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sit as member of the *sanggunian*. He could even have appointed petitioner since he was elected the president of the federation but not Antonio. The appointment of Antonio, allegedly the protege of respondent Governor, gives credence to petitioner's charge of political interference by respondent Governor in the organization. This should not be allowed. The *barangays* should be insulated from any partisan activity or political intervention if only to give true meaning to local autonomy.

WHEREFORE, the petition is GRANTED in that the resolution of respondent Secretary dated August 4, 1989 is hereby SET ASIDE for having been issued in excess of jurisdiction.

The election of the officials of the ABC Federation held on June 18, 1989 is hereby annulled. A new election of officers of the federation is hereby ordered to be conducted immediately in accordance with the governing rules and regulations.

The Supplemental petition is hereby GRANTED. The appointment of Augusto Antonio as representative to the *Sangguniang Panlalawigan* in a temporary capacity is declared null and void.

No costs.

SO ORDERED.

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

EN BANC

[G.R. No. 92376. August 12, 1991]

REPUBLIC OF THE PHILIPPINES (PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT), *petitioner, vs.* **SANDIGANBAYAN and ROSARIO M.B. OLIVARES,** *respondents.*

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SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; SEQUESTRATION OR FREEZE ORDER; RULE. — Section 26, Article XVIII of the Constitution provides: . . . "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 proceedings shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceedings shall 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*."

2. ID.; ID.; ID.; ID.; REQUIREMENT OF FILING JUDICIAL ACTION; NOT SUFFICIENTLY COMPLIED WITH BY FILING A COMPLAINT AGAINST ITS STOCKHOLDER. — To date, it is undisputed that petitioner has not instituted the corresponding judicial action against the above-named eight (8) stockholders. Perforce, the writs of sequestration theretofore issued against them have long ceased to be effective. Petitioner's contention that the listing of PJI shares as item No. 49 in the complaint filed against Benjamin Romualdez constitutes sufficient compliance with the aforequoted legal requirement is puerile. In this jurisdiction, a corporation has a legal personality distinct and separate from its stockholders. Thus, a suit against the corporation cannot be considered *ipso facto* a suit against its stockholders, and vice-versa. Consequently, the said contention of petitioner must fail. Neither will petitioner's claim that Romualdez is the real and beneficial owner of all of said shares of stock, and that the registered owners are only Romualdez's dummies, gratuitously support a finding that said stockholders were properly impleaded. Nor may a judgment that may be rendered upon and on the basis of the allegations of said complaint be binding upon the latter. Whether or not the stockholders acted as dummies of Benjamin Romualdez, and whether or not their respective shareholdings are beneficially owned by Romualdez, are matters which petitioner merely assumes and obviously still has to prove and establish in Civil Case No. 0035.

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3. ID.; ID.; ID.; RULE WHEN THE AUTHORITY TO VOTE SEQUESTERED SHARES MUST BE CONCEDED; CASE AT BAR. — We have long held that petitioner's authority to vote sequestered shares must be conceded only where there is evident necessity for such voting in order to prevent the disposal and dissipation of the sequestered assets. In the case at bar, no such necessity or urgency has been shown to exist since, to repeat, the sequestration order has already been automatically lifted.

4. ID.; ID.; ID.; DOES NOT IMPORT OR CAUSE A DIVESTMENT OF TITLE OVER THE SHARES OF STOCK. — On private respondent's qualification to be a director, the Corporation Code specifies, apart from the requirement that a majority of the directors must be residents of the Philippines, that he/she must own in his/her own right at least one share of stock. In the case at bar, private respondent owns 1,000 common shares in her own right, 500 of which are assigned to the Development Bank of the Philippines to secure the payment of a loan obligation of PJI. Although the other 500 shares are sequestered, such fact does not affect her ownership thereof as mere sequestration does not import or cause a divestment of title over the property. Hence, private respondent remains as the owner of said shares of stock and is accordingly qualified to be a director of PJI.

APPEARANCES OF COUNSEL

Lina M. Labaquis for private respondent.

