Act No. 2705 as amended by Act No. 2822. See *Additional Coal Co. v. Collector of Internal Revenue,* 46 Phil. 583, December 2, 1924; *Cervantes v. Auditor General,* 91 Phil. 359, May 26, 1952.

Supreme Court E-Library

corporations despite common misconceptions.[29] That the government may own the controlling shares in the corporation does not diminish the fact that the latter owes its existence to the Corporation Code. More pointedly, Section 143 of the Corporation Code[30] gives SEC the authority and power to implement its provisions, specifically for the purpose of regulating the entities created pursuant to such provisions. These entities include corporations in which the controlling shares are owned by the government or its agencies.

Glaringly erroneous, therefore, is petitioner's reliance on *Quimpo v. Tanodbayan*[31] and its theory that it is immaterial "'whether a corporation is acquired by purchase or through the conversion of the loans of the GFIs into equity in a corporation [because] such corporation loses its status as a private corporation and attains a new status as a GOCC."[32] *First*, based on the discussion above, PNCC does not "lose" its status as a private corporation, even if we were to assume that it is a GOCC. *Second*, neither would such loss of status prevent it from being further classified into an acquired asset corporation, as will be discussed below.

---

[29] As pointed out by then Assemblyman Estelito Mendoza: "x x x [T]here are corporations which are organized under the Corporation Code, the shareholdings of which are owned by the government, and sometimes these corporations are referred to also as public corporations simply because the shares of stock of those corporations are owned or controlled by the government. However, as one[s] organized under the Corporation Law, those corporations are regarded as private corporations in the context of the Corporation Code." (Proceedings of the Batasan Pambansa on the Proposed Corporation Code, cited in *The Corporation Code of the Philippines Annotated*, Lopez, Vol. 1, p. 59, 1994 ed.)

[30] "Sec. 143. *Rule Making power of the Securities and Exchange Commission.* — The Securities and Exchange Commission shall have the power and authority to implement the provisions of this Code, and to promulgate rules and regulations reasonably necessary to enable it to perform its duties hereunder, particularly in the prevention of fraud and abuses on the part of the controlling stockholders, members, directors, trustees or officers."

[31] 146 SCRA 137, December 2, 1986.

[32] Petitioner's Memorandum, p. 29; *rollo*, p. 528.

Supreme Court E-Library

The Controversy Is Within SEC Jurisdiction

SEC's assumption of jurisdiction over this case is proper, as the controversy involves the election of PNCC's directors. Petitioner does not really contradict the nature of the question presented and agrees that there is an intra-corporate question involved. However, it emphasizes that the "main" question to be resolved is the status of PNCC as a GOCC[33] which, it submits, is outside SEC's competence to rule on.[34] As already explained, there is no reason why SEC cannot make such determination which, though not final and may be subject to review, is nonetheless made pursuant to its exercise of its *original* and *exclusive* jurisdiction over cases involving controversies in the election of directors.[35]

SEC May Compel Stockholders' Meeting

Prescinding from the above premises, it necessarily follows that SEC can compel PNCC to hold a stockholders' meeting for the purpose of electing members of the latter's board of directors.[36] This is clearly provided for by Section 50 of the Corporation Code, which we quote:

"Sec. 50. Regular and special meetings of stockholders or members. — x x xWhenever, for any cause, there is no person

[33] Petition, pp. 17-18; *rollo*, pp. 25-26.

[34] See, however, respondent's and the CA's characterization of PNCC's status as merely an "incidental" issue.

[35] Sec. 5 (c), PD 902-A.

[36] Section 6 of PD 902-A provides:

"SECTION 6. In order to effectively exercise such jurisdiction [referring to Section 5], the Commission shall possess the following powers:

x x x x x x x x x

(f) To compel the officers of any corporation or association registered by it to call meetings of stockholders or members thereof under its supervision;

x x x x x x x x x

Supreme Court E-Library

authorized to call a meeting, *the Securities and Exchange Commission, upon petition of a stockholder or member, and on the showing of good cause therefor, may issue an order to the petitioning stockholder or member directing him to call a meeting of the corporation by giving proper notice required by this Code or by the by-laws.* The petitioning stockholder or member shall preside thereat until at least a majority of the stockholders or members present have chosen one of their member[s] as presiding officer." (italics supplied).

