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SO ORDERED.

Paras, Padilla, Sarmiento, and *Regalado, JJ.*, concur.

EN BANC

[G.R. No. 88809. July 10, 1991]

REPUBLIC OF THE PHILIPPINES (PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT), *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN (FIRST DIVISION) and EDUARDO COJUANGCO, JR.,** *respondents.*

[G.R. No. 88858. July 10, 1991]

REPUBLIC OF THE PHILIPPINES (PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT), *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN (FIRST DIVISION) and EDUARDO COJUANGCO, JR.,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; PRIVATE CORPORATIONS; RIGHT OF STOCKHOLDER TO INSPECT AND EXAMINE RECORDS OF THE CORPORATION. — The right of a stockholder to inspect and/or examine the records of a corporation is explicitly provided in Section 74 of the Corporation Code, the pertinent portion of which reads: "Sec. 74. Books to be kept; stock transfer agent. — "x x x "The records of all business transactions of the corporation and the minutes of any meeting shall be open to the inspection of any director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense."

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2. ID.; ID.; ID.; NOT MODIFIED BY EXECUTIVE ORDERS NOS. 1, 2, AND 14. — We have examined the extent of Executive Orders Nos. 1, 2 and 14 on sequestration as well as the BASECO case relied upon by petitioner. Nevertheless, the Court finds nothing therein to indicate that the Corporation Code has been deemed amended, much less an implied modification of a stockholder's right to inspection as guaranteed by Sec. 74 thereof. In San Miguel Corporation we ruled that the PCGG cannot vote the sequestered shares of respondent Cojuangco, Jr. If the PCGG cannot vote the sequestered shares of private respondent, with much more reason it cannot restrain or prevent private respondent, as stockholder from inspecting the corporate records of the SMC and the UCPB at reasonable hours on business days. The law grants respondent/stockholder such authority.

3. ID.; ID.; ID.; STOCKHOLDER CANNOT BE PREVENTED FROM EXERCISING SAID RIGHT ABSENT EVIDENCE OF IMPROPER MOTIVE. — In the absence of evidence, the PCGG cannot unilaterally deny a stockholder from exercising his statutory right of inspection based on an unsupported and naked assertion that private respondent's motive is improper or merely for curiosity or on the ground that the stockholder is not in friendly terms with the corporation's officers. Being a stockholder beyond doubt, there is no reason why private respondent may not exercise his statutory right of inspection in accordance with Sec. 74 of the Corporation Code, the only express limitation being that: 1) the right of inspection should be exercised at reasonable hours on business days; 2) the person demanding to examine and copy excerpts from the corporation's records and minutes has not improperly used any information secured through any previous examination of the records of such corporation; and 3) the demand is made in good faith or for a legitimate purpose. The latter two limitations, however, must be set up as a defense by the corporation if it is to merit judicial cognizance.

4. ID.; ID.; ID.; ID.; CASE AT BAR. — While it may be true that the right of inspection granted by Sec. 74 of the Corporation Code is not absolute, as when the stockholder is not acting in good faith and for a legitimate purpose or when the demand is purely speculative or merely to satisfy curiosity, the same may not be said in the case of private respondent. In the case at

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bar, petitioner failed to discharge the burden of proof to show that private respondent's action in seeking examination of the corporate records was moved by unlawful or ill-motivated designs which could appropriately call for a judicial protection against the exercise of such right. Save for its unsubstantiated allegations, petitioner could offer no proof, nay, not even a scintilla of evidence that respondent Cojuangco, Jr., was motivated by bad faith; that the demand was for an illegitimate purpose or that the demand was impelled by speculation or idle curiosity. Surely, respondent's substantial shareholdings in the SMC and UCPB cannot be an object of mere curiosity.

APPEARANCES OF COUNSEL

Estelito P. Mendoza for private respondent.

