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[G.R. Nos. 147062-64. December 14, 2001]

REPUBLIC OF THE PHILIPPINES, represented by the PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), *petitioner, vs.* **COCOFED *et al.* and BALLARES *et al.*,[1] EDUARDO M. COJUANGCO JR. and the SANDIGANBAYAN (First Division)** *respondents.*

SYNOPSIS

The First Division of the Sandiganbayan in Civil case Nos. 0033-A, 0033-B and 0033-P allowed respondents COCOFED, *et al.* and Ballares, *et al.* as well as Eduardo Cojuangco, *et al.*, acknowledged registered stockholders of the United Coconut Planters Bank (UCPB) and all other registered stockholders of the bank, to exercise their right to vote their shares of stock and themselves to be voted upon in the UCPB at the scheduled Stockholders' Meeting on March 6, 2001 or on any subsequent continuation or resetting thereof, and to perform such acts as will normally follow in the exercise of these rights as registered stockholders. In its petition, the Republic of the Philippines, represented by the Presidential Commission on Good Government (PCGG), contended that respondent Sandiganbayan committed grave abuse of discretion in enjoining them from voting the sequestered shares of stock in UCPB despite the fact that the sequestration share were purchased with coconut

[1] According to Section 1, Rule 7 of the 1997 Rules of Court, "[t]he title of the action indicates the names of the parties. They shall all be named in the original complaint or petition; x x x." Furthermore, Section 2, Rule 3 of the same Rules, states that "[e]very action must be prosecuted or defended in the name of the real party in interest." The said Rule defines a real party in interest as "the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit." The Court however notes that the names of *all* the private respondents have never been specifically stated or identified. Often, they are merely referred to as the "one million coconut farmers," but no names have been listed here or in the Sandiganbayan pleadings submitted as annexes to the submissions in this case.

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levy funds (which were declared public in character) and the continuing effectivity of Resolution dated February 16, 1993 in G.R. No. 96073 which allows the PCGG to vote said sequestered shares.

The Supreme Court uphold the contention of the PCGG and set aside the assailed order of the Sandiganbayan. The Court held that the government should be allowed to continue voting those shares inasmuch as they were purchased with coconut levy funds — funds that are *prima facie* public in character or, at the very least, are "clearly affected withy public interest," and because they belong to it as the *prima facie* beneficial and true owner thereof. Voting is an act of dominion that should be exercised by the share owner. One of the recognized rights of an owner is the right to vote at meetings of the corporation. The right to vote is classified as the right to control. Voting rights may be for the purpose of, among others, electing or removing directors, amending a charter or making or amending by laws. Because the subject UCPB shares were acquired with government funds, the government becomes their *prima facie* beneficial and true owner. Ownership includes the right to enjoy, dispose of, exclude and recover a thing without limitations other than those established by law or by the owner. Ownership has been aptly described as the most comprehensive of all real rights and the right to vote shares is a mere incident of ownership. In the present case, the government has been shown to be the *prima facie* owner of the funds used to purchase the shares. Hence, it should be allowed the rights and privileges flowing from such fact.

SYLLABUS

1. **MERCANTILE LAW; CORPORATION CODE; SHARES OF STOCK; GENERAL RULE; SEQUESTERED SHARES OF STOCK ARE VOTED BY THE REGISTERED HOLDER.**— It is necessary to restate the general rule that the registered owner of the shares of a corporation exercises the right and the privilege of voting. This principle applies even to shares that are sequestered by the government, over which the PCGG as a mere conservator cannot, as a general rule, exercise acts of dominion. On the other hand, it is authorized to vote these sequestered shares registered in the names of private persons

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and acquired with allegedly ill-gotten wealth, if it is able to satisfy the *two-tiered test* devised by the Court in *Cojuangco v. Calpo* and *PCGG v. Cojuangco Jr.*, as follows: (1) Is there *prima facie* evidence showing that the said shares are ill-gotten and thus belong to the State? (2) Is there an imminent danger of dissipation, thus necessitating their continued sequestration and voting by the PCGG, while the main issue is pending with the Sandiganbayan?

2. **ID.; ID.; ID.; EXCEPTION TO THE RULE; SEQUESTERED SHARES ACQUIRED WITH PUBLIC FUNDS.**— The Court in *Baseco v. PCGG* (hereinafter "*Baseco*") and *Cojuangco Jr. v. Roxas* ("*Cojuangco-Roxas*") has provided two clear "public character" exceptions under which the government is granted the authority to vote the shares: (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. The exceptions are based on the common-sense principle that legal fiction must yield to truth; that public property 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.