As respondents point out, the SEC's action is also justified by its regulatory and administrative powers[37] to implement the Corporation Code, specifically to compel the PNCC to hold a stockholder's meeting for election purposes. Apropos here is the SEC's ruling as follows:

"The Commission takes judicial notice of the PNCC by-laws follows:

'Art. V, Sec. 5

'(1) The Board of Directors shall be composed of eleven (11) directors.

'(2) The directors shall be elected at the annual meeting of the stockholders, each director to hold office for a term on one (1) year and until his successor is duly elected and qualified.

'Art. IV Sec. 4

'(1) The annual meeting of the stockholders shall be held at 3:00 P.M. on the fourth (4th) Tuesday of March every year.'

"Respondent PNCC is therefore required to conduct a regular stockholders' meeting for the purpose of electing its Board of Directors, considering that the Corporation Code and its own By-Laws require the holding of such meeting. The failure of PNCC to call and hold annual stockholders' meetings since 1983 or for thirteen (13) years constitutes a gross, continuing violation of its by-laws and the Corporation Code. For the refusal of PNCC's Board of Directors to call said meeting, petitioners, as stockholders of PNCC, can rightfully petition the SEC to order the same."

---

[37] Respondent's Memorandum, p. 43; *rollo*, p. 472, signed by Attys. Ramon J Quisumbing and Esteban Y. Mendoza of Quisumbing Torres.

Supreme Court E-Library

Third Issue:
What is the Status of PNCC?

Petitioner differs from the foregoing conclusion and avers that there is no necessity to hold a stockholders' meeting to elect members the board of directors, because the President of the Philippines is empowered to appoint them, by virtue of Article IV, Section 16 (1) of Administrative Order No. 59[38] (December 5, 1988):

"x x x x x x x x x

(1) *Governing Boards.* — A GOCC shall be governed by a Board of Directors or equivalent body composed of an appropriate number of members to be appointed by the President of the Philippines upon the recommendation of the Secretary to whose Department the GOCC is attached. The Chairman of the Board shall likewise be appointed by the President upon the recommendation of the Secretary."

Respondents counter that the above-quoted provision is inapplicable, since PNCC is not a GOCC. Instead, it is an acquired asset corporation, based on the definition given in Section 2 (a) of the same law, AO 59:

"x x x x x x x x x

(a) Government-owned and/or controlled corporation, hereinafter referred to as GOCC or government corporation, is a corporation which is created by special law or organized under the Corporation Code in which the Government, directly or indirectly, has ownership of the majority of the capital or has voting control; *Provided that an acquired asset corporation as defined in the next paragraph shall not be considered as GOCC or government corporation.*

(b) Acquired asset corporation is a corporation (1) which is under private ownership, the voting or outstanding shares of which (i) were conveyed to the government or to a government agency, instrumentality or corporation in satisfaction of debts whether by foreclosure or otherwise, or (ii) were duly acquired

---

[38] Issued by President Corazon C. Aquino.

Supreme Court E-Library

> by the government through final judgment in a sequestration proceeding; or (2) which is a subsidiary of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith, and which in any case by law or by enunciated policy is required to be disposed of to private ownership within a specified period of time." (italics supplied)

Thus, at this point these questions arise: (a) Is PNCC an acquired asset corporation? (b) Is Section 2 of AO 59 inconsistent with Section 2 (13) of EO 292? (c) Is Section 16 of AO 59 applicable to PNCC?

PNCC Is an Acquired Asset Corporation

We agree with the respondents that PNCC falls under the exception carved out from Section 2 (a and b) above which removes an acquired asset corporation from the category of a GOCC.[39] In the context of the entire administrative order and in relation to presidential issuances,[40] these provisions clearly indicate that PNCC is indeed an acquired asset corporation. This is because PNCC is a corporation that is, to quote said AO, "under private ownership, the voting or outstanding shares of which (i) were conveyed to the government" financial institutions "in satisfaction of debts x x x."

Petitioner posits the interpretation that an acquired asset corporation is one that is set to be privatized pursuant to a law or an enunciated policy.[41] On this particular point, we agree. It should be noted that under Section 2 (b) of AO 59, there are two kinds of acquired asset corporations: *one,* a corporation which is "under private ownership, the voting or outstanding

---

[39] Memorandum for Respondents, p. 16; *rollo*, p. 445.