D E C I S I O N

REGALADO, *J.*:

This special civil action for *certiorari* and prohibition, with application for temporary restraining order and preliminary injunction, seeks:

(1) the annulment of the resolution of respondent court dated February 23, 1990 in Civil Case No. 0035, entitled "*Republic of the Philippines vs. Benjamin (Kokoy) Romualdez, et al.*," granting herein private respondent's motion and enjoining the Presidential Commission on Good Government (PCGG), its

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officers, representatives, agents, nominees and other persons acting for and in their behalf, from voting the common shares of stock of stockholders Manuel Salak, Araceli Linsangan, Domingo Flores, Luisa Linsangan, Alejandro Maramag, Caridad Orpiada, Lino Sison and Milagros Hizon at or during the annual stockholders' meeting to elect the members of the board of directors of the Philippine Journalists, Inc. (PJI, for brevity) pending the termination of this proceeding and/or until further orders from this Court;

(2) the issuance of a writ of prohibition commanding respondent court to desist absolutely and permanently from further proceedings in said motion; and

(3) the issuance of a restraining order or writ of preliminary injunction pending the consideration of the merits of the present petition, enjoining respondent court from carrying out or enforcing its aforesaid resolution.

It appears from the records that on January 30, 1990, private respondent filed with respondent court an urgent motion to enjoin petitioner from voting the unsequestered common shares of PJI, belonging to the aforesaid eight (8) stockholders, at the annual stockholders' meeting scheduled on February 6, 1990.

At the hearing of said motion on February 2, 1990, petitioner verbally opposed the same, but respondent court issued an order directing private respondent to file an amended motion on the same day and the petitioner to file its opposition not later than February 5, 1990, after which the incident shall be deemed submitted for resolution. In the afternoon of February 2, 1990, private respondent filed her manifestation together with her amended motion to enjoin PCGG from voting the unsequestered shares of PJI at the aforesaid annual stockholders' meeting of February 6, 1990.

On its part, petitioner filed its opposition to the amended motion on February 5, 1990. On the same date, respondent court issued a resolution with the following dispositive portion:

"WHEREFORE, finding the issuance of a Temporary Restraining Order to be justified and in order, accordingly, respondent PCGG,

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its officers, agents, representatives, nominees and all other persons acting in their behalf are hereby ordered to cease, refrain and desist, effective upon receipt hereof, from voting the 815 (sic, 840) shares of PJI stock of stockholders Manuel Salak (85 shares); Araceli Linsangan (85 shares); Domingo Flores (150 shares); Luisa Linsangan (85 shares); Alejandro Maramag (85 shares); Caridad Orpiada (100 shares); Lino Sison (125 shares) and Milagros Hizon (125 shares) during the Annual Stockholders' Meeting on February 6, 1990 for the purpose of electing one (1) seat to the Board of Directors, until further orders from this Court. Without giving due course to the said motion, respondent is hereby ordered to file its Answer thereto within five (5) days from receipt hereof and after which, let the hearing and consideration of the main incident for the issuance of a preliminary injunction be set on Monday, February 15, 1990, at 8:30 o'clock a.m."[1]

On February 9, 1990, petitioner filed a manifestation praying that the aforesaid opposition, dated February 5, 1990, be considered as its answer to private respondent's amended urgent motion. Thereafter, on the scheduled date of hearing, both parties appeared with their respective counsel. Private respondent and her witness, Araceli Linsangan, took the witness stand and, after the termination of their testimonies and submission of the documentary evidence, she rested her case. By agreement of the parties, the incident in question was then deemed submitted for resolution without further oral arguments or memoranda.

On February 26, 1990, respondent court promulgated the questioned resolution, the decretal portion whereof reads:

"WHEREFORE, defendant-movant having clearly and positively established her right to the relief prayed for in her 'Amended Urgent Motion to Enjoin PCGG from Voting The Unsequestered Shares of PJI At The Annual Stockholders' Meeting on February 6, 1990', accordingly, finding said verified motion to be sufficient in form and substance and that the continuance of the act complained of during the present litigation would not only work injustice but also cause great or irreparable injury to defendant Rosario M. B. Olivares, as established during the hearings conducted thereon, and after a bond in the amount of ₱20,000.00 had been duly filed by said defendant,

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[1] *Rollo*, 68.