RESOLUTION

BIDIN, *J.*:

These petitions for *certiorari* assail the resolution of respondent Sandiganbayan dated May 9, 1989, allowing respondent Eduardo Cojuangco, Jr., to inspect the corporate records of United Coconut Planters Bank, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, the respondent UCPB and its corporate secretary shall respond to petitioner Eduardo Cojuangco's request for examination and copying of corporate records in a manner consistent with its duties to all its other registered stockholders as described in the Corporation Code and under specific laws governing banking institutions such as said respondent UCPB." (*Rollo*, pp. 36-40, G.R. No. 88858)

and its resolution dated May 18, 1989, likewise allowing respondent Cojuangco to examine the corporate records of San Miguel Corporation. It reads:

"IN VIEW OF THE FOREGOING, the petition filed by Petitioner Eduardo Cojuangco, Jr., to examine the records of the San Miguel Corporation is granted within the confines of Sec. 74 of the Corporation Code." (*Rollo*, pp. 36-40; G.R. No. 38809)

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The facts that gave rise to the instant petitions are as follows:

In G.R. No. 88809:

On December 26, 1988, private respondent-stockholder requested the San Miguel Corporation (SMC) and its corporate secretary the production, inspection, examination/verification and/or photocopying of the SMC corporate records to inform him of the decisions, policies, acts and performance of the management of the SMC under the PCGG-Board.

Since the shares of private respondent in the SMC have been sequestered by the PCGG, the former (SMC) sought advice from the latter on the effect of such sequestration. Subsequently, private respondent was informed by the SMC that all requests for the examination, inspection and photocopying of its corporate records should be coursed through the PCGG.

In G.R. No. 88858:

The facts set forth in G.R. No. 88809 are substantially similar in G.R. No. 88858 except that in the latter case, private respondent as stockholder of record seeks authority to inspect and examine the corporate records of United Coconut Planters Bank.

The request of private respondent for the inspection/examination of SMC's corporate records was denied by the PCGG (*Rollo*, p. 44, G.R. No. 88809). As regards the corporate records of UCPB, private respondent was likewise advised to course his request through the PCGG (*Rollo*, pp. 45-46, G.R. No. 88858).

Thereafter, private respondent filed two separate petitions for prohibition and *mandamus* before the Sandiganbayan seeking to enforce his stockholder's right to inspect the corporate records of SMC and the UCPB. Subsequently, respondent Sandiganbayan rendered the assailed resolutions afore-quoted.

Hence, the instant petitions for *certiorari* with prayer for the issuance of temporary restraining orders. On June 13, 1989 and July 20, 1989, the Court issued a temporary restraining order in G.R. Nos. 88809 and 88858, respectively.

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Petitioner argues, among others, that:

1) respondent Sandiganbayan has no jurisdiction over the petition filed by respondent Eduardo Cojuangco, Jr.;

2) the PCGG may validly refuse private respondent's right to inspection; and

3) the petition filed by private respondent before the Sandiganbayan is barred by the doctrine of state immunity from suit.

We find the petition devoid of merit.

Nothing is more settled than this Court's pronouncement in *PCGG v. Peña* (159 SCRA 556 [1988]), where We held that:

"x x x 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.

"x x x x x x x x x

"x x x Executive Order No. 14, which defines the jurisdiction over cases involving the ill-gotten wealth of former President Marcos, his wife, Imelda, members of their immediate family, close relatives, subordinates, close and/or business associates, dummies, agents and nominees, specifically provides in Section 2 that 'the Presidential Commission on Good Government shall file all 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 cases must seek recourse in the same court, the Sandiganbayan, which is vested with exclusive and original jurisdiction.* x x x" (Italics supplied)

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The above ruling was reiterated in *Soriano v. Yuson* (164 SCRA 226 [1988]) and accompanying cases.

All matters of sequestration being within the exclusive and original jurisdiction of the Sandiganbayan, it follows that the propriety of petitioner's action in denying Cojuangco's right of inspection, ostensibly based on the order of sequestration, may be challenged before the respondent court.

Neither may the doctrine of state immunity be properly invoked by petitioner in the case at bar. For one thing, the petition filed by respondent Cojuangco, Jr., before the Sandiganbayan demanded no affirmative performance by the State in its political capacity which would otherwise call for the application of immunity from suit (See *Republic v. Sandiganbayan*, 184 SCRA 382 [1990] and cases cited therein).

