Supreme Court E-Library

in the integrity and impartiality of the judiciary.[15] No position exacts a greater demand for moral righteousness and uprightness than a seat in the judiciary.[16]

WHEREFORE, Judge Arnulfo G. Cabredo is found ***GUILTY*** of ***GRAVE MISCONDUCT***. The Court imposes on him the penalty of *DISMISSAL* from the service with forfeiture of all benefits, excluding accrued leave credits, with prejudice to re-employment in any branch or agency of the government, including government-owned or controlled corporations.

Let a copy of this decision be attached to the personnel records of judge Arnulfo G. Cabredo.

SO ORDERED.

Davide, Jr., C. J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and *Azcuna, JJ.*, concur.

EN BANC

[G.R. No. 107789. April 30, 2003.]

REPUBLIC OF THE PHILIPPINES (PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT), *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN (THIRD DIVISION) and VICTOR AFRICA,** *respondents*, **AEROCOM INVESTORS AND MANAGERS, INC., BENITO NIETO, CARLOS NIETO, MANUEL NIETO III, RAMON NIETO, ROSARIO ARELLANO,**

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[15] Rule 2, Canon 2 of the Code of Judicial Conduct.

[16] *Naval v. Panday*, 275 SCRA 654 (1999).

Supreme Court E-Library

VICTORIA LEGARDA, ANGELA LOBREGAT, MA. RITA DE LOS REYES, CARMEN TUAZON and RAFAEL VALDEZ, *intervenors.*

[G.R. No. 147214. April 30, 2003.]

VICTOR AFRICA, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN and THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,** *respondents.*

SYNOPSIS

These consolidated cases stemmed from the resolutions of the Sandiganbayan (1) ordering the calling and holding of the Eastern Telecommunications, Philippines, Inc. (ETPI) annual stockholders meeting for 1992 under its supervision and (2) authorizing the Presidential Commission on Good Government (PCGG) to cause the holding of a special stockholders' meeting to increase ETPI's authorized capital stock and to vote therein the sequestered Class "A" shares of stock.

The Supreme Court ruled that the Members of the Sandiganbayan cannot participate in the stockholders meeting for the election of the ETPI Board of Directors. Neither shall the Clerk of Court be appointed to call such meeting and issue notices thereof. The Sandiganbayan shall appoint, or the parties may agree to constitute, a committee of competent and impartial persons to call, send notices and preside at the meeting for the election of the ETPI Board of Directors.

The Court likewise ruled that the PCGG cannot vote sequestered shares to elect the ETPI Board of Directors or to amend the Articles of Incorporation for the purpose of increasing the authorized capital stock unless there is a *prima facie* evidence showing that said shares are ill-gotten and there is an imminent danger of dissipation. Consequently, the Court referred the petitions at bar to the Sandiganbayan for reception of evidence to determine whether there is a *prima facie* evidence showing that the sequestered shares in question are ill-gotten and there is an imminent danger of dissipation to entitle the PCGG to vote them in a stockholders' meeting.

Supreme Court E-Library

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT; CANNOT VOTE SEQUESTERED SHARES; EXCEPTION.— The PCGG cannot thus vote sequestered shares, except when there are "demonstrably weighty and defensible grounds" or "when essential to prevent disappearance or wastage of corporate property."

2. ID.; ID.; ID.; ID.; TWO-TIERED TEST IN DETERMINING WHETHER SEQUESTERED SHARES MAY BE VOTED UPON.— The principle laid down in Baseco was further enhanced in the subsequent cases of *Cojuangco v. Calpo* and *Presidential Commission on Good Government v. Cojuangco,* Jr., where this Court developed a "two-tiered" test in determining whether the PCGG may vote sequestered shares: The issue of whether PCGG may vote the sequestered shares in SMC necessitates a determination of at least two factual matters: 1. whether there is *prima facie* evidence showing that the said shares are ill-gotten and thus belong to the state; and 2. whether there is an immediate danger of dissipation thus necessitating their continued sequestration and voting by the PCGG while the main issue pends with the Sandiganbayan.

3. ID.; ID.; ID.; ID.; ID.; INAPPLICABLE IN CASES INVOLVING FUNDS OF PUBLIC CHARACTER.— The two-tiered test, however, does not apply in cases involving funds of "public character." In such cases, the government is granted the authority to vote said shares, namely: (1) Where government shares are taken over by private persons or entities who/which registered them in their own names, and (2) Where the capitalization or shares that were acquired with public funds somehow landed in private hands.

4. COMMERCIAL LAW; CORPORATION CODE; PRIVATE CORPORATIONS; STOCK AND TRANSFER BOOK; SHALL BE THE BASIS OF DETERMINING THE TRUE OWNERS OF THE SHARES OF STOCK, REGARDLESS OF THE PRESENCE OF ALTERATIONS BY SUBSTITUTION THEREIN; CASE AT BAR.— This Court sees no grave abuse of discretion on the part of the Sandiganbayan in ruling that: "The charge that there were "alterations by substitution" in the Stock and Transfer Book is

Supreme Court E-Library

not a matter which should preclude the Stock and Transfer Book from being the basis or guide to determine who the true owners of the shares of stock in ETPI are. If there be any substitution or alterations, the anomaly, if at all, may be explained by the corporate secretary who made the entries therein. At any rate, the accuracy of the Stock and Transfer Book may be checked by comparing the entries therein with the issued stock certificates. The fact is that any transfer of stock or issuance thereof would necessitate an alteration of the record by substitution. Any anomaly in any entry which may deprive a person or entity of its right to vote may generate a controversy personal to the corporation and the stockholder and should not affect the issue as to whether it is the PCGG or the shareholder who has the right to vote. In other words, should there be a stockholder who feels aggrieved by any alteration by substitution in the Stock and Transfer Book, said stockholder may object thereto at the proper time and before the stockholders meeting." Whether the ETPI Stock and Transfer Book was falsified and whether such falsification deprives the true owners of the shares of their right to vote are thus issues best settled in a different proceeding instituted by the real parties-in-interest.

5. ID.; ID.; ID.; TRANSFER OF SHARES; REGISTRATION IS A PREREQUISITE FOR VOTING OF SHARES; RATIONALE.— Explaining why registration is a prerequisite for the voting of shares, this Court, in *Batangas Laguna Tayabas Bus Company, Inc., v. Bitanga,* discoursed: "Indeed, until registration is accomplished, the transfer, though valid between the parties, cannot be effective as against the corporation. Thus, the unrecorded transferee . . . cannot vote nor be voted for. The purpose of registration, therefore, is two-fold: to enable the transferee to exercise all the rights of a stockholder, including the right to vote and to be voted for, and to inform the corporation of any change in share ownership so that it can ascertain the persons entitled to the rights and subject to the liabilities of a stockholder. Until challenged in a proper proceeding, a stockholder of record has a right to participate in any meeting; his vote can be properly counted to determine whether a stockholders' resolution was approved, despite the claim of the alleged transferee. On the other hand, a person who has purchased stock, and who desires to be recognized as a stockholder for the purpose of voting, must

Supreme Court E-Library

secure such a standing by having the transfer recorded on the corporate books. Until the transfer is registered, the transferee is not a stockholder but an outsider."

6. ID.; ID.; ID.; STOCK CERTIFICATES; CONSIDERED AS NON-NEGOTIABLE INSTRUMENTS; CASE AT BAR.— With respect to the PCGG's submission that under Section 34 of the Negotiable Instruments Law, it may take title to the shares represented by the blank stock certificates found in Malacañang and vote the same, the same is untenable. The PCGG assumes that stock certificates are negotiable. They are not. ". . . [A]lthough a stock certificate is sometimes regarded as *quasi*-negotiable, in the sense that it may be transferred by delivery, it is well settled that the instrument is non-negotiable, because the holder thereof takes it without prejudice to such rights or defenses as the registered owner or creditor may have under the law, except insofar as such rights or defenses are subject to the limitations imposed by the principles governing estoppel." That the PCGG found the stock certificates endorsed in blank does not necessarily make it the owner of the shares represented therein. Their true ownership has to be ascertained in a proper proceeding.

7. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; NO OTHER COURT THAN THE ONE CONTEMNED WILL PUNISH A GIVEN CONTEMPT; EXCEPTION.— "In whatever context it may arise, contempt of court involves the doing of an act, or the failure to do an act, in such a manner as to create an affront to the court and the sovereign dignity with which it is clothed. As a matter of practical judicial administration, jurisdiction has been felt properly to rest in only one tribunal at a time with respect to a given controversy. Partly because of administrative considerations, and partly to visit the full personal effect of the punishment on a contemnor, the rule has been that no other court than the one contemned will punish a given contempt. The rationale that is usually advanced for the general rule that the power to punish for contempt rests with the court contemned is that contempt proceedings are *sui generic* and are triable only by the court against whose authority the contempts are charged; the power to punish for contempt exists for the purpose of enabling a court to compel due decorum and respect in its presence and due obedience to its judgments, orders and processes; and in

Supreme Court E-Library

order that a court may compel obedience to its orders, it must have the right to inquire whether there has been any disobedience thereof, for to submit the question of disobedience to another tribunal would operate to deprive the proceeding of half its efficiency." The above rule is not of course absolute as it admits exception "when the entire case has already been appealed [in which case] jurisdiction to punish for contempt rests with the appellate court where the appeal completely transfers to proceedings thereto or where there is a tendency to affect the *status quo* or otherwise interfere with the jurisdiction of the appellate court."

APPEARANCES OF COUNSEL

Victor Africa for himself.
M.M. Lazaro & Associates for Intervenor AEROCOM.

RESOLUTION

CARPIO MORALES, *J.*:

These consolidated cases, the first for *Certiorari, Mandamus* and Prohibition, and the second "for Review on *Certiorari*" although it is actually one for *Certiorari*, stem from a Resolution of November 13, 1992 issued by the Sandiganbayan in Civil Case No. 0130,[1] on motion of Victor Africa (Africa) who prayed that said court order the "calling and holding of the Eastern Telecommunications, Philippines, Inc. (ETPI) annual stockholders meeting for 1992 under the [c]ourt's control and supervision and prescribed guidelines."

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[1] Entitled "*Victor Africa v. Presidential Commission on Good Government*," involving a petition for *certiorari*, with prayer for a temporary restraining order/preliminary injunction, filed by Victor Africa. The petition seeks to nullify the Orders of the PCGG dated August 5, 1991 and August 9, 1991, directing Africa to account for his sequestered shares in ETPI and to cease and desist from exercising voting rights on the sequestered shares in the special stockholders' meeting to be held on August 12, 1991, from representing himself as a director, officer, employee or agent of ETPI, and from participating, directly or indirectly in the management of ETPI. (*Rollo*, G.R. No. 107789, p. 453).

Supreme Court E-Library

It is gathered that on August 7, 1991, the Presidential Commission on Good Government (PCGG) conducted an ETPI stockholders meeting during which a PCGG controlled board of directors was elected. A special stockholders meeting was later convened by the registered ETPI stockholders wherein another set of board of directors was elected, as a result of which two sets of such board and officers were elected.

Africa, a stockholder of ETPI, alleging that the PCGG had since January 29, 1988 been "illegally 'exercising' the rights of stockholders of ETPI,"[2] especially in the election of the members of the board of directors, filed the above-said motion before the Sandiganbayan.

The PCGG did not object to Africa's motion provided that:

1. An Order be issued upholding the right of PCGG to vote all the Class "A" shares of ETPI.

2. In the alternative, in the remote event that PCGG's right to vote the sequestered shares be not upheld, an Order be issued:

   a. Disregarding the Stock and Transfer Book and Booklet of Stock Certificates of ETPI in determining who can vote the shares in an Annual Stockholders Meeting of ETPI,

   b. Allowing PCGG to vote twenty-three and 90/100 percent (23.9%) of the total subscription in ETPI, and

   c. Directing the amendment of the Articles of Incorporation and By-laws of ETPI providing for the minimum safeguards for the conservation of assets xxx prior to the calling of a stockholders meeting.[3]

By the assailed Resolution of November 13, 1992,[4] the Sandiganbayan resolved Africa's motion, the dispositive portion of which reads:

WHEREFORE, it is ordered that an annual stockholders meeting of the Eastern Telecommunications, Philippines, Inc. (ETPI), for

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[2] *Id.* at 83.