[40] Cf. Administrative Order No. 64 dated March 24, 1988; Proclamation No. 50 dated December 8, 1986; Administrative Order No. 397 dated May 13, 1998; as well as Presidential Decree No. 2029 dated February 4, 1986.

[41] CA Decision, pp. 10-11; *rollo*, pp. 85-85A.

Supreme Court E-Library

shares of which" were either conveyed to the government or to a government agency, instrumentality or corporation in satisfaction of debts whether by foreclosure or otherwise, or were duly acquired by the government in a sequestration proceeding; and *two*, a corporation which is a subsidiary of a government entity organized exclusively to own and manage, or lease or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith.

Both kinds of acquired asset corporations are by law or by enunciated policy required to be privatized within a specified period. Such interpretation of AO 59 is supported by Section 18 thereof which provides:

"SEC. 18. *Dissolution of Acquired Asset Corporations.*— All executive agencies, offices and instrumentalities shall take steps to dissolve any acquired asset corporation *which has not been disposed of to the private sector* within five (5) years from the date of the decision to dissolve the corporation. x x x"[42] (italics supplied)

Reading these sections together, it becomes evident that an acquired asset corporation is singled out for eventual

---

[42] *Cf.* definition in PD No. 2029 *"Defining Government-owned or Controlled Corporations and Identifying Their Role in National Development"*.

"Sec. Types of corporations. — For purposes of this Decree, government-owner or controlled corporations, hereafter called government corporations, may be classified to parent or subsidiary corporations. Other corporations in which the government has equity interest may be classified as acquired asset and affiliate corporations.

x x x x x x x x x

(c) An acquired asset corporation is one organized under the general corporation law (1) under private ownership at least a majority of the shares of stock of which were conveyed to a government corporation in satisfaction of debts incurred with a government financial institution, whether by foreclosure or otherwise, or (2) as a subsidiary corporation of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith, and which in any case by enunciated policy of the government is required to be disposed of to private ownership within a specified period of time."

Supreme Court E-Library

disposition to the private sector or, failing in that, for dissolution.[43]

True, respondents failed to show that PNCC was headed either for privatization or for dissolution. However, Article I, Section 1 of Proclamation No. 50,[44] provides the enunciated policy required under AO 59 n this wise:

"Sec. 1. *Statement of Policy.* — It shall be the policy of the State to promote privatization through an orderly, coordinated and efficient program for the prompt disposition of the large number of non-performing assets of the government financial institutions, and certain government-owned or controlled corporations which have been found unnecessary or inappropriate for the government sector to maintain."

Pursuant to this policy, AO 64,[45] which was issued by then President Corazon Aquino, transferred to the national government

---

[43] Cf. Proclamation No. 50, Proclaiming and Launching a Program for the Expeditious Disposition and Privatization of Certain Government Corporations and/or the Assets Thereof, and Creating the Committee on Privatization and the Asset Privatization Trust, December 8, 1986.

[44] See also EO No. 37, s. 1992, entitled "'Restating the Privatization Policy of the Government."

[45] AO No. 64, entitled "Approving the Identification of and Transfer to the National Government of Certain Assets and Liabilities of the Philippine Export and Foreign Loan Guarantee Corporation and the National Development Company," provides:

"WHEREAS, pursuant to Section 23 of Proclamation No. 30, the President of the Philippines, acting through the Committee on Privatization, shall in an appropriate instrument identify and describe the assets of government institutions to be transferred to the National Government and the loan or other transactions giving rise to the receivables, obligations and other property constituting assets to be transferred;

x x x x x x x x x

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, do hereby approve the following:

(a) The identification of and transfer to the National Government of certain assets of the Philippine Export Foreign Loan Guarantee Corporation (Philguarantee) and the National Development Company (NDC) consisting of loans, equity investments, advances, acquired assets included in the list

Supreme Court E-Library

certain assets held by the Philippine Export and Foreign Loan Guarantee (Philguarantee) and the National Development Company (NDC). Certain shares in PNCC were included. This fact was confirmed by President Fidel V. Ramos who issued AO 397[46] on May 13, 1998. The said administrative order states that *"PNCC is one of the corporations slated to be privatized."*[47]