3. **ID.; ID.; ID.; COCONUT LEVY FUNDS ARE AFFECTED WITH PUBLIC INTEREST.**— Having conclusively shown that the sequestered UCPB shares were purchased with coconut levies, we hold that these funds and shares are, at the very least, "affected with public interest." The Resolution issued by the Court on February 16, 1993 in *Republic v. Sandiganbayan* stated that coconut levy funds were "clearly affected with public interest"; thus, herein private respondents – even if they are the registered shareholders – cannot be accorded the right to vote them.

4. **ID.; ID.; ID.; COCONUT LEVY FUNDS ARE *PRIMA FACIE* PUBLIC FUNDS; SAID FUND SATISFY THE GENERAL DEFINITION OF PUBLIC FUNDS.**— To avoid misunderstanding and confusion, this Court will even be more categorical and positive than its earlier pronouncements: *the coconut levy funds are not only affected with public interest; they are, in fact, prima facie public funds.* Public funds are those moneys

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belonging to the State or to any political subdivision of the State; more specifically, taxes, customs duties and moneys raised by operation of law for the support of the government or for the discharge of its obligations. Undeniably, *coconut levy funds satisfy this general definition of public funds,*

5. ID.; ID.; ID.; COCONUT LEVY FUND RAISED THROUGH STATE'S POLICE AND TAXING POWER.— Indeed, coconut levy funds partake of the nature of taxes which, in general, are enforced proportional contributions from persons and properties, exacted by the State by virtue of its sovereignty for the support of government and for all public needs. Based on this definition, a tax has three elements, namely: a) it is an enforced proportional contribution from persons and properties; b) it is imposed by the State by virtue of its sovereignty; and c) it is levied for the support of the government. The coconut levy funds fall squarely into these elements

6. ID.; ID.; ID.; HAVING BEEN ACQUIRED WITH PUBLIC FUNDS, THE SUBJECT SHARES BELONG, *PRIMA FACIE*, TO THE GOVERNMENT.— Having shown that the coconut levy funds are not only affected with public interest, but are in fact *prima facie* public funds, this Court believes that the government should be allowed to vote the questioned shares, because they belong to it as the *prima facie* beneficial and true owner. As stated at the beginning, voting is an act of dominion that should be exercised by the share owner. One of the recognized rights of an owner is the right to vote at meetings of the corporation. The right to vote is classified as the right to control. Voting rights may be for the purpose of, among others, electing or removing directors, amending a charter, or making or amending bylaws. Because the subject UCPB shares were acquired with government funds, the government becomes their *prima facie* beneficial and true owner. Ownership includes the right to enjoy, dispose of, exclude and recover a thing without limitations other than those established by law or by the owner. Ownership has been aptly described as the most comprehensive of all real rights. And the right to vote shares is a mere incident of ownership. In the present case, the government has been shown to be the *prima facie* owner of the funds used to purchase the shares. Hence, it should be allowed the rights and privileges flowing from such fact.

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7. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRETION MAY ARISE WHEN A LOWER COURT OR TRIBUNAL VIOLATES OR CONTRAVENES THE CONSTITUTION, THE LAW OR EXISTING JURISPRUDENCE.— We hold that the Sandiganbayan gravely abused its discretion when it contravened the rulings of this Court in *Baseco* and *Cojuangco-Roxas* — thereby unlawfully, capriciously and arbitrarily depriving the government of its right to vote sequestered shares purchased with coconut levy funds which are *prima facie* public funds. Indeed, grave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence. In one case, this Court ruled that the lower court's resolution was "tantamount to overruling a judicial pronouncement of the highest Court x x x and unmistakably a very grave abuse of discretion."

8. ID.; ID.; ID.; PUBLIC CHARACTER OF SHARES IS A VALID ISSUE.— The main issue of who may vote the shares cannot be determined without passing upon the question of the public/private character of the shares and the funds used to acquire them. The latter issue, although not specifically raised in the Court *a quo*, should still be resolved in order to fully adjudicate the main issue. Indeed, this Court has "the authority to waive the lack of proper assignment of errors if the unassigned errors closely relate to errors properly pinpointed out or if the unassigned errors refer to matters upon which the determination of the questions raised by the errors properly assigned depend." Therefore, "where the issues already raised also rest on other issues not specifically presented as long as the latter issues bear relevance and close relation to the former and as long as they arise from matters on record, the Court has the authority to include them in its discussion of the controversy as well as to pass upon them."