[3] *Id.* at 104–105.

[4] *Id.* at 39–47.

Supreme Court E-Library

1992 be held on Friday, November 27, 1992, at 2:00 o'clock in the afternoon, at the ETPI Board Room, Telecoms Plaza, 7th Floor, 316 Gil J. Puyat Avenue, Makati, Metro Manila. *The Executive Clerk of Court of this Division shall issue the call and notice of annual stockholders meeting of ETPI* addressed to all the duly registered/ recorded stockholders of ETPI. *The stockholders meeting shall be conducted under the supervision and control of this Court, through Mr. Justice Sabino R. de Leon, Jr. In accordance with the Supreme Court ruling in Cojuangco et al vs. Azcuna, et al., supra, only the registered owners, their duly authorized representatives or their proxies may vote their corresponding shares.*

The following minimum safeguards must be set in place and carefully maintained until final judicial resolution of the question of whether or not the sequestered shares of stock (or in a proper case the underlying assets of the corporation concerned) constitute ill-gotten wealth:

"a. An independent comptroller must be appointed by the Board of Directors upon nomination of the PCGG as conservator. The comptroller shall not be removable (nor shall his position be abolished or his compensation changed) without the consent of the conservator. The comptroller shall, in addition to his other functions as such, have charge of internal audit.

b. The corporate secretary must be acceptable to the conservator. If the corporate secretary ceases to be acceptable to the conservator, a new one must be appointed by the Board of Directors upon nomination of the conservator.

c. The external auditors of the corporation must be independent and must be acceptable to the conservator. The independent external auditors shall not be changed without the consent of the conservator.

d. The conservator must be represented in the Board of Directors and in the Executive (or equivalent) and Audit Committees of the corporation involved and of its majority-owned subsidiaries or affiliates. The representative of the conservator must be a full director (not merely an honorary or *ex-oficio* director) with the

Supreme Court E-Library

right to vote and all other rights and duties of a member of the Board of Directors under the Corporation Code. The conservator's representative shall not be removed from the Board of Directors (or the mentioned Committees) without the consent of the conservator. The conservator shall, however, have the right to remove and change its representative at any time, and the new representative shall be promptly elected to the Board and its mentioned Committees.

e. All transactions involving the disbursement of corporate funds in excess of P5 million must have the prior approval of the director representing the conservator, in order to be valid and effective.

f. The incurring of debt by the corporation, whether in the form of bonds, debentures, commercial paper or any other form, in excess of ₱5 million, must have the prior approval of the director representing the conservator, in order to be valid and effective.

g. The disposition of a substantial part of assets of the corporation (substantial meaning in excess of ₱5 million) shall require the prior approval of the director representing the conservator, in order to be valid and effective.

h. The above safeguards must be written into the articles of incorporation and by-laws of the company involved. In other words, the articles of incorporation and by-laws of the company must be amended so as to incorporate the above safeguards.

i. Any amendment of the articles of incorporation or by-laws of the company that will modify in any way any of the above safeguards, shall need the prior approval of the director representing the conservator."

SO ORDERED.[5] (Italics supplied)

Assailing the foregoing resolution, the PCGG filed before this Court the herein first petition, docketed as ***G.R. No. 107789***, anchored upon the following grounds:

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[5] *Id.* at 45–47.

Supreme Court E-Library

I

RESPONDENT SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION IN RULING THAT THE REGISTERED STOCKHOLDERS OF ETPI HAD THE RIGHT TO VOTE IN SPITE OF (A) THE RULING OF THIS HONORABLE COURT IN PCGG V. SEC AND AFRICA (G.R. NO. 82188) AND (B) A CLEAR SHOWING THAT ETPI'S STOCK AND TRANSFER BOOK WAS ALTERED AND CANNOT BE USED AS THE BASIS TO DETERMINE WHO CAN VOTE IN A STOCKHOLDERS' MEETING.

II

RESPONDENT SANDIGANBAYAN GRAVELY ABUSED ITS DISCRETION AND EXCEEDED ITS JURISDICTION WHEN IT HELD THAT PCGG CANNOT VOTE AT LEAST 23.9% OF THE OUTSTANDING CAPITAL STOCK OF ETPI.

III

WITHOUT DUE CARE AND IN RECKLESS DISREGARD OF THE INTERESTS OF THE REPUBLIC, RESPONDENT SANDIGANBAYAN GRAVELY ABUSED ITS DISCRETION IN ORDERING THE HOLDING OF A STOCKHOLDERS' MEETING IN ETPI WITHOUT FIRST SETTING IN PLACE — BY AMENDING THE ARTICLES AND BY-LAWS OF ETPI TO INCORPORATE — THE SAFEGUARDS PRESCRIBED BY THIS HONORABLE COURT IN COJUANGCO V. ROXAS.

IV

THE SANDIGANBAYAN ACTED IN EXCESS OF ITS AUTHORITY AND/OR WITH GRAVE ABUSE OF DISCRETION IN APPOINTING (A) ITS OWN DIVISION CLERK OF COURT TO PERFORM THE DUTIES OF A CORPORATE SECRETARY, AND (B) ITS OWN JUSTICE SABINO DE LEON, JR. TO CONTROL AND SUPERVISE THE STOCKHOLDERS' MEETING.[6] (Emphasis in the original)

By Resolution of November 26, 1992, this Court enjoined the Sandiganbayan from (a) implementing its Resolution of November 13, 1992, and (b) holding the stockholders' meeting of ETPI scheduled on November 27, 1992, at 2:00 p.m.

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[6] *Id.* at 11–12.

Supreme Court E-Library

On December 7, 1992, Aerocom Investors and Managers, Inc. (AEROCOM), Benito Nieto, Carlos Nieto, Manuel Nieto III, Ramon Nieto, Rosario Arellano, Victoria Legarda, Angela Lobregat, Ma. Rita de los Reyes, Carmen Tuazon and Rafael Valdez, all stockholders of record of ETPI, filed a motion to intervene in G.R. No. 107789. Their motion was granted by this Court by Resolution of January 14, 1993.

After the parties submitted their respective memoranda, the PCGG, in early 1995, filed a "VERY URGENT PETITION FOR AUTHORITY TO HOLD SPECIAL STOCKHOLDERS' MEETING FOR [THE] SOLE PURPOSE OF INCREASING [ETPI's] AUTHORIZED CAPITAL STOCK," it claiming that the increase in authorized capital stock was necessary in light of the requirements laid down by Executive Order No. 109 [7] and Republic Act No. 7975.[8]

By Resolution of May 7, 1996,[9] this Court resolved to refer the PCGG's very urgent petition to hold the special stockholders' meeting to the Sandiganbayan for reception of evidence and resolution.

In compliance therewith, the Sandiganbayan issued a Resolution of December 13, 1996,[10] which is being assailed in the herein second petition, granting the PCGG "authority to cause the holding of a special stockholders' meeting of ETPI for the sole purpose of increasing ETPI's authorized capital stock and to vote therein the sequestered Class 'A' shares of stock. . . ." In said Resolution, the Sandiganbayan held that there was an urgent necessity to increase ETPI's authorized capital stock; there existed a *prima facie* factual foundation for the issuance of the writ of sequestration covering the Class "A" shares of stock; and the PCGG was entitled to vote the sequestered shares of stock.

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[7] POLICY TO IMPROVE THE PROVISION OF LOCAL EXCHANGE CARRIER SERVICE.

[8] AN ACT TO PROMOTE AND GOVERN THE DEVELOPMENT OF PHILIPPINE TELECOMMUNICATIONS AND THE DELIVERY OF PUBLIC TELECOMMUNICATIONS SERVICES.

[9] *Rollo*, G.R. No. 107780, pp. 958–963.

[10] *Rollo*, G.R. No. 107789, pp. 962–963.

Supreme Court E-Library

The PCGG-controlled ETPI board of directors thus authorized the ETPI Chair and Corporate Secretary to call the special stockholders meeting. Notices were sent to those entitled to vote for a meeting on March 17, 1997. The meeting was held as scheduled and the increase in ETPI's authorized capital stock from ₱250 Million to ₱2.6 Billion was "unanimously approved."[11]

On April 1, 1997, Africa filed before this Court a motion to cite the PCGG "and its accomplices" in contempt and "to nullify the 'stockholders meeting' called/conducted by PCGG and its accomplices," he contending that only this Court, and not the Sandiganbayan, has the power to authorize the PCGG to call a stockholders meeting and vote the sequestered shares. Africa went on to contend that, assuming that the Sandiganbayan had such power, its Resolution of December 13, 1996 authorizing the PCGG to hold the stockholders meeting had not yet become final because the motions for reconsideration of said resolution were still pending. Further, Africa alleged that he was not given notice of the meeting, and the PCGG had no right to vote the sequestered Class "A" shares.

A motion for leave to intervene relative to Africa's "Motion to Cite the PCGG and its Accomplices in Contempt" was filed by ETPI. This Court granted the motion for leave but ETPI never filed any pleading relative to Africa's motion to cite the PCGG in contempt.

By Resolution of February 16, 2001, the Sandiganbayan finally resolved to deny the motions for reconsideration of its Resolution of December 13, 1996, prompting Africa to file on April 6, 2001 before this Court the herein second petition,[12] docketed as ***G.R. No. 147214***, challenging the Sandiganbayan Resolutions of December 13, 1996 (authorizing the holding of a stockholders meeting to increase ETPI's authorized capital stock and to vote therein the sequestered Class "A" shares of stock) and February 16, 2001 (denying reconsideration of the December 13, 1996 Resolution).

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[11]. *Id.* at 1124–1125.

[12] *Rollo*, G.R. No. 147214, pp. 17–32.

Supreme Court E-Library

In his petition in G.R. No. 147214, Africa alleged that the Sandiganbayan committed "grave abuse of discretion" when, by the assailed Resolutions,

> a. IT DID NOT ACKNOWLEDGE THE NON-SEQUESTERED STATUS OF THE SHARES [OF "SMALL STOCKHOLDERS" OF WHICH HE IS ONE AND AEROCOM AND POLYGON] AND/OR OWNERS THEREOF[;] [AND]
>
> b. IT DID NOT ACCORD TO THE NON-SEQUESTERED SHARES/OWNERS THE RIGHTS APPURTENANT TO A STOCKHOLDER[.]

He thus prayed that this Court set aside the questioned Resolutions permitting the PCGG to vote the non-sequestered ETPI Class "A" shares and nullify the votes the PCGG had cast in the stockholders meeting held on March 17, 1997.

By Resolution of February 24, 2003,[13] this Court ordered the *consolidation* of G.R. No. 147214 with G.R. No. 107789, now the subject of the present Resolution.

I

The first issue to be resolved is whether the PCGG can vote the sequestered ETPI Class "A" shares in the stockholders meeting for the election of the board of directors. The leading case on the matter is *Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government*[14] where this Court defined the powers of the PCGG as follows:

> a. *PCGG May Not Exercise Acts of Ownership*
>
> One thing is certain, and should be stated at the outset: the *PCGG cannot exercise acts of dominion* over property sequestered, frozen or provisionally taken over. As already earlier stressed with no little insistence, the act of sequestration[,] freezing or provisional takeover of property does not import or bring about a divestment of title over said property; [it] does not make the PCGG the owner thereof. In relation to the property sequestered, frozen or provisionally taken

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[13] *Rollo*, G.R. No. 147214, p. 319.

[14] 150 SCRA 181 (1987).

Supreme Court E-Library

over, the *PCGG is a conservator, not an owner*. Therefore, it can not perform acts of strict ownership; and this is specially true in the situations contemplated by the sequestration rules where, unlike cases of receivership, for example, no court exercises effective supervision or can upon due application and hearing, grant authority for the performance of acts of dominion.