When confronted with the same question, the Department of Justice (DOJ) in DOJ Opinion No. 37, Series of 1995, stated that PNCC was an acquired asset corporation, as follows:

"At the outset, we note from the attached papers that in its letter dated May 20, 1991 to the PNCC, *the Office of the President already declared that PNCC is an 'acquired asset corporation as defined in Administrative Order No. 59.'*" (italics supplied)

DOJ Opinion No. 22, Series of 1998, had a similar tenor:

"The question whether PNCC is a government-owned or controlled corporation (GOCC) and, therefore, a government entity ha[s] been previously passed upon by the Office of the President. In a letter dated May 20, 1991, Deputy Executive Secretary Sonny Coloma informed the then PNCC President that PNCC is '*an acquired asset corporation* as defined under Section 2 of Administrative Order No. 59.' The conclusion, although not explicitly stated in said letter, is that PNCC is not a GOCC." (italics supplied)

While not controlling, official opinions of the justice secretary are persuasive. We uphold such opinions in the present milieu.

---

consisting of two pages hereto attached and made an integral part hereof as Annex 'A'.

x x x x x x x x x

[46] AO No. 397 provides:

"WHEREAS, PNCC's indebtedness to the various government financial institutions were transferred to the National Government (NG) through the Committee on Privatization (COP)/Asset Privatization Trust (APT) and the Bureau of Treasury pursuant to Proclamation No. 50 and Administrative Order No. 64."

[47] Although PNCC is not in the list of GOCCs for privatization (see EO No. 37, s. 1992), it is treated as a *transferred asset* for eventual disposition by the APT to the private sector. (DOJ Opinion No. 22, s. 1998) (Italics supplied).

Supreme Court E-Library

There Is No Inconsistency
With the Administrative Code

Its earlier posturing notwithstanding, petitioner simultaneously asserts that AO 59 is insufficient in its definition of "GOCC," which is allegedly inconsistent with that found in Executive Order (EO) 292,[48] otherwise known as the Revised Administrative Code (RAC). The inconsistency, according to petitioner, lies in the fact that AO 59 distinguishes between a GOCC and an acquired asset corporation, while EO 292 does not. Petitioner maintains that "[s]ince A.O. No. 59 is a mere administrative issuance of the President, it is clear that its definition of a GOCC cannot prevail over that given by E.O. No. 292, which is a law."[49]

We do not find any inconsistency. The definition given in AO 59 explicitly applies only to that particular administrative order. We quote the section in full:

"Sec. 2. *Definition of Terms. — As used in this Administrative Order,* the following terms shall mean:

(a) Government-Owned and/or controlled corporation, hereinafter referred to as GOCC or government corporation, is a corporation which is created by special law or organized under the Corporation Code in which the Government, directly or indirectly, has ownership of the majority of the capital or has voting control; *Provided that an acquired asset corporation as defined in the next paragraph shall not be considered as GOCC or government corporation.*

(b) *Acquired asset corporation* is a corporation (1) which is under private ownership, the voting or outstanding shares of which (i) were conveyed to the government or to a government agency, instrumentality or corporation in satisfaction of debts whether by foreclosure or otherwise, or (ii) were duly acquired by the government through final judgment in a sequestration proceeding; or (2) which is a subsidiary of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets

---

[48] Quoted above.

[49] Petitioner's Memorandum, p. 21; *rollo*, p. 520.

Supreme Court E-Library

acquired by a government financial institution in satisfaction of debts incurred therewith, *and which in any case by law or by enunciated policy is required to be disposed of to private ownership within a specified period of time."* (Italics supplied)

AO 59 does not purport to have established a new kind of corporation that supersedes EO 292. Neither does the former seek to revise the definition of "GOCC" given in the latter. What AO 59 in fact does is to distinguish GOCCs in general from those that are sought to be privatized. In fact, the definition given in EO 292 itself states that the GOCCs *may be further categorized.*[50] This caveat suggests that the definition is broad enough to admit distinctions as to the kinds of GOCCs defined under AO 59.