9. ID.; ID.; ID.; NO POSITIVE RELIEF FOR INTERVENORS; THEIR RIGHT IS DEPENDENT UPON THE SANDIGANBAYAN'S RESOLUTION ON THE ACTION FOR THE RECOVERY OF THE SEQUESTERED SHARES.— We cannot rule on intervenors' alleged right to vote at this time and in this case. That right is dependent upon the Sandiganbayan's resolution of their action for the recovery of said sequestered shares. Given the patent fact that intervenors are not registered stockholders

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of UCPB as of the moment, their asserted rights cannot be ruled upon in the present proceedings. Hence, no positive relief can be given them now, except insofar as they join petitioner in barring private respondents from voting the subject shares.

VITUG, *J.*, *separate opinion*:

1. MERCANTILE LAW; CORPORATION CODE; SHARES OF STOCK; PURCHASE BY THE COCONUT INDUSTRY INVESTMENT FUND COMPANIES OF THE COCONUT FARMER'S SHARE IN UNITED COCONUT PLANTERS BANK DID NOT CHANGE THE PUBLIC CHARACTER OF THE SHARES.— To account for their equity holdings in the bank, COCOFED, *et al.*, in their Memorandum, would advance that, in 1975, COCOFED, a private national association of coconut producers, was designated by the Philippine Coconut Authority ("PCA") as being the implementing agency for the free distribution of the shares of stock of the UCPB to the coconut farmers. By 02 May 1981, 232,805,852.16 of said shares were distributed to the farmers. Still there remained 15,619,419.84 shares registered in the name of COCOFED which, according to it, were ultimately given to the farmers. Prior to June 1986, a substantial number of the coconut farmers sold their shares in the bank at prices below par value. By way of a financial assistance to the selling coconut farmers, the UCPB Board of Directors authorized the CIIF companies to purchase their holdings in the bank at par value. These transactions, nevertheless, did not change the character of the UCPB shares, these having been bought with coconut levy funds which the Court distinctly characterized to be "clearly affected with public interest" and "raised such as they were by the State's police and taxing powers." *The fundamental rule is that tax proceeds may only be used for a public purpose, which may either be a general public purpose to support the existence of the state or a special public purpose to pursue certain legitimate objects of government in the exercise of police power, and none other. As a measure to ensure the proper utilization of money collected for a specified public purpose, the 1987 Constitution, restating another general principle, treats the proceeds as a special fund to be paid out for such purpose. If, however, that purpose has been fulfilled or is no longer forthcoming, the balance, if any, shall then be transferred to the general funds of the*

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government, which may thereafter be appropriated by Congress and expended for any legitimate purpose within the scope of the general fund. An entity, whether public or private, which holds the tax money has no authority to disburse it or to pay any of it to anyone, the power to dispose of such money being vested in the legislature. Thus, the 1987 Constitution, like its counterparts in the 1935 and the 1973 Constitution, mandates that no money shall be paid out of the national treasury except in pursuance of an appropriation made by law.

2. ID.; ID.; ID.; PENDING A CONCLUSIVE DETERMINATION ON THE LEGALITY OF THE 10% EQUITY RETENTION STANDING IN THE NAME OF RESPONDENT EDUARDO COJUANGCO, JR., IT WOULD BE NEITHER RIGHT NOR JUST TO DEPRIVE HIM FROM MEANWHILE EXERCISING HIS RIGHT TO AT LEAST VOTE THE SAME.— Respondent Eduardo Cojuangco, Jr., upon the other hand, in claiming ownership over a portion of the sequestered UCPB shares, advanced two documents — an agreement in May 1975, where he appeared to have exercised his option to acquire the UCPB shares of stock owned by the family of the late Don Jose Cojuangco, Sr., amounting to 72.2% equity holding in the bank, at two hundred pesos (Php 200.00) per share, and the "Agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers of the Philippines," dated 25 May 1975, whereby the PCA purchased with funds from the CCSF the aforesaid UCPB shares from Eduardo Cojuangco, Jr., also at two hundred pesos (Php 200.00) per share. In the latter agreement, it was stipulated that as compensation for exercising his personal and exclusive option to acquire the UCPB shares and for transferring such shares to the PCA, Eduardo Cojuangco, Jr., would receive one (1) share for every nine (9) shares acquired by the PCA and additional equity in the bank. In sum, correlating the two agreements, Eduardo Cojuangco, Jr., would contend, in effect, that he retained title over roughly 10% equity holding in the bank and established his *prima facie* right over the corresponding shares independently sourced from the coconut levy funds. Even if it were to be conceded that the said 10% holding in UCPB of Eduardo Cojuangco, Jr., could be assailed, pending a conclusive determination on the legality of such a retention, however, it would neither be right nor just to deprive