Equally evident is that resort to the provisional remedies in question should entail the least possible interference with business operations or activities so that, in the event that the accusation of the business enterprise being "ill-gotten" be not proven, it may be returned to its rightful owner as far as possible in the same condition as it was at the time of sequestration.

b. *PCGG Has Only Powers of Administration*

The PCGG may thus exercise only powers of administration over the property or business sequestered or provisionally taken over, much like a court-appointed receiver, such as to bring and defend actions in its own name; receive rents; collect debts due; pay outstanding debts due; and generally do such other acts and things as may be necessary to fulfill its mission as conservator and administrator. In this context, it may in addition enjoin or restrain any actual or threatened commission of acts by any person or entity that may render moot and academic, or frustrate or otherwise make ineffectual its efforts to carry out its task; punish for direct or indirect contempt in accordance with the Rules of Court; and seek and secure the assistance of any office, agency or instrumentality of the government. In the case of sequestered businesses generally (*i.e.*, going concerns, businesses in current operation), as in the case of sequestered objects, its essential role, as already discussed, is that of conservator, caretaker, "watchdog" or overseer. It is not that of manager, or innovator, much less an owner.

c. *Powers over Business Enterprises Taken Over by Marcos or Entities or Persons Close to him; Limitations Thereon*

Now, in the special instance of a business enterprise shown by evidence to have been "taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos," the PCGG is given power and authority, as already adverted to, to "provisionally take (it) over in the public interest or to prevent xxx (its) disposal or dissipation;" and since the term is obviously employed in reference to going concerns, or business enterprises in operation, something more than mere physical custody is connoted;

Supreme Court E-Library

the PCGG may in this case exercise some measure of control in the operation, running, or management of the business itself. But even in this special situation, the intrusion into management should be restricted to the minimum degree necessary to accomplish the legislative will, which is "to prevent the disposal or dissipation" of the business enterprise. There should be no hasty, indiscriminate, unreasoned replacement or substitution of management officials or change of policies, particularly in respect of viable establishments. In fact, such a replacement or substitution should be avoided if at all possible, and undertaken only when justified by demonstrably tenable grounds and in line with the stated objectives of the PCGG. And it goes without saying that where replacement of management officers may be called for, the greatest prudence, circumspection, care and attention should accompany that undertaking to the end that truly competent, experienced and honest managers may be recruited. There should be no role to be played in this area by rank amateurs, no matter how well meaning. The road to hell, it has been said, is paved with good intentions. The business is not to be experimented or played around with, not run into the ground, not driven to bankruptcy, not fleeced, not ruined. Sight should never be lost xxx of the ultimate objective of the whole exercise, which is to turn over the business to the Republic, once judicially established to be "ill-gotten." Reason dictates that it is only under these conditions and circumstances that the supervision, administration and control of business enterprises provisionally taken over may legitimately be exercised.

d. *Voting of Sequestered Stock; Conditions Therefor*

So, too, it is within the parameters of these conditions and circumstances that the PCGG may properly exercise the prerogative to vote sequestered stock of corporations, granted to it by the President of the Philippines through a Memorandum dated June 26, 1986. That Memorandum authorizes the PCGG, "pending the outcome of proceedings to determine the ownership of ** (sequestered) shares of stock," "to vote such shares of stock as it may have sequestered in corporations at all stockholders' meetings called for the election of directors, declaration of dividends, amendment of the Articles of Incorporation, etc." The Memorandum should be construed in such a manner as to be consistent with, and not contradictory to the Executive Orders earlier promulgated on the same matter. There should be no exercise of the right to vote simply because the right exists, or because the stocks sequestered constitute the controlling or a substantial part of the corporate voting power. The stock is not

Supreme Court E-Library

to be voted to replace directors, or revise the articles or by-laws, or otherwise bring about substantial changes in policy, program or practice of the corporation except for demonstrably weighty and defensible grounds, and always in the context of the stated purposes of sequestration or provisional takeover, i.e., to prevent the dispersion or undue disposal of the corporate assets. Directors are not to be voted out simply because the power to do so exists. Substitution of directors is not to be done without reason or rhyme, should indeed be shunned if at all possible, and undertaken only when essential to prevent disappearance or wastage of corporate property, and always under such circumstances as to assure that replacements are truly possessed of competence, experience and probity.

In the case at bar, there was adequate justification to vote the incumbent directors out of office and elect others in their stead because the evidence showed *prima facie* that the former were just tools of President Marcos and were no longer owners of any stock in the firm, if they ever were at all. This is why, in its Resolution of October 28, 1986[,] this Court declared that —

> "Petitioner has failed to make out a case of grave abuse or excess of jurisdiction in respondents' calling and holding of a stockholders' meeting for the election of directors as authorized by the Memorandum of the President ** (to the PCGG) dated June 26, 1986, particularly, where as in this case, the government can, through its designated directors, properly exercise control and management over what appear to be properties and assets owned and belonging to the government itself and over which the persons who appear in this case on behalf of BASECO have failed to show any right or even any shareholding in said corporation."

It must however be emphasized that the conduct of the PCGG nominees in the BASECO Board in the management of the company's affairs should henceforth be guided and governed by the norms herein laid down. They should never for a moment allow themselves to forget they are conservators, not owners of the business; they are fiduciaries, trustees, of whom the highest degree of diligence and rectitude is, in the premises, required. (Emphasis in the original)

The PCGG cannot thus vote sequestered shares, except when there are "demonstrably weighty and defensible grounds" or

Supreme Court E-Library

"when essential to prevent disappearance or wastage of corporate property."[15]

The principle laid down in Baseco was further enhance in the subsequent cases of *Cojuangco v. Caplo*[16] *Presidential Commission on Good Government v. Cojuangco, Jr.*,[17] where this Court developed a "two-tiered" test in determining whether the PCGG may vote sequestered shares:

The issue of whether PCGG may vote the sequestered shares in SMC necessitates a determination of at least two factual matters:

1. whether there is *prima facie* evidence showing that the said shares are ill-gotten and thus belong to the state; and

2. whether there is an immediate danger of dissipation thus necessitating their continued sequestration and voting by the PCGG while the main issue pends with the Sandiganbayan.[18]

The two-tiered test, however, does not apply in cases involving funds of "public character." In such cases, the government is granted the authority to vote said shares, namely:

(1) Where government shares are taken over by private persons or entities who/which registered them in their own names, and

(2) Where the capitalization or shares that were acquired with public funds somehow landed in private hands.[19]

This Court, in *Republic v. Cocofed*,[20] explained:

The [public character] exceptions are based on the common-sense principle that legal fiction must yield to truth; that public property

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[15] *Vide San Miguel Corporation v. Kahn*, 176 SCRA 447, 464 (1989); *Republic v. Sandiganbayan*, 200 SCRA 530 (1991), holding that the PCGG'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."

[16] G.R. No. 115352, June 10, 1993.

[17] 302 SCRA 217 (1999).

[18] *Ibid.*

[19] *Republic v. Cocofed*, G.R. Nos. 147062–64, December 14, 2001.

[20] *Ibid.*

Supreme Court E-Library

registered in the names of non-owners is affected with trust relations; and that the *prima facie* beneficial owner should be given the privilege of enjoying the rights flowing from the *prima facie* fact of ownership.

In Baseco, a private corporation known as the Bataan Shipyard and Engineering Co. was placed under sequestration by the PCGG. Explained the Court:

> "The facts show that the corporation known as BASECO was owned and controlled by President Marcos 'during his administration, through nominees, by taking undue advantage of his public office and/or using his powers, authority, or influence,' and that it was by and through the same means, that BASECO had taken over the business and/or assets of the National Shipyard and Engineering Co., Inc., and other government-owned or controlled entities."

Given this factual background, the Court discussed PCGG's right over BASECO in the following manner:

> "Now, in the special instance of a business enterprise shown by evidence to have been 'taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos,' the PCGG is given power and authority, as already adverted to, to provisionally take (it) over in the public interest or to prevent ** (its) disposal or dissipation;' and since the term is obviously employed in reference to going concerns, or business enterprises in operation, something more than mere physical custody is connoted; the PCGG may in this case exercise some measure of control in the operation, running, or management of the business itself."

Citing an earlier Resolution, it ruled further:

> "Petitioner has failed to make out a case of grave abuse of excess of jurisdiction in respondent's calling and holding of a stockholder's meeting for the election of directors as authorized by the Memorandum of the President ** (to the PCGG) dated June 26, 1986, particularly, where as in this case, *the government can, through its designated directors, properly exercise control and management over what appear to be properties and assets owned and belonging to the government itself* and over which the persons who appear in this case on behalf of BASECO have failed to show any right or even any shareholding in said corporation." (Italics supplied)

Supreme Court E-Library

The Court granted PCGG the right to vote the sequestered shares because they appeared to be "assets belonging to the government itself." The Concurring Opinion of Justice Ameurfina A. Melencio-Herrera, in which she was joined by Justice Florentino P. Feliciano, explained this principle as follows:

> "I have no objection to according the right to vote sequestered stock in case of a take-over of business actually belonging to the government or whose capitalization comes from public funds but which, somehow, landed in the hands of private persons, as in the case of BASECO. To my mind, however, caution and prudence should be *exercised* in the case of sequestered shares of an on-going private business enterprise, specially the sensitive ones, since the true and real ownership of said shares is yet to be determined and proven more conclusively by the Courts." (Italics supplied)

The exception was cited again by the Court in *Cojuangco-Roxas* in this wise:

> "The rule in this jurisdiction is, therefore, clear. The PCGG cannot perform acts of strict ownership of sequestered property. It is a mere conservator. It may not vote the shares in a corporation and elect the members of the board of directors. *The only conceivable exception is in a case of a takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands as in BASECO.*" (Italics supplied)

The "public character" test was reiterated in many subsequent cases; most recently, in *Antiporda v. Sandiganbayan*. Expressly citing *Cojuangco-Roxas*, this Court said that in determining the issue of whether the PCGG should be allowed to vote sequestered shares, it was crucial to find out first whether this were purchased with public funds, as follows:

> "It is thus important to determine first if the sequestered corporate shares came from public funds that landed in private hands."

This Court summed up the rule in the determination of whether the PCGG has the right to vote sequestered shares as follows:

In short, when sequestered shares registered in the names of private individuals or entities are alleged to have been acquired with ill-gotten wealth, then the two-tiered test is applied. However, when

Supreme Court E-Library

the sequestered shares in the name of private individuals or entities are shown, *prima facie*, to have been (1) originally government shares, or (2) purchased with public funds or those affected with public interest, then the two-tiered test does not apply. Rather, the public character exception in *Baseco v. PCGG and Cojuangco Jr. v. Roxas* prevail; that is, the government shall vote the shares.

The PCGG contends, however, that it is entitled to vote the sequestered shares in the election of the board of directors, it invoking this Court's alleged finding in *PCGG et al. v. Securities and Exchange Commission, et al.* [21] that Africa had dissipated ETPI's assets, thus:

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[21] G.R. No. 82188, June 30, 1988. The decision, penned by then Associate Justice Marcelo Fernan, was concurred in by thirteen justices (Yap, C.J., Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino and Medialdea, JJ.); one justice (Gutierrez, Jr., J.) was on leave. *For easy reference, the decision, which is not found in either the Philippine Reports or in the Supreme Court Reports Annotated, is reproduced in full below:*

"Assailed in this consolidated petition for *certiorari*, *mandamus* and *prohibition* with prayer for preliminary injunction and/or temporary restraining order as having been issued with grave abuse of discretion and in excess of jurisdiction are two restraining orders issued by [1] the Securities and Exchange Commission Hearing Panel on March 3, 1988 in SEC Case No. 3297 entitled 'Victor Africa and Rafael C. Valdez, Complainants, versus Eduardo M. Villanueva, et al., Respondents' enjoining the respondents therein as members of the Board of Directors of Eastern Telecommunications Philippines, Inc. [*ETPI*] from holding the stockholders' meeting scheduled on March 4, 1988; and [2] the Sandiganbayan on March 4, 1988 in SB Civil Case No. 0009 entitled 'Republic of the Philippines, Plaintiff, versus Jose L. Africa, et al., Defendants', 'enjoining the PCGG, its Commissioners, nominated Directors and/or Corporate Officers, employees, nominees, agents and/or representatives xxx from calling and/or holding stockholders meetings and voting (the) sequestered shares thereat for the purpose of amending the Articles or By-laws of *ETPI*, or otherwise effecting substantial changes in policy, programs or practices of said corporation.' (Annex 'U', Petition, p. 192, *Rollo*) The temporary restraining order dated March 4, 1988 was subsequently replaced by a writ of preliminary injunction on March 25, 1988. (Annex 'B', Petitioners Urgent Manifestation and Motion dated March 29, 1988)

"The relevant background facts of the case culled from Petitioners' *URGENT CONSOLIDATED PETITION* are as follows: Until 1974, Eastern Telecommunications of the Philippines [*ETPI*] was a wholly-owned subsidiary

Supreme Court E-Library

Under a consultancy contract, Polygon Investors and Managers, Inc. with Jose L. Africa as Chairman and Victor Africa as President, earned from ETPI as of 1987, more than ₱57 million. Likewise in

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of Cable and Wireless, Ltd., operating under the name Eastern Extension Australasia and China Telegraph Company Ltd. [*EEATC*] by virtue of a royal decree from Spain, renewed in 1952 by the Philippine Government. In the late 1966, *EEATC* attempted to win a contract for the establishment of a satellite earth station but the contract was awarded by then President Ferdinand E. Marcos to a previously unknown corporation, the Philippine Overseas Telecoms Corporation [*POTC*], controlled by Messrs. Ilusorio, Poblador, Nieto, Benedicto and Reyes. Thereafter, desiring to obtain the franchise for the establishment of a tropospheric scatter system communications with Taiwan, but aware that it could not possibly do so without a strong Filipino partner, EEATC entered into a business alliance with *POTC* enabling them to obtain a franchise and the needed government approvals.