Thus, contrary to respondent's assertion that PNCC is *not* a GOCC,[51] we hold that it may be deemed so under EO 292. However, for purposes of AO 59, particularly in the application of Section 16 thereof, PNCC is an acquired asset corporation. In this light, the alleged inconsistency is more apparent than real. It should be emphasized that an acquired asset corporation is a GOCC set to be privatized pursuant to the government's policy[52] as enunciated in Proclamation 50,[53] which defines "assets" to include GOCCs thus:

---

[50] See for instance Proclamation No. 50, which categorized GOCCs into parent and subsidiary corporations.

[51] Respondent's Memorandum, pp. 19-31; *rollo*, pp. 448-460.

[52] As a precursor to Proclamation No. 50, privatization as a policy was declared in PD No. 2029 of the late dictator, Ferdinand E. Marcos.

[53] In one of its introductory clauses, Proclamation No. 50 provides:

"CONSIDERING, that the government has decided to adopt, as the twin cornerstones of the program, the following parallel imperatives for the attainment of national policy:

(a) The judicious use of the corporate form of organization in the creation of government bodies for the production and distribution of economic goods and services to the public, and the need to rationalize and monitor the operations of government corporations to help bring about improved performance, assure more efficient use of resources and in general to re-orient their activities and properties in a manner consistent with national

Supreme Court E-Library

"Sec. 2. *Definition of Terms.* — As used in this Proclamation and unless the context otherwise requires, the term:

(1) Assets shall include x x x (iv) the *government institutions* themselves, whether as parent or subsidiary corporations.

(2) Government institutions shall refer to *government-owned or controlled corporations*, financial or otherwise, whether organized by special charter as in the case of a parent cooperation, or under general law as in the case of a subsidiary corporation." (italics supplied)

Under Section 5[54] of same Proclamation thereof, the Committee on Privatization is empowered to identify and transfer these assets for disposition to the private sector.

The allusions to an implied repeal by EO 292 of Section 2 (a and b) of AO 59 deserves scant consideration. Suffice it to say that, as respondents pointed out, it would be absurd for an earlier law to impliedly repeal a subsequent one.[55] In any case, implied repeal is generally not favored.[56] Equally important, there is really no inconsistency.

---

objectives, to the end that the private sector is given primacy and the Government assumes a supplemental role, in entrepreneurial endeavors under a climate of fair competition; and

(b) Reducing the number of government corporations which ha[ve] proliferated to unmanageable proportions; circumscribing the areas of economic activities within which government corporations may operate; and aiming to achieve these goals through the privatization of a good number of government corporations, and the disposition and liquidation of the non-relevant and non-performing assets of retained corporations as the logical first step to their rehabilitation."

[54] "Sec. 5. *Powers and functions.* — The Committee shall have the following powers and functions:

(1) To identify to the President of the Philippines, and arrange for transfer to the National Government and/or to the Trust and the subsequent divestment to the private sector of x x x (b) such government corporations, whether parent or subsidiary, and/or such of their assets, as may have been recommended by the Committee for disposition, and approved by the President; x x x"

[55] Respondent's Memorandum, p. 23; *rollo*, p. 452.

[56] See *Intia Jr. et al. v. COA,* G.R. No. 131529, April 30, 1999; *Manzano v. Valera,* G.R. No. 122068, July 8, 1998; *Fabella v. CA*, G.R. No. 110379, November 28, 1997; *Agujetas v. CA,* G.R. No. 106560, August 23, 1996.

Supreme Court E-Library

Section 16 of AO 59 Is Inapplicable to PNCC

Assuming *arguendo* that PNCC is a GOCC and not an acquired asset corporation under AO 59, Section 16 thereof is inapplicable. *First*, the GOCC referred to in Section 16 (1) of AO 59 is that which is attached to a department of the executive branch *vis-a-vis* the inter-departmental supervision announced in the said Administrative Order. Here, the President shall appoint members of the board "upon the recommendation of the Secretary to whose Department the GOCC is attached." *Second*, the GOCC referred to in Section 16 is one with an original charter, and not one created under general corporation law. This is evident from a reading of Section 16 (2) of AO 59:

"(2) *Powers and Functions of the Board.* — Insofar as it is not inconsistent with the *charter* of a given GOCC, the Board of Directors or equivalent body shall have the following powers and functions:

x x x x x x x x x" (italics supplied)

In sum, it is clear that PNCC is an acquired asset corporation under AO 59. Thus, Section 16 (1) of AO 59 is inapplicable. The alleged derogation of the President's power over GOCCs is without basis. We note, at this point, petitioner's admission that members of the PNCC board of directors are nominated by the GFIs in proportion to their equity ownership therein.[57] Petitioner's vacillation in seeking to apply Section 16 (1) of AO 59 while at same time asserting the invalidity of Section 2 (a and b) thereof betrays the stark weakness of its position.