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hereby orders the PCGG, its officers, representatives, agents, nominees and other persons acting for or in their behalf, to cease, desist and refrain from voting the common shares of stock of the following stockholders, namely, Manuel Salak, Araceli Linsangan, Domingo Flores, Luisa Linsangan, Alejandro Maramag, Caridad Orpiada, Luis (sic, Lino) Sison and Milagros Hizon at or during the Annual Stockholders' meeting which may be held on any date hereafter to elect the members of the Board of Directors of Philippine Journalists, Inc., pending the termination of this proceeding and/or further orders from this Court."[2]

As the *ratio decidendi* therefor, respondent court gave this explication:

"The basic issue, therefore, revolves on the legal effect of the sequestration of the shares of stock of defendant Romualdez in PJI, *vis-a-vis*, the posture of defendant-movant that, even admitting for the sake of argument that such sequestration includes the shares of stock of the above-named stockholders however, the failure of the plaintiff and/or the PCGG to institute the corresponding judicial action or proceeding within six (6) months from the date of sequestration as mandated under Article XVIII, Section 26 of the 1987 Constitution resulted in the automatic lifting of such writ of sequestration against said stockholders. Defendant-movant does not claim such situation to exist in so far as she herself and the other defendants named in the Expanded Complaint are concerned, but justifies her right to be elected as a Director in PJI under the authority of the proxies given to her by stockholders owning sufficient shares of common stock to elect her as such and who are, admittedly, not co-defendants in the instant case, nor have any other judicial action or proceeding been instituted against them within the mandated constitutional period. In the case of Philippine International Corporation versus PCGG, We have affirmatively ruled for the petitioner therein to the effect that the failure or omission to comply with the mandate of Article XVIII, Section 26 of the Constitution automatically results in the lifting of the writ of sequestration.

"The end result of a similar application of Our ruling therein to the instant proceeding is that since no judicial action or proceeding having been instituted up to the present against the above-named

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[2] *Ibid.*, 74.

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stockholders, then the Writs of Sequestration issued against them have been automatically lifted."[3]

Private respondent having posted the required bond, the writ of preliminary injunction was issued and served by respondent court. The scheduled stockholders' meeting was postponed to April 3, 1990. Petitioner's motion for reconsideration having been denied, the said meeting was postponed indefinitely.

Petitioner has now come to this Court contending that: (a) respondent court has acted without or in excess of its jurisdiction, or with grave abuse of discretion, in holding that private respondent has the right to be elected as a member of the board of directors of PJI; and (b) respondent court has acted without or in excess of its jurisdiction, or with grave abuse of discretion, in holding that the sequestration of the PJI shares of stock registered in the names of Manuel Salak, Araceli Linsangan, Domingo Flores, Luisa Linsangan, Alejandro Maramag, Caridad Orpiada, Lino Sison and Milagros Hizon has been automatically lifted.

In amplification of its plaint, petitioner argues that private respondent has no right to be elected as director of the PJI since her own shares of stock have been sequestered and, therefore, it is the PCGG nominee who has the right to be elected as director pursuant to Presidential Memorandum dated June 26, 1986. Further, petitioner insists that the proxies executed in private respondent's favor do not in any way grant her the right to be elected as director, considering that since the sequestration of the shares of stock subject of the proxies was not appealed by the owners thereof to the Office of the President pursuant to PCGG's internal rules, said sequestration allegedly has not been automatically lifted.

Petitioner also theorizes that the inclusion of PJI shares as item No. 49 in the list of sequestered shares of Benjamin Romualdez is sufficient compliance with the requirement for the "corresponding judicial action or proceeding to be filed within six (6) months from the ratification of the Constitution,"

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[3] *Ibid.*, 73-74.

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contemplated by Section 26, Article XVIII of the Constitution, supposedly because Romualdez is the real and beneficial owner of all of said shares of stock. Further, petitioner contends that the proxies executed by the aforesaid eight (8) stockholders conferred on private respondent only the right to vote, but not the right to be voted for as a director of PJI.

Private respondent, on her part, counters that even if her own shares cannot be utilized for her election as director, the sequestration of the shares of stock of the aforenamed stockholders has been automatically lifted for failure of petitioner to commence any judicial action or proceeding against them within the mandatory constitutional period. The said stockholders, therefore, have the right to execute and issue, as they did, the questioned proxies and affidavits expressly authorizing her to vote their shares "in the manner she deems proper" and "to use the same votes corresponding to the shares for the purpose of electing her as a member of the board of directors."[4]

It is private respondent's submission, and this is not disputed, that since the corporate by-laws only require the votes of stockholders owning 626 shares of common stock to elect her, she can qualify as a director with the votes corresponding to the aforesaid 840 shares, with full voting rights, for which she holds duly executed proxies.

The fundamental issue, therefore, boils down to whether or not the respective shares of stock of the aforementioned eight (8) stockholders should still be considered as sequestered and, further, whether or not the PCGG is authorized to vote the same in the stockholders' meeting.