"Despite this alliance, Cable & Wireless was uneasy about its tenure in the Philippines, in view of the then forthcoming expiration of the Laurel-Langley Act, which expiration would require American corporations to reorganize themselves into 60/40 corporations with majority Filipino ownership.

"In March 1974, *EEATC* Philippine representative M.C. Bane was called to a conference at Camp Crame with the then Secretary of National Defense. Present at the meeting were representatives of RCA and Globe Mackay, who together with M.C. Bane, were told that they had until July of 1974 within which to reorganize their respective corporations into a 60/40 corporation in favor of Filipino ownership and that failing to do so, the Philippine Government would take the necessary action.

"With the deadline fast approaching, *EEATC* re-opened negotiations with *POTC*, which at that time had undergone rapid changes resulting in Nieto, Jr. becoming its controlling figure and Atty. Jose L. Africa as its negotiating representative. During the negotiations, Atty. Africa was quick to point out that *EEATC* was to deal only with the *BAN* Group [Benedicto, Africa and Nieto] allegedly at the express wish of then President Marcos.

"The figure eventually arrived at for *EEATC's* assets was ₱10M of which P6M was to be the input of the BAN Group. However, upon Atty. Africa's information that the *BAN* Group could put up only ₱1M a compromise was suggested for the new corporation to raise a bank loan from which Cable and Wireless could be paid for the assets to be acquired. After a series of negotiations, it was agreed that a loan of ₱7M was to be arranged and *BAN* would contribute P3M while Cable and Wireless would contribute P2M, thus establishing a 60/40 relationship in a new corporation. Despite this agreement, Africa again informed Cable and Wireless that the *BAN* Group could raise only ₱1M and asked whether it would be possible for Cable and Wireless to lend the group P2M repayable over a period of three [3] years. Seeing no other alternative, Cable and Wireless agreed to this arrangement. The loan

Supreme Court E-Library

document was drawn up while Nieto, Jr. secured the signature of then President Marcos on Presidential Decree No. 489 transferring the franchise of *EEATC* to the new corporation, Eastern Telecommunications of the Philippines, Inc. [*ETPI*].

"Under the Management of Cable and Wireless *ETPI* grew and prospered. But when its dividends, which were paid in dollars to the *BAN* Group, began to run into millions, said group also started to intervene in the corporation's operations and management. Requests for employment of family relatives and high salaries for them were made. The *BAN* Group likewise placed the majority of their individual stockholdings in three separate companies, namely: Aerocom Investors, Universal Molasses, and Polygon, so that in 1986, the ownership of the Class "A" stocks of the corporation was as follows:

Roberto S. Benedicto	-	3.3 percent
Universal Molasses Corp.	-	16.6 percent
Manuel Nieto, Jr.	-	2.2 percent
Nieto's relatives	-	3.3 percent
Aerocom Investors and Managers Inc.	-	17.5 percent
Jose Africa	-	2.2 percent
Africa's relatives	-	.3 percent
Polygon Investors and Managers Inc.	-	17.5 percent

"By the end of 1987, the initial capital of P1M of the *BAN* Group, its corporations and relatives had grown to the astronomical sum of ₱784,185,198.00. Cash dividends paid to them as of 1986 had amounted to ₱225,845,000.00 even as another P180,000,000.00 is due them for 1987, for a grand total of ₱405,845,000.00. In 1984, cash dividends to the *BAN* Group, et al. in the amount of $1M were remitted to the United States.

"Under a consultancy contract, Polygon Investors and Managers with Jose L. Africa as Chairman and his son, Victor Africa as President, earned from *ETPI* as of 1987 more than ₱57M. Likewise in 1987, *ETPI* paid to Jose L. Africa ₱1,200,000.00 as 'professional fees' and Manuel H. Nieto, Jr., another ₱1,200,000.00 as 'allowances'.

"On a *prima facie* finding that the three owned corporations, Aerocom, Universal and Polygon are Marcos-owned firms, the *PCGG*, on March 14, 1986 sequestered the company *ETPI* and on July 22, 1987 *PCGG* filed with the Sandiganbayan Civil Case No. 0009 for Reconveyance, Reversion, Accounting, Restitution of the ill-gotten *ETPI* shares and damages in connection therewith. The sequestration order was partially lifted with respect to the Class 'B' shares which belonged to Cable and Wireless.

"The root cause of the present controversy is the *PCGG* Resolution dated January 28, 1988 which ordered the reconvening and resumption of the annual stockholders meeting of the Eastern Telecommunications Philippines, Inc. on

Supreme Court E-Library

29 January 1988 at 2:00 P.M. at the principal office of the corporation. The meeting was originally scheduled for 4 January 1988, but had to be and was duly adjourned the same day.

"A copy of this resolution, contained in a letter addressed to the Chairman and Corporate Secretary of *ETPI* was received by respondent Victor Africa as Corporation Secretary of *ETPI* at 11:11 A.M. of January 29, 1988. At 2:00 P.M. of the same day, the reconvened stockholders' meeting was held over the objection interposed by said respondent Victor Africa as corporate secretary and stockholder of *ETPI*, on the manner the meeting was called. In said stockholders' meeting petitioners Eduardo M. Villanueva, as **PCGG** nominee, and Roman Mabanta and Eduardo de los Angeles as nominees of the foreign investors, Cable and Wireless Ltd. and Jose L. Africa [who was absent] were elected members of the Board of Directors. Immediately thereafter, the elected directors present held an organizational meeting, in turn, electing Eduardo Villanueva as President and General Manager, petitioners Ramon Desuasido, Almario Velasco and Ranulfo Payos as Acting Corporate Secretary, Acting Treasurer and Acting Assistant Corporate Secretary, respectively. The Board of Directors further resolved to hold a Board meeting on February 8, 1988.

"At the February 8, 1988 meeting, the Board of Directors resolved, among others, to propose amendments to *ETPI's* Articles of Incorporation to abrogate 'the right of first refusal' clause embodied in Article 10 thereof and to call for a special stockholders meeting in February 29, 1988 for the purpose of ratifying the proposed amendment.

"On February 15, 1988, respondents Victor Africa and Rafael C. Valdez, as alleged erstwhile Corporate Secretary and Director, respectively, of *ETPI*, filed before the Securities and Exchange Commission [*SEC*] a verified complaint with prayer for preliminary injunction, docketed therein as *SEC* Case No. 3297, assailing the legality of the Board of Directors' and Corporate Officers' elections at the reconvened stockholders meeting on January 29, 1988, the Board meetings of January 29 and February 8, 1988 as well as all the acts done by the Board during said meetings.

"During the pendency of the application for preliminary injunction, respondents Victor Africa and Rafael Valdez filed an urgent motion for a temporary restraining order to enjoin the Board of Directors from proceeding with the special stockholders meeting on February 29, 1988. This motion was opposed by therein respondents Mabanta and delos Angeles.

"On February 26, 1988, by way of special appearance, the office of the Solicitor General filed an omnibus motion for the *PCGG* to intervene and for the dismissal of the case in so far as Villanueva, Velasco, Payos and Desuasido were concerned, claiming that they were *PCGG* nominees/designees, and therefore beyond the jurisdiction of the *SEC*.

Supreme Court E-Library

"At the hearing on February 29, 1988, therein respondent de los Angeles agreed to defer the February 29 meeting but at the resumption of the hearing on March 1, 1988, therein petitioners reiterated their urgent motion for a temporary restraining order, manifesting that the meeting of February 29, 1988 was merely adjourned to March 4, 1988.

"On March 3, 1988, after marathon hearings on the application for a temporary restraining order, the hearing panel of the SEC issued the assailed order, effective for twenty (20) days, on the grounds that 'the said stockholders meeting on March 4, 1988 xxx is not really that urgent and to afford the Panel sufficient time to deliberate on the matter without rendering the act sought to be enjoined academic.' (p. 190, *Rollo*)

"Also on March 3, 1988, respondents Jose Africa and Manuel H. Nieto, Jr. as stockholders of *ETPI* filed in Civil Case No. 0009 of the Sandiganbayan a motion for injunction with prayer for a temporary restraining order to enjoin the *PCGG*, its Commissioners, nominated Directors and/or Corporate Officers, employees, nominees, agents and/or representatives from calling or holding meetings of the stockholders and the Board of Directors, managing the corporation, controlling its policies, running its day-to-day business, etc. The following day, March 4, 1988, the Sandiganbayan issued the second assailed temporary restraining order. Hence, this petition, *PCGG* maintaining that both the *SEC* and Sandiganbayan acted with grave abuse of discretion and in excess of jurisdiction in issuing said temporary restraining orders, the *SEC* for having done so without first resolving its motion for intervention and for dismissal of the case; and the Sandiganbayan for taking cognizance of the motion, thereby intervening with the *PCGG's* executive and administrative jurisdiction.

"Without giving due course to the petition, the Court set the case for hearing on March 17, 1988. At said hearing, We required the parties to file their memoranda on the applicability of the case of Bataan Shipyard & Engineering, Co., Inc. vs. Presidential Commission on Good Government [150 SCRA 181] to the petition at bar. All parties complied with this order.

"We shall deal first with the *SEC* case. By its own terms, the temporary restraining order issued in *SEC* Case No. 3297 was effective only for twenty (20) days. The same has therefore already expired, rendering the challenge against it moot and academic. This, notwithstanding, the Court has decided to delve deeper into the *SEC* case to correct a blatant jurisdictional defect and thus save the parties unnecessary waste of time and effort as well as to avoid multiplicity of suits and promote the orderly administration of justice.

"On the basis of the allegations in the complaint filed by respondent Victor Africa and Rafael Valdez in *SEC* Case No. 3297, it would appear that the complaint being lodged before the *SEC* pertained primarily to an intra-corporate controversy. The respondents named therein are the individual members of the Board of Directors and the Corporate Officers of *ETPI* and the acts sought to be nullified or enjoined were the supposedly illegal corporate acts

Supreme Court E-Library

of these individuals. Conveniently omitted are the information that certain stocks of the corporation are under sequestration by the *PCGG* and that some individually named respondents are *PCGG* nominees or designees. The lone reference to PCGG is found in paragraph 5 of the complaint alleging the receipt by Victor Africa of a letter from *PCGG* Chairman Ramon A. Diaz ordering a stockholders meeting on the 29th of January, 1988 at 2:00 P.M. at the principal office of the Corporation and the allegation that this notice was in violation of the provision in the corporation's By-laws regarding notice of meetings. By this clever presentation of the antecedent facts, the *SEC* was misled into taking cognizance of the complaint, and in view of the forthcoming special stockholders meeting being sought to be enjoined, the Hearing Panel was constrained to issue the assailed temporary restraining order if only to maintain the status quo and thus prevent the case from becoming moot and academic.