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him from meanwhile exercising his right to at least vote the same. For the foregoing reasons, I vote to *grant* the petition in part and to *deny* it insofar as the shares of stock pertaining to the 10% of the 72% equity retention standing in the name of Eduardo Cojuangco, Jr., are concerned. In passing, I should like to state my understanding of the ruling of the Court. I must first clarify, however, that sequestration does not mean the vesting of title in the hands of the sequestering authority; rather, the term implies the preservation of assets. Neither ownership nor rights thereover are acquired or lost by virtue alone of sequestration — a mere ancillary remedy to secure a disputed asset.

MELO, *J.*, *dissenting opinion*:

1. **MERCANTILE LAW; CORPORATION LAW; SHARES OF STOCK; THE VALIDITY OF THE ACQUISITION OF THE UNITED COCONUT PLANTERS BANK SHARES IS THE VERY *LIS MOTA* OF THE ACTION FOR RECONVEYANCE, ACCOUNTING, REVERSION AND RESTITUTION FILED BY THE PCGG WITH THE SANDIGANBAYAN; TO RULE ON THE MATTER WOULD BE TO PREEMPT SAID COURT.**— The view expressed by the majority that the UCPB shares, having been acquired with the use of coconut levy funds, and, therefore belong to the government, may very well turn out to be correct. However, since these issues are still pending litigation at the *Sandiganbayan,* it would be premature, I submit, to rule on this point at this time. Verily, the validity of the acquisition by Cojuangco Jr., *et al.* of their UCPB shares is the very *lis mota* of the action for reconveyance, accounting, reversion, and restitution filed by the PCGG with the *Sandiganbayan.* To rule on this matter would be to preempt said court. Too, the argument that the coconut levy funds used to purchase the sequestered UCPB shares of stock are public funds does not appear to have been raised before the *Sandiganbayan*; consequently, the *Sandiganbayan* did not rule on the nature of the fund. It would be absurd to hold that the *Sandiganbayan* gravely abused its discretion in not holding that the sequestered shares belong *prima facie* to the government, the issue of whether or not coconut levy funds are public funds not having been raised before it.

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2. ID.; ID.; ID.; THE DETERMINATION OF WHETHER THE COCONUT LEVY FUNDS ARE PUBLIC FUNDS INVOLVES THE ASCERTAINMENT OF THE CONSTITUTIONALITY OF SECTION 5 OF ARTICLE III OF PRESIDENTIAL DECREE NO. 1468.— Moreover, and as mentioned earlier, the nature of the funds used is a matter which should be decided first-hand by the *Sandiganbayan* when it resolves the merits of Civil Case No. 0033-A. Note should also be taken of the fact that the determination of whether the coconut levy funds are public funds involves the ascertainment of the constitutionality of Section 5, Article III of Presidential Decree No. 961 and Section 5, Article III of Presidential Decree No. 1468. Presidential Decrees No. 961 and 1468 have not been repealed, revoked, or declared unconstitutional, hence they are presumed valid and binding. Without a previous declaration of unconstitutionality, the coconut levy funds may not thus be characterized as *prima facie* belonging to the government. That issue must first be resolved by the *Sandiganbayan*. In fact, when the Solicitor General, in G.R. No. 96073, filed a motion to declare the coconut levies collected pursuant to the various issuances as public funds and to declare Section 5, Article III of Presidential Decree No. 1468 as unconstitutional, the Court denied the same in a Resolution dated March 26, 1996.