One final point. Petitioner is represented in this litigation by private counsel, not by the government corporate counsel or by the solicitor general. In fact, the OSG's Memorandum submitted in representation of SEC debunks the Petition and sides with respondents. Petitioner should not find it strange then that it is rightly adjudged as a private corporation subject to regulation by the SEC, since by its very act of retaining

---

[57] Petition, p. 5; *rollo*, p. 13.

Supreme Court E-Library

private counsel and by the government's act of opposing its claims, it is indeed a SEC-regulated entity.

Epilogue

Lest the focus of our disposition of this case be lost in the maze of arguments strewn before us, we stress that PNCC is a corporation created in accordance with the general corporation statute. Hence, it is *essentially* a private corporation, notwithstanding the government's interest therein through the debt-to-equity conversion imposed by PD 1295. Being a private corporation, PNCC is subject to SEC regulation and jurisdiction.

Petitioner contends that Proclamation 50[58] and AO 59[59] limit the exercise of that jurisdiction. But, after wading into the complex issues submitted by the parties, we have shown that such laws and issuances are not applicable to this particular case. We must emphasize also, and this should be clear to all concerned, that our ruling here does not in any way affect the *factual*

---

[58] "Sec. 25. *Reorganization of Trusted Corporations.* — In order to aligamate organizational and manning structures of parent government-owned or controlled corporations as well as corporations established through the Corporation Code which are transferred to the Trust, with the centralization of the exercise by the government of its ownership role over such corporations through the Trust, this Proclamation proclaims and mandates that:

x x x x x x x x x

(3) The chairman and members of the board of directors or Trustees and the presidents or chief executive officers of the trusted corporations shall be appointed: (a) in the case of parent corporations, by the Committee; and (b) in the case of subsidiary or affiliate corporations by the Trust. In both instances, it shall have the approval of the President."

[59] "Sec. 16. *Role of the GCMCC in the Review of Studies and Proposals Pertaining to the Government Corporate Sector.* —

x x x x x x x x x

(1) *Governing Boards.* — A GOCC shall be governed by a Board of Directors or equivalent body composed of an appropriate number of members to be appointed by the President of the Philippines upon the recommendation of the Secretary to whose Department the GOCC is attached. The Chairman of the Board shall likewise be appointed by the President upon the recommendation of the Secretary."

Supreme Court E-Library

issue of whether the government owns a majority of the shares in PNCC. This matter, as can be gleaned from the *factual* narration of the CA, was not settled below. However, from our painstaking explanation above, it should be obvious that this issue of fact is irrelevant to the disposition of the legal issues herein raised. To repeat, whether PNCC is majority owned by the government or not is unimportant since our decision is essentially based on the verity that PNCC is a private corporation created pursuant to the general corporation law.

WHEREFORE, the Petition is hereby *DENIED*. The assailed Decision and the Resolution of the Court of Appeals are *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Melo (Chairman), Vitug, Purisima, and *Gonzaga-Reyes, JJ.*, concur.

EN BANC

[G.R. No. 134047. December 8, 1999]

AMADO S. BAGATSING, ERNESTO M. MACEDA and JAIME LOPEZ, *petitioners, vs.* **COMMISSION ON ELECTIONS and JOSE L. ATIENZA,** *respondents.*

SYNOPSIS

Petitioners Amado S. Bagatsing, Ernesto M. Maceda, and Jaime Lopez were co-candidates of private respondent Jose L. Atienza for the position of Mayor in the City of Manila in the May 11, 1998 elections. Seven days after the elections, they filed before the Commission on Elections (COMELEC) a complaint for disqualification against private respondent on the ground of alleged disbursement of public funds within the prohibited forty-five-day period before the election which was in violation