"Under these circumstances, the issuance of the temporary restraining order would have been legal and proper. What, to our mind, taints the same with grave abuse of discretion was the fact that at the time of the issuance of the assailed temporary restraining order, there were certain information already within the knowledge of the Hearing Panel. For it must be remembered that as early as February 26, 1988, the Office of the Solicitor General had filed a motion for intervention and for dismissal of the case for lack of jurisdiction. If on the basis of the complaint filed by respondents Victor Africa and Rafael Valdez, it was not readily discernible that it was the legality of the *PCGG's* resolution of January 29, 1988 that has to be determined as the order which gave rise to the chain of events sought to be nullified or enjoined, the disclosure in the motion to intervene that some of the individual respondents in *SEC* Case No. 3297 are *PCGG* nominees or designees should have made it clear to the Hearing Panel that the *PCGG* was the real party in interest. The Hearing Panel should have then realized that there exists an element in the case which effectively removes it from the jurisdiction of the Commission, i.e., the presence of the *PCGG*, which as another quasi-judicial body is a co-equal entity over which actions the *SEC* has no power of control.

"In one of the valedictory decisions of Mr. Chief Justice Claudio Teehankee, this Court finally laid to rest the question of the proper forum before which actions to challenge the *PCGG's* acts or orders in sequestration cases may be instituted. Thus:

'xxx Executive Order No. 14 xxx specifically provides in Section 2 that 'The Presidential Commission on Good Government shall file such cases whether civil or criminal, with the Sandiganbayan which shall have exclusive and original jurisdiction thereof.' Necessarily, those who wish to question or challenge the Commission's acts or orders in such case must seek recourse in the same court, the Sandiganbayan, which is vested exclusive and original jurisdiction. The Sandiganbayan's decisions and final orders are in turn subject to review on *certiorari* exclusively by this Court.' (*Presidential Commission on Good Government v. Hon. Emmanuel Peña, etc., et al.*, G.R. No. 77663, April 12, 1988)

Supreme Court E-Library

"The root cause of the *SEC* controversy being undeniably the *PCGG's* resolution calling for a stockholders meeting of the partially sequestered *ETPI*, the challenge thereto is properly cognizable by the Sandiganbayan. The other respondents in this petition, Messrs. Jose Africa and Manuel H. Nieto, Jr., were in a sense more perceptive in filing a motion for injunction in Civil Case No. 0009 pending before the Sandiganbayan.

"In the face of this glaring lack of jurisdiction, it follows that had the temporary restraining order issued in SEC Case No. 3297 not lost its effectivity *functus officio*, the same would have been set aside. But, as earlier intimated, the case does not end here. *SEC* Case No. 3297 should further be ordered dismissed for lack of jurisdiction.

"We come now to the second assailed temporary restraining order dated March 4, 1988 issued by the Sandiganbayan in Civil Case No. 0009, which was replaced on March 29, 1988 with a writ of preliminary injunction, and which injunction was reiterated on May 2, 1988. (Annex A, Third Urgent Motion to Resolve Urgent Consolidated Petition) The main objection interposed by the *PCGG* to the issuance of these orders is that they were in effect an intervention by the Sandiganbayan with the *PCGG's* discretionary executive and administrative jurisdiction.

"Verily, the *PCGG* is vested with executive and administrative jurisdiction over sequestered corporations, business enterprises and properties. The powers granted to the *PCGG*, no matter how broad they appear, however, must be exercised pursuant to its pronounced objective of 'provisionally taking over in the public interest or to prevent its disposal or dissipation business enterprises and properties taken over by the government of the Marcos administration or entities or persons close to the former President Marcos xxx'. (Sec. 3[b], Executive Order No. 1) It is with this objective in mind that in the leading case of *BASECO vs. PCGG*, supra this Court laid down certain guidelines on what acts may or may not be done by the *PCGG* with regard to said sequestered properties or businesses. We tried to cover as wide a range of activities in said case as possible but We realize that We cannot even attempt to encompass *all* situations. Each case must be decided on the basis of its factual antecedents and merits, but always with reference to the objectives for which the *PCGG* was created. In like manner should the *PCGG's* acts and orders be measured. Acts or orders transgressing this parameter are certainly tainted with abuse of discretion which the Sandiganbayan, the court vested with exclusive and original jurisdiction over case involving the *PCGG*, may correct. Otherwise, *PCGG* would be above the law.

"In the case at bar, the stockholders meeting enjoined by the *SEC* and the Sandiganbayan was called specifically for the purpose of ratifying the proposed amendment to delete from *ETPI's* Articles of Incorporation and By-Laws the 'right of first refusal' clause. The question that must now be resolved is whether the *PCGG* may be permitted to vote the sequestered shares to effect this change.

Supreme Court E-Library

"The 'right of first refusal' is primarily an attribute of ownership. Conversely, a waiver thereof is an act of ownership. To allow the *PCGG* to vote the sequestered shares for this purpose would be sanctioning its exercise of an act of strict ownership. To our mind, though, it is not so much the nature of the act proposed to be done by the *PCGG* that is essential, but rather, the purpose for doing so. The prime consideration should be: is the act proposed to be done by the *PCGG* merely an act of administration or an act of strict ownership essential to the pursuit of its objectives? For it cannot be totally discounted that situations may arise wherein only through an act of strict ownership can the *PCGG* be able to prevent the dissipation of the assets of the sequestered corporation or business. Fortunately, this is not one of them.

For while We commend the purported objective of the *PCGG* for trying to amend the 'right of first refusal' clause to enable it to sell the sequestered shares to the public, We cannot see our way clear as to how this move could help prevent the dissipation of the corporation's assets, particularly when it has its own representatives in the Board of Directors, who can effectively provide such measures and safeguards to prevent such dissipation. Moreover, to sell the sequestered shares at this time when the issue of ownership is still pending before the Sandiganbayan and the exact equity proportion thereof is still uncertain, would not only be premature, but would also expose the would-be buyers to great risks.

"But while We find the Sandiganbayan to have acted properly in enjoining the *PCGG* from holding the stockholders meeting for the specified purpose of amending the 'right of first refusal' clause in *ETPI's* Articles of Incorporation and By-Laws, We find the general injunction imposed by it on the *PCGG* to desist and refrain from calling a stockholders meeting for the purpose of electing a new Board of Directors of effecting substantial changes in the policy, program or practice of the corporation to be too broad as to taint said order with grave abuse of discretion. Said order completely ties the hands of the *PCGG*, rendering it virtually helpless in the exercise of its power of conserving and preserving the assets of the corporation. Indeed, of what use is the PCGG if it cannot even do this? The injunction issued by the Sandiganbayan must be lifted with qualifications as it was lifted in our resolution dated May 24, 1988.

"As to the charge of forum-shopping imputed to private respondents, We give the latter the benefit of the doubt considering that there are two separate sets of petitioners in the SEC and Sandiganbayan cases and the lack of a definite ruling, at the time of the filing of the petitions in *SEC* and Sandiganbayan, as to which is the proper forum in cases of this nature.

"**WHEREFORE**. the temporary restraining order issued in *SEC* Case No. 3297 is hereby declared a nullity and *SEC* Case No. 3297 is ordered dismissed for lack of jurisdiction. The writs of preliminary injunction dated March 25 and May 2, 1988 issued by the Sandiganbayan in Civil Case

Supreme Court E-Library

1987, ETPI paid to Jose L. Africa ₱1,200,000.00 as "professional fees" and Manuel Nieto, Jr. another ₱1,200,000.00 as "allowances."[22]

The PCGG's contention is misleading, This Court made no finding in *PCGG v. SEC et al.* that Africa dissipated ETPI's assets. Precisely this Court issued a Resolution of July 28, 1988 in the same case to clarify, upon motion of Africa, that the narration of facts found in the decision therein did not constitute a finding of facts:

> The categorical statement in the decision of June 30, 1988 that the "relevant background facts of the case culled from Petitioners' Urgent Consolidated Petition" was not without a reason or purpose. Precisely this statement was made to impress upon the parties that *the narration of facts is just that — a narration, without necessarily judging its truth or veracity. Being based on mere allegations, properly controverted, it is not a finding of facts, but more of a presentation of the complete picture of events which led to the sequestration of Eastern Telecommunications, Philippines, Inc. as well as to the instant petition.* This Court, it must be remembered, is not a trier of facts, and particularly so in this case where the facts narrated are precisely the facts in litigation before the Sandiganbayan. (Italics supplied.)

Unfortunately, the Sandiganbayan, in its impugned Resolution of November 13, 1992, skirted the question of whether there is evidence of dissipation of ETPI assets, holding instead that:

> The issue as to whether the B[enedicto]A[frica]N[ieto] group had dissipated funds of ETPI during its administration of ETPI is a matter which is not in issue herein. Dissipation by the PCGG Board of Directors is also charged by the BAN group. An investigation of the anomalies charged by one against the other may be taken up in another case.[23]

No. 0009 are lifted except in so far as they enjoin petitioners from holding a stockholders meeting for the purpose of deleting from *ETPI's* Articles of Incorporation and By-Laws the 'right of first refusal' clause. No pronouncement as to costs.

"SO ORDERED."

[22] *Vide* Note 16.

[23] *Rollo*, G.R. No. 107789, pp. 44–45.

Supreme Court E-Library

And it further held that the PCGG could not vote the sequestered shares as "only the owners of the shares of stock of subject corporation, their duly authorized representatives or their proxies, may vote the said shares,"[24] relying on this Court's ruling in *Cojuangco, Jr. v. Roxas*[25] that:

> The rule in this jurisdiction is, therefore, clear. The PCGG cannot perform acts of strict ownership of sequestered property. It is a mere conservator. It may not vote the shares in a corporation and elect members of the board of directors. The only conceivable exception is in a case of a takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands as in BASECO.

In short, the Sandiganbayan held that the public character exception does not apply, in which case it should have proceeded to apply the two-tiered test. This it failed to do.

The questions thus remain if there is *prima facie* evidence showing that the subject shares are ill-gotten and if there is imminent danger of dissipation. This Court is not, however, a trier of facts, hence, it is not in a position to rule on the correctness of the PCGG's contention. Consequently, this issue must be remanded to the Sandiganbayan for resolution.

II

On the PCGG's submission that the Stock and Transfer Book should not be used as the basis for determining the voting rights of the shareholders because some entries therein were altered "by substitution": This Court sees no grave abuse of discretion on the part of the Sandiganbayan in ruling that:

> The charge that there were "alterations by substitution" in the Stock and Transfer Book is not a matter which should preclude the Stock and Transfer Book from being the basis or guide to determine who the true owners of the shares of stock in ETPI are. If there be any substitution or alterations, the anomaly, if at all, may be explained by the corporate secretary who made the entries therein. At any rate,

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[24] *Id.* at 43.

[25] 195 SCRA 797 (1991).

Supreme Court E-Library

the accuracy of the Stock and Transfer Book may be checked by comparing the entries therein with the issued stock certificates. The fact is that any transfer of stock or issuance thereof would necessitate an alteration of the record by substitution. Any anomaly in any entry which may deprive a person or entity of its right to vote may generate a controversy personal to the corporation and the stockholder and should not affect the issue as to whether it is the PCGG or the shareholder who has the right to vote. In other words, should there be a stockholder who feels aggrieved by any alteration by substitution in the Stock and Transfer Book, said stockholder may object thereto at the proper time and before the stockholders meeting.[26]

Whether the ETPI Stock and Transfer Book was falsified and whether such falsification deprives the true owners of the shares of their right to vote are thus issues best settled in a different proceeding instituted by the real parties-in-interest.

III

On the PCGG's submission that the Sandiganbayan gravely abused its discretion when it held that it cannot vote at least 23.9% of the outstanding capital stock of ETPI, which percentage is broken down as follows:

Shares ceded to the government by virtue of the Benedicto compromise	-	12.8%
Shares represented by some stock certificates found in Malacañang (at least)	-	3.1%
Shares held and admitted by Manuel Nieto to belong to then President Marcos	-	8.0%

The PCGG alleges that the 12.8% indicated above represents 51% of the combined shareholdings of Roberto S. Benedicto

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[26] *Rollo*, G.R. No. 107789, p 44.