As regards the right of inspection, it is the submission of petitioner that the request of respondent Cojuangco, Jr., for the examination of the corporate records of SMC and UCPB may be validly refused pending judicial determination of respondent's sequestered shares, *i.e.*, whether the same are ill-gotten or not (*Rollo*, p. 14, GR No. 88809; citing EO Nos. 1 & 2). It is further argued that respondent's purpose in examining the corporate records of SMC and the UCPB is merely to satisfy his curiosity regarding the performance of said corporations (*Rollo*, p. 16, GR No. 88809; *Rollo*, p. 17, G.R. No. 88858).

Does sequestration automatically deprive a stockholder of his right of inspection?

We rule in the negative.

The right of a stockholder to inspect and/or examine the records of a corporation is explicitly provided in Section 74 of the Corporation Code, the pertinent portion of which reads:

"SEC. 74. Books to be kept; stock transfer agent. —

"x x x x x x x x x

The records of all business transactions of the corporation and the minutes of any meeting shall be open to the inspection of any

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director, trustee, stockholder or member of the corporation at reasonable hours on business days and he may demand, in writing, for a copy of excerpts from said records or minutes, at his expense."

Petitioners argue, however, that the Corporation Code has to give way to, as having been amended by, Executive Orders Nos. 1, 2, 14 and related issuances as well as the pronouncement laid down by this Court in *Bataan Shipyard and Engineering Corporation v. Presidential Commission on Good Government* (150 SCRA 181 [1987]) on the effects of sequestration (*Rollo*, p. 12, GR No. 88809; *Rollo*, p. 13, G.R. No. 88858). There is mischief in this argument. We have examined the extent of Executive Orders Nos. 1, 2 and 14 on sequestration as well as the BASECO case relied upon by petitioner. Nevertheless, the Court finds nothing therein to indicate that the Corporation Code has been deemed amended, much less an implied modification of a stockholder's right to inspection as guaranteed by Sec. 74 thereof. Moreover, what is clear in the case of BASECO, *supra*, is the following:

"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; does not make the PCGG the owner thereof. In relation to the property sequestered, frozen or provisionally taken over, the *PCGG is a conservator, not an owner.* x x x"

The PCGG does not become, *ipso facto*, the owner of the shares just because the same have been sequestered; nor does it become the stockholder of record by virtue of such sequestration.

Just recently, We ruled that the PCGG cannot vote the sequestered shares of respondent Cojuangco, Jr., in San Miguel Corporation (*Cojuangco, Jr., et al., v. Roxas, et al.*, G.R. No. 91925, April 16, 1991; *Cojuangco, Jr., et al., v. Azcuna, et al.*, GR No. 93005, April 16, 1991). If the PCGG cannot vote the sequestered shares of private respondent, with much more reason it cannot restrain or prevent private respondent,

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as stockholder from inspecting the corporate records of the SMC and the UCPB at reasonable hours on business days. The law grants respondent/stockholder such authority.

Petitioner, in seeking to bar private respondent from exercising his statutory right of inspection, lays emphasis on the argument that respondent's express purpose is to "supervise" PCGG's management, if not to gratify his curiosity regarding the performance of the SMC and the UCPB.

Again, the argument is devoid of merit. Records indicate that private respondent is the ostensible owner of a substantial number of shares and is a stockholder of record in SMC and UCPB.* Being a stockholder beyond doubt, there is therefore no reason why private respondent may not exercise his statutory right of inspection in accordance with Sec. 74 of the Corporation Code, the only express limitation being that: 1) the right of inspection should be exercised at reasonable hours on business days; 2) the person demanding to examine and copy excerpts from the corporation's records and minutes has not improperly used any information secured through any previous examination of the records of such corporation; and 3) the demand is made in good faith or for a legitimate purpose. The latter two limitations, however, must be set up as a defense by the corporation if it is to merit judicial cognizance. As such, and in the absence of evidence, the PCGG cannot unilaterally deny a stockholder from exercising his statutory right of inspection based on an unsupported and naked assertion that private respondent's motive is improper or merely for curiosity or on the ground that the stockholder is not in friendly terms with the corporation's officers.