3. ID.; ID.; ID.; THE QUESTION OF WHETHER THE COCONUT LEVY FUNDS ARE PUBLIC FUNDS IS NOT IN ISSUE IN THE PRESENT CASE.— And if it is to be recalled, the issue involved herein is whether or not the *Sandiganbayan* committed grave abuse of discretion when it issued the disputed order allowing respondents to vote the UCPB shares of stock registered in their names. The question of whether the coconut levy funds are public funds is not in issue here. In fact, the constitutionality of Presidential Decrees No. 961 and 1468 have not been raised by the PCGG during the proceedings before the *Sandiganbayan*. Moreover, it should be pointed out that the avowed purpose of sequestration is to preserve the assets sequestered to assure that if, and when, judgment is rendered in favor of the petitioner, the judgment may be implemented. "Preservation," not "deprivation" before judgment, is its essence. In the instant case, however, the actuations of PCGG with regard to the sequestered shares partake more of deprivation rather than preservation. As pointed out by respondents, since 1986, only

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one (1) stockholders' meeting of UCPB has been held. At this meeting, PCGG voted all of the shares, as a result of which all members of the Board of UCPB, since 1986 to the present, have been PCGG nominees. When vacancies in the Board occur because of resignation, replacements are installed by the remaining members of the Board — on nomination of the PCGG. The stockholders' meeting scheduled on March 6, 2001 would have been the first stockholders' meeting since 1986 at which registered stockholders would exercise their right to vote and by their vote elect the members of the Board of Directors. Also, the shares of stock in UCPB were sequestered in 1986. The civil action *"Republic of the Philippines v. Eduardo M. Cojuanco, Jr., Civil Case No. 033,"* was instituted before the *Sandiganbayan* on July 30, 1987. This action included, among other things, the UCPB shares of stock and was filed to maintain the effectivity of the writs of sequestration pursuant to Section 26, Article XVIII of the Constitution. Notwithstanding the lapse of more than 14 years, the proceedings have barely gone beyond the pre-trial stage. PCGG's exercise of the right to vote the sequestered shares of stock for a period of 14 years constitutes effectively a deprivation of a property right belonging to the registered stockholders (18 *Am. Jur.* 2d, Corporations 2d Section 1065, p. 859, citing cases), a state of affairs not within the contemplation of "sequestration" as a means of preservation of assets.

4. ID.; ID.; INCIDENTS CONCERNING THE VOTING OF THE SEQUESTERED SHARES BEING MATTERS INCIDENTAL TO THE SEQUESTRATION SHOULD BE ADDRESSED TO THE SANDIGANBAYAN.— I regret to say that I find unacceptable the contention that the *"law of the case"* herein should be the Resolution dated February 16, 1993 in *Republic of the Philippines vs. Sandiganbayan, et al.* For one, the UCPB shares of stock of respondents COCOFED, *et al.* and Ballares, *et al.* are not the subject of the case relied upon. Hence, the Resolution therein could not have referred to or covered said shares. For another, and more importantly, what is invoked by petitioner is, in effect, merely a restraining order which was not re-affirmed by the Court when we rendered the main decision in the said consolidated sequestration cases. Rather, what I believe is truly applicable herein is the Court's decision in *COCOFED vs. PCGG* (178 SCRA 236 [1989]) wherein it was held that *"the incidents concerning the voting of the*

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sequestered shares, the COCOFED elections, and the replacement of directors, being matters incidental to the sequestration, should be addressed to the Sandiganbayan." Thus, the *Sandiganbayan* has been given by the Court full discretion to evaluate and to allow or disallow the duly registered stockholders of the UCPB shares to exercise the right to vote the said shares in the UCPB elections and/or appointment/ replacement of its directors. If, as in the case at hand, the *Sandiganbayan,* in the exercise of its sound discretion and for justifiable reasons cited in its assailed Order of February 28, 2001, allowed herein private respondents to vote the sequestered shares in question, one would simply be at a loss to understand how such action could be said to be tainted with grave abuse of discretion.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.

Mario E. Ongkiko for petitioners-intervenors.

Abello Concepcion Regala & Cruz for COCOFED, *et al.* & Ballares, *et al.*

Estelito P. Mendoza for E.M. Cojuangco, Jr.

Catapang Guzman Tiongco & Torres for UCPB & 14 CIIF Holding Co.

Sycip Salazar Hernandez & Gatmaitan for UCPB.