[27] Sec. 34. *Special indorsement; indorsement in blank.* — A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable, and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

Supreme Court E-Library

and his controlled corporations amounting to 12.8% of the total equity of ETPI which was ceded to the Republic; the 3.1% represents the shares covered by the ETPI stock certificates endorsed in blank found in Malacañang, now in its (PCGG's) possession, which it submits it may, under Section 34 of the Negotiable Instruments Law,[27] take title thereto and vote the same in the stockholders meeting; and the 8% represents the shares of Manuel H. Nieto, Jr. which, so it avers, he, in an Affidavit of May 28, 1986, admitted actually belong to former President Marcos:

> 5. That in relation to and simultaneously with the board meeting of PHILCOMSAT, on March 21, 1986, I declared my concurrence in the disclosures made on the participation of Mr. Ferdinand E. Marcos and associates in the companies covered by the sequestration order dated March 14, 1986 *i.e.*, 39,926.2% (sic) of the total subscribed capital stock of Philippine Overseas Telecommunications Corporation and 40% of the individual shareholdings of Jose L. Africa, Manuel H. Nieto, Jr., & Roberto S. Benedicto in Eastern Telecommunications Philippines, Inc.[28]

On the question of whether the PCGG can vote all the above shares, the Sandiganbayan, finding in the affirmative, held in its Resolution of November 13, 1992:

> Considering the Compromise Agreement entered into by the PCGG and Roberto S. Benedicto in Civil Case No. 009 wherein Roberto S. Benedicto assigned and transferred to the Government 12.8% of the shares of stock of ETPI, which Compromise Agreement was made the basis of a judgment of this Court, it is only proper that the PCGG may vote these shares after said judgment shall have become final and executory. Besides, before the PCGG can vote these shares, the transfer to the State of the shares of stock must be entered in the Stock and Transfer Book, the entries therein being the only basis for which the stockholder may vote the said shares.
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> The same ruling is made in respect to the shares of stock represented by stock certificates found in Malacañang (3.1%) and

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[28] *Rollo*, G.R. No. 107789, pp. 20–21.

[29] *Id.* at 45.

Supreme Court E-Library

the shares of stock allegedly admitted by Manuel H. Nieto to belong to former President Ferdinand E. Marcos (8.0%).[29] (Italics supplied)

The Sandiganbayan clearly made no ruling proscribing the PCGG from voting the shares representing 12.8% of ETPI's outstanding capital stock, the only requirement it imposed being that the transfer of the shares be registered in the Stock and Transfer Book and that, in the case of the Benedicto shares, the Compromise Agreement be final and executory.

In requiring that the transfer of the Benedicto shares be first recorded in ETPI's Stock and Transfer Book before the PCGG may vote them, the Sandiganbayan committed no grave abuse of discretion. For Section 63 of the Corporation Code provides:

> Sec. 63. *Certificate of stock and transfer of shares.* — The capital stock of stock corporations shall be divided into shares for which the certificates signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by the delivery of the certificate or certificates endorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.
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> xxx xxx xxx.

Explaining why registration is a prerequisite for the voting of shares, this Court, in *Batangas Laguna Tayabas Bus Company, Inc., v. Bitanga*,[30] discoursed:

> Indeed, until registration is accomplished, the transfer, though valid between the parties, cannot be effective as against the corporation. Thus, the unrecorded transferee xxx cannot vote nor be voted for. The purpose of registration, therefore, is two-fold: to enable the transferee to exercise all the rights of a stockholder, including the right to vote and to be voted for, and to inform the

[30] 362 SCRA 635 (2001).

Supreme Court E-Library

corporation of any change in share ownership so that it can ascertain the persons entitled to the rights and subject to the liabilities of a stockholder. Until challenged in a proper proceeding, a stockholder of record has a right to participate in any meeting; his vote can be properly counted to determine whether a stockholders' resolution was approved, despite the claim of the alleged transferee. On the other hand, a person who has purchased stock, and who desires to be recognized as a stockholder for the purpose of voting, must secure such a standing by having the transfer recorded on the corporate books. Until the transfer is registered, the transferee is not a stockholder but an outsider.

Whether the PCGG needs to await the finality of the judgment[31] based on the Republic-Benedicto compromise agreement is now moot since it is *not disputed* that it had long become final and executory. Accordingly, the PCGG may vote in its name the shares ceded to the Republic by Benedicto pursuant to the said agreement once they are registered in its name.

With respect to the PCGG's submission that under Section 34 of the Negotiable Instruments Law, it may take title to the shares represented by the blank stock certificates found in Malacañang and vote the same, the same is untenable. The PCGG assumes that stock certificates are negotiable. They are not.

> xxx [A]lthough a stock certificate is sometimes regarded as quasi-negotiable, in the sense that it may be transferred by delivery, it is well settled that the instrument is non-negotiable, because the holder thereof takes it without prejudice to such rights or defenses as the registered owner or creditor may have under the law, except insofar as such rights or defenses are subject to the limitations imposed by the principles governing estoppel.[32]

That the PCGG found the stock certificates endorsed in blank does not necessarily make it the owner of the shares represented therein. Their true ownership has to be ascertained in a proper proceeding. Similarly, the ownership of the Nieto shares has

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[31] *Vide Republic v. Sandiganbayan*, 226 SCRA 314 (1993).

[32] *De los Santos and Astraquillo v. Republic*, 96 Phil 577 (1955).

Supreme Court E-Library

yet to be adjudicated. That they allegedly belong to former President Marcos does not make the PCGG, its owner. The PCGG must, in an appropriate proceeding, first establish that they truly belong to the former President and that they were ill-gotten. Pending final judgment over the ownership of these shares, the PCGG may not register and vote the Nieto and the Malacañang shares *in its name*. If the Sandiganbayan finds, however, that there is evidence of dissipation of these shares, the PCGG may vote the same as *conservator* thereof.

IV

On the PCGG's imputation of grave abuse of discretion upon the Sandiganbayan for ordering the holding of a stockholders meeting to elect the ETPI board of directors without first setting in place, through the amendment of the articles of incorporation and the by-laws of ETPI, the safeguards prescribed in *Cojuangco, Jr. v. Roxas*: [33] This Court laid down those safeguards because of the obvious need to reconcile the rights of the stockholder whose shares have been sequestered and the duty of the conservator to preserve what could be ill-gotten wealth.

It is through the right to vote that the stockholder participates in the management of the corporation. The right to vote, unlike the rights to receive dividends and liquidating distributions, is not a passive thing because management or administration is, under the Corporation Code, vested in the board of directors, with certain reserved powers residing in the stockholders directly. The board of directors and executive committee (or management committee) and the corporate officers selected by the board may make it very difficult if not impossible for the PCGG to carry out its duties as conservator if the Board or officers do not cooperate, are hostile or antagonistic to the conservator's objectives.

Thus, it is necessary to achieve a balancing of or a reconciliation between the stockholders' right to vote and the conservator's statutory duty to recover and in the process thereof, to conserve assets, thought to be ill-gotten wealth, until final judicial determination of the character of such assets or until a final compromise agreement between the parties is reached.

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[33] *Vide* Note 20.

Supreme Court E-Library

There are, in the main, two (2) types of situations that need to be addressed. The first situation arises where the sequestered shares of stock constitute a distinct minority of the voting shares of the corporation involved, such that the registered owners of such sequestered shares would in any case be able to vote in only a *minority of the Board of Directors* of the corporation. The second situation arises where the sequestered shares of stock constitute a majority of the voting shares of the corporation concerned, such that the registered owners of such shares of stock would in any case be entitled to elect a *majority of the Board of Directors* of the corporation involved.

Turning to the first situation, the Court considers and so holds that in order to enable the PCGG to perform its functions as conservator of the sequestered shares of stock pending final determination by the courts as to whether or not the same constitute ill-gotten wealth or a final compromise agreement between the parties, the PCGG must be represented in the Board of Directors of the corporation and to its majority-owned subsidiaries or affiliates and in the Executive Committee (or its equivalent) and the Audit Committee thereof, in at least an *ex oficio* (*i.e.*, non-voting) capacity. The PCGG representative must have a right of full access to and inspection of (including the right to obtain copies of) the books, records and all other papers of the corporation relating to its business, as well as a right to receive copies of reports to the Board of Directors, its Executive (or equivalent) and Audit Committees. By such representation and rights of full access, the PCGG must be able so to observe and monitor the carrying out of the business of the corporation as to discover in a timely manner any move or effort on the part of the registered owners of the sequestered stock alone or in concert with other shareholders, to conceal, waste and dissipate the assets of the corporation, or the sequestered shares themselves, and seasonably to bring such move or effort to the attention of the Sandiganbayan for appropriate action.

In the second situation above referred to, the Court considers and so holds that the following minimum safeguards must be set in place and carefully maintained until final judicial resolution of the question of whether or not the sequestered shares of stock (or, in a proper case, the underlying assets of the corporation concerned) constitute ill-gotten wealth or until a final compromise agreement between the parties is reached:

Supreme Court E-Library

a. An independent comptroller must be appointed by the Board of Directors upon nomination of the PCGG as conservator. The comptroller shall not be removable (nor shall his position be abolished or his compensation changed) without the consent of the conservator. The comptroller shall, in addition to his other functions as such, have charge of internal audit.

b. The corporate secretary must be acceptable to the conservator. If the corporate secretary ceases to be acceptable to the conservator, a new one must be appointed by the Board of Directors upon nomination of the conservator.

c. The external auditors of the corporation must be independent and must be acceptable to the conservator. The independent external auditors shall not be changed without the consent of the conservator.

d. The conservator must be represented in the Board of Directors and in the Executive (or equivalent) and Audit Committees of the corporation involved and of its majority-owned subsidiaries or affiliates. The representative of the conservator must be a full director (not merely an honorary or *ex oficio* director) with the right to vote and all other rights and duties of a member of the Board of Directors under the Corporation Code. The conservator's representative shall not be removed from the Board of Directors (or the mentioned Committees) without the consent of the conservator. The conservator shall, however, have the right to remove and change its representative at any time, and the new representative shall be promptly elected to the Board and its mentioned Committees.

e. All transactions involving the disbursement of corporate funds in excess of ₱5 million must have the prior approval of the director representing the conservator, in order to be valid and effective.

f. The incurring of debt by the corporation, whether in the form of bonds, debentures, commercial paper or any other form, in excess of *P*5 million, must have the prior approval of the director representing the conservator, in order to be valid and effective.

g. The disposition of a substantial part of assets of the corporation (substantial meaning in excess of ₱5 million) shall require the prior approval of the director representing the conservator, in order to be valid and effective.

Supreme Court E-Library

h. The above safeguards must be written into the articles of incorporation and by-laws of the company involved. In other words, the articles of incorporation and by-laws of the company must be amended so as to incorporate the above safeguards.

i. Any amendment of the articles of incorporation or by-laws of the company that will modify in any way any of the above safeguards, shall need the prior approval of the director representing the conservator.

The amount of ₱5,000,000.00 referred to in paragraphs (e), (f) and (g) above is intended merely to be indicative. The precise amount may differ depending upon the size of the corporation involved and the reasonable operating requirements of its business.

Whether a particular case falls within the first or the second type of situation described above, the following safeguards are indispensably necessary:

1. The sequestered shares and any stock dividends pertaining to such shares, may not be sold, transferred, alienated, mortgaged, or otherwise disposed of and no such sale, transfer or other disposition shall be registered in the books of the corporation, pending final judicial resolution of the question of ill-gotten wealth or a final compromise agreement between the parties; and

2. Dividend and liquidating distributions shall not be delivered to the registered stockholders of the sequestered shares, including stock dividends pertaining to such shares, but shall instead be deposited in an escrow, interest-bearing, account in a first class bank or banks, acceptable to the Sandiganbayan, to be held by such banks for the benefit of whoever is held by final judicial decision or final compromise agreement, to be entitled to the shares involved. (Emphasis in the original)

There is nothing in the *Cojuangco* case that would suggest that the above measures should be incorporated in the articles and by-laws before a stockholders meeting for the election of the board of directors is held. The PCGG nonetheless insists that those measures should be written in the articles and by-laws before such meeting, "otherwise, the [Marcos] cronies

Supreme Court E-Library

will elect themselves or their representatives, control the corporation, and for an appreciable period of time, have every opportunity to disburse funds, destroy or alter corporate records, and dissipate assets." That could be a possibility, but the peculiar circumstances of this case require that the election of the board of directors first be held before the articles of incorporation are amended. Section 16 of the Corporation Code requires the majority vote of the board of directors to amend the articles of incorporation:

> Sec. 16. *Amendment of Articles of Incorporation.* — Unless otherwise prescribed by this Code or by special law, and for legitimate purposes, any provision or matter stated in the articles of incorporation may be amended *by a majority vote of the board of directors* or trustees and the vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of this Code, or the vote or written assent of at least two thirds (2/3) of the members if it be a non-stock corporation.
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> xxx (Italics supplied)

At the time Africa filed his motion for the holding of the annual stockholders meeting, there were two sets of ETPI directors, one controlled by the PCGG and the other by the registered stockholders. Which of them is the legitimate board of directors? Which of them may rightfully vote to amend the articles of incorporation and integrate the safeguards laid down in *Cojuangco*? It is essential, therefore, to cure this aberration of two boards of directors sitting in a single corporation before the articles of incorporation are amended to set in place the *Cojuangco* safeguards.