Explaining the rationale behind a stockholder's right to inspection, this Court in the case of *Gokongwei, Jr. v. Securities and Exchange Commission* (89 SCRA 336 [1979]) held that:

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* Private respondent owns 13,225 shares of stock in the SMC (See *Cojuangco, Jr., et al. v. Roxas, et al.*, and *Cojuangco, Jr., et al. v. Azcuna, et al.*, GR Nos. 91925 & 93005, April 16, 1991) and 54, 117, 421 shares in UCPB (Resolution of respondent Sandiganbayan, *Rollo*, p. 39, G.R. No. 88858).

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"The stockholder's right of inspection of the corporation's books and records is based upon their ownership of the assets and property of the corporation. It is, therefore, an incident of ownership of the corporate property, whether this ownership or interest be termed an equitable ownership, a beneficial ownership, or a quasi-ownership. This right is predicated upon the necessity of self-protection. It is generally held by majority of the courts that where the right is granted by statute to the stockholder, it is given to him as such and must be exercised by him with respect to his interest as a stockholder and for some purpose germane thereto or in the interest of the corporation. In other words, the inspection has to be germane to the petitioner's interest as a stockholder, and has to be proper and lawful in character and not inimical to the interest of the corporation." (citing Fletcher Cyc, Private Corporations, Vol. 5, 1976 Rev. Ed., Secs. 2213, 2218 & 2222).

While it may be true that the right of inspection granted by Sec. 74 of the Corporation Code is not absolute, as when the stockholder is not acting in good faith and for a legitimate purpose (*Gonzales v. PNB*, 122 SCRA 489 [1983]); or when the demand is purely speculative or merely to satisfy curiosity (*Grey v. Insular Lumber Co.*, 40 O.G., No. 31st Supp. 1 [1939]; See also State *ex rel. Thiele v. Cities Service Co.*, 115 A. 773 [1922]), the same may not be said in the case of private respondent. This is because:

"x x x the 'impropriety of purpose such as will defeat enforcement must be set up (by) the corporation defensively if the Court is to take cognizance of it as a qualification. In other words, the specific provisions take from the stockholder the burden of showing impropriety of purpose or motive.'" (*Gokongwei, Jr. v. Securities and Exchange Commission, supra*; citing *State v. Monida & Yellowstone Stage Co.*, 110 Minn. 193, 124 NW 791; *State v. Cities Service Co.*, 114 A 463.)

In the case at bar, petitioner failed to discharge the burden of proof to show that private respondent's action in seeking examination of the corporate records was moved by unlawful or ill-motivated designs which could appropriately call for a judicial protection against the exercise of such right. Save for its unsubstantiated allegations, petitioner could offer no proof,

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nay, not even a scintilla of evidence that respondent Cojuangco, Jr., was motivated by bad faith; that the demand was for an illegitimate purpose or that the demand was impelled by speculation or idle curiosity. Surely, respondent's substantial shareholdings in the SMC and UCPB cannot be an object of mere curiosity.

IN VIEW OF THE FOREGOING, the Court Resolved to DISMISS the instant petition for lack of merit. The temporary restraining orders issued are hereby LIFTED and SET ASIDE. This Resolution is immediately executory.

SO ORDERED.

Gutierrez, Jr., Cruz, Paras, Griño-Aquino, Medialdea, and *Regalado, JJ.*, concur.

Fernan, C.J., Narvasa, Feliciano, and *Davide, Jr., JJ.*, concur in the result.

Melencio-Herrera, J., concurs in G.R. No. 88809 (SMC) but took no part in G.R. No. 88858 (UCPB), her son's law office being one of the Bank's retained counsel.

Gancayco, J., on leave.

Padilla, J., no part in G.R. No. 88809 (SMC, where he has equity interest) but he concurs in the decision as to G.R. No. 88858 (UCPB).

Sarmiento, J., no part. He has not participated in any case of SMC due to conflict of interest.