From a careful consideration of the arguments adduced, we find that respondent Sandiganbayan did not act in grave abuse of discretion in restraining PCGG from voting the shares of Manuel Salak, Araceli Linsangan, Domingo Flores, Luisa Linsangan, Alejandro Maramag, Caridad Orpiada, Lino Sison and Milagros Hizon on the scheduled stockholders' meeting.

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[4] *Ibid*., 107A-122.

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Section 26, Article XVIII of the Constitution provides:

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"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 proceedings shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceedings shall 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*." (Italics supplied).

To date, it is undisputed that petitioner has not instituted the corresponding judicial action against the above-named eight (8) stockholders. Perforce, the writs of sequestration therefore issued against them have long ceased to be effective.

Petitioner's contention that the listing of PJI shares as item No. 49 in the complaint filed against Benjamin Romualdez constitutes sufficient compliance with the aforequoted legal requirement is puerile. In this jurisdiction, a corporation has a legal personality distinct and separate from its stockholders. Thus, a suit against the corporation cannot be considered *ipso facto* a suit against its stockholders, and vice-versa. Consequently, the said contention of petitioner must fail.[5]

Neither will petitioner's claim that Romualdez is the real and beneficial owner of all of said shares of stock, and that the registered owners are only Romualdez's dummies, gratuitously support a finding that said stockholders were properly impleaded. Nor may a judgment that may be rendered upon and on the basis of the allegations of said complaint be binding upon the latter. Whether or not the stockholders acted as dummies of

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[5] *Presidential Commission on Good Government vs. International Copra Export Corporation, et al*., G.R. No. 92755, Resolution *En Banc,* October 12, 1990.

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Benjamin Romualdez, and whether or not their respective shareholdings are beneficially owned by Romualdez, are matters which petitioner merely assumes and obviously still has to prove and establish in Civil Case No. 0035.

As, far as said stockholders are concerned, however, the inclusion of the supposed major stockholder, Benjamin Romualdez, in said case does not detract from nor excuse petitioner's failure to file the corresponding judicial action against them in compliance with the constitutional requirement. It is also to be noted that this observation is but in keeping with and demanded by the due process requirement.

Besides, we have long held that petitioner's authority to vote sequestered shares must be conceded only where there is evident necessity for such voting in order to prevent the disposal and dissipation of the sequestered assets.[6] In the case at bar, no such necessity or urgency has been shown to exist since, to repeat, the sequestration order has already been automatically lifted.

The matter of the lifting of the sequestration order being thus settled, we find no other legal obstacle to the aforenamed stockholders' issuance of their questioned proxies authorizing private respondent to vote their respective shares, in the same manner that they can vote the same if they personally decide to do so, and which they specifically declared in their proxies and affidavits as earlier mentioned.

On private respondent's qualification to be a director, the Corporation Code specifies, apart from the requirement that a majority of the directors must be residents of the Philippines, that he/she must own in his/her own right at least one share of stock. In the case at bar, private respondent owns 1,000 common shares in her own right, 500 of which are assigned to the Development Bank of the Philippines to secure the payment

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[6] *Bataan Shipyard & Engineering Co., Inc. vs. Presidential Commission on Good Government, et al.*, 150 SCRA 181 (1987); *Sabido vs. Sandiganbayan, et al.*, G.R. No. 92321, Resolution *En Banc*, July 19, 1990.

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of a loan obligation of PJI.[7] Although the other 500 shares are sequestered, such fact does not affect her ownership thereof as mere sequestration does not import or cause a divestment of title over the property. Hence, private respondent remains as the owner of said shares of stock and is accordingly qualified to be a director of PJI.

ON THE FOREGOING PREMISES, the petition at bar is hereby DISMISSED for lack of merit.

SO ORDERED.

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

FIRST DIVISION

[G.R. Nos. 92457-58. August 12, 1991]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILFREDO JIMENEZ *y* MARQUEZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; FULL PENETRATION OF THE MALE ORGAN; NOT NECESSARY FOR CONSUMMATION. — The Medico-Legal examinations which revealed "shallow, healed laceration at 5 o'clock of the hymen, in the case of Queenie Artificio and "in virgin state physically," in the case of Rowena Ibañez do not negate the fact established by the prosecution's evidence that they were raped by the accused-appellant. In the crime of rape, complete or full penetration of the complainant's private part is not necessary.

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[7] *Rollo,* 83-84.