The danger of the so-called Marcos cronies taking control of the corporation and dissipating its assets is, of course, a legitimate concern of the PCGG, charged as it is with the duties of a conservator. Nevertheless, such danger may be averted by the "substantially contemporaneous" amendment of the articles after the election of the board. This Court said as much in *Cojuangco*:

> The Court is aware that the implementation of some of the above safeguards may require agreement between the registered stockholders

Supreme Court E-Library

and the PCGG as well as action on the part of the Securities and Exchange Commission. The Court, therefore, directs petitioners and the PCGG to effect the implementation of this decision under the supervision and control of the Sandiganbayan so that the right to vote the sequestered shares and the installation and operation of the safeguards above-specified may be exercised and effected in a substantially contemporaneous manner and with all deliberate dispatch.

V

As for the PCGG's contention that the Sandiganbayan gravely abused its discretion in ordering the Division Clerk of Court to call the stockholders meeting and in appointing then Sandiganbayan Associate Justice Sabino de Leon, Jr. to control and supervise the same, it is impressed with merit.

The Clerk of Court, who is already saddled with judicial responsibilities, need not be burdened with the additional duties of a corporate secretary. Moreover, the Clerk of Court may not have the requisite knowledge and expertise to discharge the functions of a corporate secretary. It is not thus surprising to find the PCGG complaining that:

> xxx ETPI's By-laws provide:
>
> "Sec. 4. *Notice of Meeting.* — Except as otherwise provided by law, written or printed notice of all annual and special meetings of stockholders, stating the place and time of the meeting and the general nature of the business to be considered, shall be transmitted by personal delivery, registered air-mail, telegraph, or cable to each stockholder of record entitled to vote thereat at his address last known to the Secretary of the Company, at least ten (10) days before the date of the meeting, if an annual meeting, or at least five (5) days before the date of the meeting, if a special meeting."

Here, respondent Victor Africa filed a Motion dated *March 30, 1992* asking the Sandiganbayan to "issue the call and *Notice of Annual Stockholder's Meeting* in ETPI" because under ETPI's By-laws such meeting should be held in the month of May xxx In the Resolution dated November 13, 1992, the Sandiganbayan granted the Motion and authorized its Division Clerk of Court to issue such "Notice of *Annual* Stockholder's Meeting." However, for inexplicable reasons, the Division Clerk of Court issued a "Notice of *Special* Stockholder's Meeting"xxx which requires only a prior 5-day notice, instead of a

Supreme Court E-Library

"notice of (Delayed) Annual Stockholder's Meeting" which requires a prior 10-day notice.

Instead of sending the Notices to each stockholder at his recorded address, the Division Clerk of Court whimsically sent all the Notices meant for the Class B stockholders to Atty. Eduardo de los Angeles (who returned the Notices because he was not authorized to receive such Notices). According to him xxx, he does not know some of the Class B stockholders for whom notices were sent to him. As a result, at this late stage, no proper notice has been sent to Class B stockholders. Yet, the Sandiganbayan has scheduled and is dead set to supervise a stockholder's meeting on November 27, 1992. This clearly violates the substantial rights of the Class B stockholders who own 40% of ETPI. Under the Articles of Incorporation xxx and By-laws xxx of ETPI, Class B stockholders are entitled to vote two members of the Board of Directors. Unless properly notified, most of the Class B stockholders who reside in the United Kingdom (and whose shares are not sequestered) will not be able to exercise their right to vote.[34] (Emphasis in the original)

The appointment of a sitting member of the Sandiganbayan is particularly unsound for, as the PCGG points out:

xxx What then is the reason for him to attend and supervise the meeting? To observe so that he can later testify in the court where he himself sits — in the court which will eventually decide any controversy which may arise from the meeting?[35]

Obviously, under such situation, the justice so appointed would be compelled to inhibit himself from any judicial controversy arising from the stockholders meeting.[36] Worse, if he were to preside at the meeting and rule upon the objections that may be raised by some stockholders, the Sandiganbayan would

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[34] *Rollo*, G.R. No. 107789, pp. 29–30.

[35] *Id.* at 32.

[36] The Code of Judicial Conduct provides:

Rule 3.12. — A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include, among others, proceedings where:

(a) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding; . . . .

Supreme Court E-Library

be faced with the "anomaly"[37] of eventually reviewing the decisions rendered by a member of its court during the stockholders meeting.

This Court appreciates the quandary that the Sandiganbayan faced when it ordered its Division Clerk of Court to call the meeting: ETPI has two sets of officers and, presumably, two corporate secretaries. And given the stakes involved, the stockholders meeting would be contentious, to say the least, hence, the need for an impartial referee to supervise and control the meeting.

Happily, the case of *Board of Directors and Election Committee of SMB Workers Savings and Loan Asso., Inc. v. Tan, etc., et al.*[38] provides a solution to the Sandiganbayan's dilemma. There, this Court upheld the creation of a committee empowered to call, conduct and supervise the election of the board of directors:

> As regards the creation of a committee of three vested with the authority to call, conduct and supervise the election, and the appointment thereto of Candido C. Viernes as chairman and representative of the court and one representative each from the parties, the Court in the exercise of its equity jurisdiction may appoint such committee, it having been shown that the Election Committee that conducted the election annulled by the respondent court if allowed to act as such may jeopardize the rights of the respondents.
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> In a proper proceeding a court of equity may direct the holding of a stockholders' meeting under the control of a special master, and the action taken at such a meeting will not be set aside because of a wrongful use of the court's interlocutory decree, where not brought to the attention of the court prior to the meeting. (18 C.J.S. 1270.)
>
> A court of equity may, on showing of good reason, appoint a master to conduct and supervise an election of directors when it appears that a fair election cannot otherwise be had. Such a court cannot

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[37]. Vide *Manila Electric Co. v. Pasay Transportation Co.*, 57 Phil. 600 (1932).

[38] 105 Phil. 426 (1959). Vide also 5 Fletcher Cyc Corp (Perm Ed) §2074; 18A Am Jur 2d, Corporations § 1166.

Supreme Court E-Library

make directions contrary to statute and public policy with respect to the conduct of such election. (19 C.J.S. 41)

This Court also approved a similar action by the *Securities and Exchange Commission in Sales v. Securities and Exchange Commission*.[39]

Such a committee composed of impartial persons knowledgeable in corporate proceedings would provide the needed expertise and objectivity in the calling and the holding of the meeting without compromising the Sandiganbayan or its officers. The appointment of the committee members and the delineation of the scope of the duties of the committee may be made pursuant to an agreement by the parties or in accordance with the provisions of Rule 9 (Management Committee) of the Interim Rules of Procedure for Intra-Corporate Controversies insofar as they are applicable.

VI

And now, Africa's motion to cite the PCGG and its "accomplices" in contempt for calling and holding a stockholders meeting to increase ETPI's authorized capital stock without this Court's authority and despite the pendency of motions for reconsideration of the Sandiganbayan Resolution of December 13, 1996 granting the PCGG authority to cause the holding of such meeting. In the same motion, Africa asks this Court to nullify the March 17, 1997 stockholders meeting which increased ETPI's authorized capital stock on the grounds that he, an ETPI

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[39] 169 SCRA 109 (1989). There, this Court agreed with the Solicitor General's submission that:

xxx Respondent Commission had to address itself to the controversy by issuing its questioned order dated June 13, 1980, directing the holding of the annual stockholders' meeting of Sipalay Mining for the year 1980 as mandated in its by-laws, and creating a committee to supervise and control the conduct of the proceedings to insure an orderly stockholders' meeting and forestall possible controversy in the sending of notices, processing and validation of proxies and closing of the stock and transfer book. Certainly, the Commission cannot be faulted, much less can it be said that it exceeded its jurisdiction, for having taken all proper measures to insure that an orderly meeting and election are held in Sipalay Mining in the light of the issues raised in SEC Case No. 1751 pending before the Commission.

Supreme Court E-Library

stockholder, was not notified of the meeting, and the PCGG voted the sequestered ETPI shares despite the absence of evidence of dissipation of assets. Intervenor AEROCOM has shared Africa's assertions.

As earlier stated, this Court, by Resolution of May 7, 1996, referred the PCGG's "VERY URGENT MOTION FOR RECONSIDERATION TO HOLD SPECIAL STOCKHOLDERS MEETING . . ." to the Sandiganbayan for reception of evidence and resolution. The dispositive portion of said Resolution reads:

> Taking account of all the foregoing, the Court Resolved to REFER the "VERY URGENT PETITION FOR AUTHORITY TO HOLD SPECIAL STOCKHOLDERS' MEETING FOR SOLE PURPOSE OF INCREASING EASTERN'S AUTHORIZED CAPITAL STOCK" to the Sandiganbayan *for reception of evidence and resolution* — WITH ALL DELIBERATE DISPATCH but no longer than sixty (60) days from notice hereof — *of the factual issues raised by the parties as herein set out, and such others, factual or otherwise as are relevant, in order to decide* the basic question in this proceeding of the necessity and propriety of the holding of the special stockholders' meeting of EASTERN for the "sole purpose of increasing ** (its) authorized capital stock" and the exercise by the PCGG of the right to vote at said meeting.[40] (Emphasis supplied)

Clearly, when the PCGG's "VERY URGENT PETITION TO HOLD SPECIAL STOCKHOLDERS MEETING . . . " was referred to the Sandiganbayan, this Court gave the latter full authority to decide the issue of whether a stockholders meeting should be held. Implicit in this authority was the power to grant (or deny) the petition. There is thus no need for the parties to seek this Court's imprimatur to hold the same.

Africa's motion must thus be denied.

Even assuming *arguendo* that the holding of the meeting was contemptuous because the December 13, 1996 Sandiganbayan Resolution had not yet attained finality, it was the Sandiganbayan, and not this Court, which was contemned. Consequently, it is the Sandiganbayan, and not this Court, which has jurisdiction

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[40] *Rollo*, G.R. No. 107789, pp. 962–963.

Supreme Court E-Library

over the motion to declare the PCGG and "its accomplices" in contempt.

In whatever context it may arise, contempt of court involves the doing of an act, or the failure to do an act, in such a manner as to create an affront to the court and the sovereign dignity with which it is clothed. As a matter of practical judicial administration, jurisdiction has been felt properly to rest in only one tribunal at a time with respect to a given controversy. Partly because of administrative considerations, and partly to visit the full personal effect of the punishment on a contemnor, the rule has been that no other court than the one contemned will punish a given contempt.

The rationale that is usually advanced for the general rule that the power to punish for contempt rests with the court contemned is that contempt proceedings are *sui generic* and are triable only by the court against whose authority the contempts are charged; the power to punish for contempt exists for the purpose of enabling a court to compel due decorum and respect in its presence and due obedience to its judgments, orders and processes; and in order that a court may compel obedience to its orders, it must have the right to inquire whether there has been any disobedience thereof, for to submit the question of disobedience to another tribunal would operate to deprive the proceeding of half its efficiency.[41]

The above rule is not of course absolute as it admits exception "when the entire case has already been appealed [in which case] jurisdiction to punish for contempt rests with the appellate court where the appeal completely transfers to proceedings thereto or where there is a tendency to affect the *status quo* or otherwise interfere with the jurisdiction of the appellate court."[42] This exception does not, however, apply to Africa's motion since at the time he filed it on April 1, 1997 before this Court, his petition in G.R. No. L-147214 assailing the December 17, 1996 Resolution of the Sandiganbayan had not yet been filed.

The motion to nullify the March 17, 1997 stockholders meeting must likewise be denied for lack of jurisdiction. Such motion is

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[41] *People v. Godoy*, 243 SCRA 64 (1995).

[42] *Ibid.*

Supreme Court E-Library

but an *incident* to Sandiganbayan Civil Case No. 0130.[43] As such, jurisdiction over it pertains exclusively and originally to the Sandiganbayan.

Under Section 2 of the President's Executive Order No. 14 issued on May 7, 1986, all cases of the Commission regarding "the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees" whether civil or criminal are lodged within the "exclusive and original jurisdiction of the Sandiganbayan" *and all incidents arising from, incidental to, or related to, such cases necessarily fall likewise under the Sandiganbayan's exclusive and original jurisdiction,* subject to review on *certiorari* exclusively by the Supreme Court.[44]

This is another reason for the denial of the motion to cite the PCGG and its "accomplices" in contempt.

VII

FINALLY, the question on the validity of the PCCG's voting the Class "A" shares to increase the authorized capital stock of ETPI.

In his petition in G.R. No. 147214, Africa faults the Sandiganbayan for failing to acknowledge, in its Resolution of February 16, 2001, the Decisions of this Court declaring that his shares in ETPI[45] and those of AEROCOM[46] and POLYGON (Polygon Investors & Managers, Inc.)[47] were not sequestered.

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[43] *Vide* Note 1.

[44] *Presidential Commission on Good Government v. Peña*, 159 SCRA 556 (1988). *Vide* also *Republic v. Sandiganbayan*, 173 SCRA 72 (1989); *Africa v. PCGG*, 205 SCRA 38 (1992); *Republic v. Sandiganbayan*, 199 SCRA 39 (1991).

[45] *Vide Republic of the Philippines v. Sandiganbayan*, 266 SCRA 515 (1997).

[46] *Vide Presidential Commission on Good Government v. Sandiganbayan*, 290 SCRA 639 (1998); *Presidential Commission on Good Government v. Sandiganbayan*, 339 SCRA 263 (2000).

[47] *Vide Presidential Commission on Good Government v. Sandiganbayan*, 339 SCRA 263 (2000).

Supreme Court E-Library

Hence, so he contends, they, and not the PCGG, should have been allowed to vote their respective shares during the meeting.

Two matters require clarification at this point. First, that this Court rendered decisions holding that the shares of Africa, AEROCOM and POLYGON are not or are no longer sequestered is of little consequence since the decisions were promulgated *after* the Sandiganbayan issued its resolution granting the PCGG authority to call and hold the stockholders meeting to increase the authorized capital stock. At that time, the shares were presumed to have been regularly sequestered. The more fundamental question that confronts this Court is: Was the PCGG entitled to vote the sequestered shares in the stockholders meeting of March 17, 1997?

Second, the PCGG correctly argues that Africa has no cause of action to claim on behalf of AEROCOM and POLYGON that these two companies are entitled to vote their respective shares in the stockholders meeting to increase ETPI's authorized capital stock. The claim is personal to AEROCOM and POLYGON. Nevertheless, this does not preclude Africa from invoking his own right as a "small stockholder" of ETPI to vote in the stockholders meeting for the purpose of increasing ETPI's authorized capital stock. The PCGG maintains, however, that it is entitled to vote said shares because this Court, by its claim, recognized in *PCGG v. SEC*, *supra*, that ETPI's assets were being dissipated by the BAN (Benedicto, Africa, Nieto) Group, thus:

> Under the Management of Cable and Wireless *ETPI* grew and prospered. But when its dividends, which were paid in dollars to the *BAN* Group, began to run into millions, said group also started to intervene in the corporation's operations and management. Requests for employment of family relatives and high salaries for them were made. The *BAN* Group likewise placed the majority of their individual stockholdings in three separate companies, namely: Aerocom Investors, Universal Molasses, and Polygon, so that in 1986, the ownership of the Class "A" stocks of the corporation was as follows:
>
> | | | |
> |---|---|---|
> | Roberto S. Benedicto | - | 3.3 percent |
> | Universal Molasses Corp. | - | 16.6 percent |

Supreme Court E-Library

Manuel Nieto, Jr.	-	2.2 percent
Nieto's relatives	-	3.3 percent
Aerocom Investors and Managers Inc.	-	17.5 percent
Jose Africa	-	2.2 percent
Africa's relatives	-	.3 percent
Polygon Investors and Managers Inc.	-	17.5 percent

By the end of 1987, the initial capital of P1M of the *BAN* Group, its corporations and relatives had grown to the astronomical sum of ₱784,185,198.00. Cash dividends paid to them as of 1986 had amounted to ₱225,845,000.00 even as another ₱180,000,000.00 is due them for 1987, for a grand total of ₱405,845,000.00. In 1984, cash dividends to the *BAN* Group, et al. in the amount of $1M were remitted to the United States.

Under a consultancy contract, Polygon Investors and Managers with Jose L. Africa as Chairman and his son, Victor Africa as President, earned from *ETPI* as of 1987 more than P57M. Likewise in 1987, *ETPI* paid to Jose L. Africa ₱1,200,000.00 as "professional fees" and Manuel H. Nieto, Jr., another ₱1,200,000.00 as "allowances".[48]

As stated early on, however, the foregoing narration does not constitute a finding of fact.

The PCGG further submits that the Sandiganbayan found *prima facie* evidence for the issuance of the writ of sequestration covering the Class "A" shares of *ETPI*. Such reliance on the Sandiganbayan's ruling is misplaced because the issue is not whether there is *prima facie* evidence to warrant sequestration of the shares, but *whether there is prima facie evidence showing that the shares are ill-gotten and whether there is evidence of dissipation of assets to warrant the voting by the PCGG of sequestered shares.* As to the latter issue, the Sandiganbayan held in the affirmative in this wise:

xxx [T]he propriety and legality of allowing the PCGG to cause the holding of a stockholders' meeting of the ETPI for the purpose

[48] *Vide* Note 16.

Supreme Court E-Library

of electing a new Board of Directors or effecting changes in the policy, program and practices of said corporation (except for the specified purpose of amending the right of first refusal clause in ETPI's Articles of Incorporation and By Laws) and *impliedly to vote the sequestered shares of stocks has been upheld by the Supreme Court* in the case of *"PCGG vs. SEC, PCGG vs. Sandiganbayan, et al.*", G.R. No. 82188, promulgated June 30, 1988 xxx [49] (Italics supplied)

The Sandiganbayan proceeded to quote the following pronouncement of this Court in *PCGG v. SEC*:

But while We find the Sandiganbayan to have acted properly in enjoining the *PCGG* from holding the stockholders meeting for the specified purpose of amending the "right of first refusal" clause in *ETPI's* Articles of Incorporation and By-Laws, *We find the general injunction imposed by it on the PCGG to desist and refrain from calling a stockholders meeting for the purpose of electing a new Board of Directors of effecting substantial changes in the policy, program or practice of the corporation to be too broad as to taint said order with grave abuse of discretion. Said order completely ties the hands of the PCGG, rendering it virtually helpless in the exercise of its power of conserving and preserving the assets of the corporation. Indeed, of what use is the PCGG if it cannot even do this*? xxx[50] (Emphasis and italics supplied)

The Sandiganbayan, however, misread this Court's ruling in the said *SEC* case. One of the issues raised therein was whether the Sandiganbayan committed grave abuse of discretion in enjoining the PCGG from calling and holding stockholders meetings and voting the sequestered ETPI shares *for the purpose of deleting the "right of first refusal" clause in ETPI's articles of incorporation*. In its therein assailed Order, the Sandiganbayan temporarily restrained the PCGG *"from calling and/or holding stockholders meetings and voting the sequestered shares thereat for the purpose of amending the articles or by-laws of ETPI, or otherwise effecting substantial changes in policy, programs or practices of said corporation."*

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[49] *Rollo*, G.R. No. 147214, p. 53.

[50] *Vide* Note 16.

Supreme Court E-Library

Clearly, the temporary restraining order was too broad. The Sandiganbayan should have limited itself to restraining the calling and holding of the stockholders meeting and voting the shares for the sole purpose of amending the "right of first refusal" clause. It was thus necessary for this Court to make the underscored ruling above. No declaration therein was made that in all instances the PCGG may vote the sequestered shares to effect substantial changes in ETPI policy, programs or practices. In lifting the injunction on that aspect, this Court merely recognized "that situations may arise wherein only through an act of strict ownership can the PCGG be able to prevent the dissipation of the assets of the sequestered corporation or business."[51]

Moreover, if, as the Sandiganbayan assumed, this Court had come to a conclusion in the SEC case that the BAN Group was guilty of dissipation and that, consequently, the PCGG was entitled to vote the sequestered shares, this Court would not have bothered, in its Resolution of May 7, 1996, to direct said court to decide whether the PCGG has the right to vote in the stockholders meeting for the purpose of increasing ETPI's authorized capital stock.[52]

This Court notes that, like in Africa's motion to hold a stockholders meeting (to elect a board of directors), the Sandiganbayan, in the PCGG's petition to hold a stockholders meeting (to amend the articles of incorporation to increase the authorized capital stock), again failed to apply the two-tiered test. On such determination hinges the validity of the votes cast by the PCGG in the stockholders meeting of March 17, 1997. This lapse by the Sandiganbayan leaves this Court with no other choice but to remand these questions to it for proper determination.

IN SUM, this Court rules that:

(1) The PCGG cannot vote sequestered shares to elect the ETPI Board of Directors or to amend the Articles of Incorporation

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[51] *Vide* Note 15.

[52] *Vide* Note 9.

Supreme Court E-Library

for the purpose of increasing the authorized capital stock unless there is a *prima facie* evidence showing that said shares are ill-gotten and there is an imminent danger of dissipation.

(2) The ETPI Stock and Transfer Book should be the basis for determining which persons have the right to vote in the stockholders meeting for the election of the ETPI Board of Directors.

(3) The PCGG is entitled to vote the shares ceded to it by Roberto S. Benedicto and his controlled corporations under the Compromise Agreement, provided that the shares are first registered in the name of the PCGG. The PCGG may not register the transfer of the Malacañang and the Nieto shares in the ETPI Stock and Transfer Book; however, it may vote the same as conservator provided that the PCGG satisfies the two-tiered test devised by the Court in *Cojuangco v. Calpo, supra.*

(4) The safeguards laid down in the case of *Cojuangco v. Roxas* shall be incorporated in the ETPI Articles of Incorporation substantially contemporaneous to, but not before, the election of the ETPI Board of Directors.

(5) Members of the Sandiganbayan shall not participate in the stockholders meeting for the election of the ETPI Board of Directors. Neither shall a Clerk of Court be appointed to call such meeting and issue notices thereof. The Sandiganbayan shall appoint, or the parties may agree to constitute, a committee of competent and impartial persons to call, send notices and preside at the meeting for the election of the ETPI Board of Directors; and

(6) This Court has no jurisdiction over the motion to cite the PCGG and "its accomplices" in contempt and to nullify the stockholders meeting of March 17, 1997.

WHEREFORE, this Court Resolved to *REFER* the petitions at bar to the Sandiganbayan for reception of evidence to determine whether *there is a prima facie evidence showing that the sequestered shares in question are ill-gotten and there is an imminent danger of dissipation to entitle the* PCGG to vote them in a stockholders meeting to elect the ETPI Board of

Supreme Court E-Library

Directors and to amend the ETPI Articles of Incorporation for the sole purpose of increasing the authorized capital stock of ETPI.

The Sandiganbayan shall render a decision thereon within sixty (60) days from receipt of this Resolution and in conformity herewith.

The motion to cite the PCGG and its "accomplices" and to nullify the ETPI Stockholders Meeting of March 17, 1997 filed by Victor Africa is ***DENIED*** for lack of jurisdiction.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Ynares-Santiago, Sandoval-Guiterrez, Carpio, Austria-Martinez, Corona, and *Callejo, Sr., JJ.,* concur.

Vitug, J., in the result.

Panganiban, J., took no part. Former counsel of a party.

Quisumbing, J., abroad on official business.

Azcuna, J., took no part.

FIRST DIVISION

[G.R. No. 116326. April 30, 2003.]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROBERT LEE, *ET AL.*,** *accused-appellant.*

SYNOPSIS

The accused were found guilty by the trial court of the complex crime of robbery with homicide. The trial court sentenced each of them to suffer the penalty of *reclusion perpetua.* From the said decision, only the appellant, appealed