D E C I S I O N

PANGANIBAN, *J.:*

The right to vote sequestered shares of stock registered in the names of private individuals or entities *and* alleged to have been acquired with ill-gotten wealth shall, as a rule, be exercised by the registered owner. The PCGG may, however, be granted such voting right provided it can (1) show *prima facie* evidence that the wealth and/or the shares are indeed ill-gotten; and (2) demonstrate imminent danger of dissipation of the assets, thus necessitating their continued sequestration and voting by the government until a decision, ruling with finality on their ownership, is promulgated by the proper court.

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However, the foregoing "two-tiered" test does not apply when the sequestered stocks are acquired with funds that are *prima facie* public in character or, at least, are affected with public interest. Inasmuch as the subject UCPB shares in the present case were undisputably acquired with coco levy funds which are public in character, then the right to vote them shall be exercised by the PCGG. In sum, the "public character" test, not the "two-tiered" one, applies in the instant controversy.

The Case

Before us is a Petition for *Certiorari* with a prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction under Rule 65 of the Rules of Court, seeking to set aside the February 28, 2001 Order[2] of the First Division of the Sandiganbayan[3] in Civil Case Nos. 0033-A, 0033-B and 0033-F. The pertinent portions of the assailed Order read as follows:

"In view hereof, the movants COCOFED, *et al.* and Ballares, *et al.* as well as Eduardo Cojuangco, *et al.*, who were acknowledged to be registered stockholders of the UCPB are authorized, as are all other registered stockholders of the United Coconut Planters Bank, until further orders from this Court, to exercise their rights to vote their shares of stock and themselves to be voted upon in the United Coconut Planters Bank (UCPB) at the scheduled Stockholders' Meeting on March 6, 2001 or on any subsequent continuation or resetting thereof, and to perform such acts as will normally follow in the exercise of these rights as registered stockholders.

"Since by way of form, the pleadings herein had been labeled as praying for an injunction, the right of the movants to exercise their right as abovementioned will be subject to the posting of a nominal bond in the amount of FIFTY THOUSAND PESOS (₱50,000.00) jointly for the defendants COCOFED, *et al.* and Ballares, *et al.*, as well as all other registered stockholders of sequestered shares in that bank,

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[2] *Rollo*, pp. 34-41.

[3] Signed by Presiding Justice Francis E. Garchitorena and Associate Justices Catalino R. Castañeda Jr. and Gregory S. Ong.

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and FIFTY THOUSAND PESOS (₱50,000.00) for Eduardo Cojuangco, Jr., *et al.*, to answer for any undue damage or injury to the United Coconut Planters Bank as may be attributed to their exercise of their rights as registered stockholders."[4]

The Antecedents

The very roots of this case are anchored on the historic events that transpired during the change of government in 1986. Immediately after the 1986 EDSA Revolution, then President Corazon C. Aquino issued Executive Order (EO) Nos. 1,[5] 2[6] and 14.[7]

"On the explicit premise that 'vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad,' the Presidential Commission on Good Government (PCGG) was created by Executive Order No. 1 to assist the President in the recovery of the ill-gotten wealth thus accumulated whether located in the Philippines or abroad."[8]

Executive Order No. 2 states that the ill-gotten assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominiums, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world.[9]

Executive Order No. 14, on the other hand, empowered the PCGG, with the assistance of the Office of the Solicitor General

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[4] Assailed Order, p. 6; *Rollo*, p. 39.

[5] See *Vital Legal Documents in the New People's Government*, Vol. 99, pp. 23-25.

[6] *Ibid.*, pp. 30-32.

[7] *Id.*, pp. 49-52.

[8] *Republic v. Sandiganbayan*, 310 Phil 401, 415-416, January 23, 1995, per Narvasa, *CJ.*

[9] Second Whereas Clause, Executive Order No. 2.

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and other government agencies, *inter alia*, to file and prosecute all cases investigated by it under EO Nos. 1 and 2.

Pursuant to these laws, the PCGG issued and implemented numerous sequestrations, freeze orders and provisional takeovers of allegedly ill-gotten companies, assets and properties, real or personal.[10]

Among the properties sequestered by the Commission were shares of stock in the United Coconut Planters Bank (UCPB) registered in the names of the alleged "one million coconut farmers," the so-called Coconut Industry Investment Fund companies (CIIF companies) and Private Respondent Eduardo Cojuangco Jr. (hereinafter "Cojuangco").

In connection with the sequestration of the said UCPB shares, the PCGG, on July 31, 1987, instituted an action for reconveyance, reversion, accounting, restitution and damages docketed as Case No. 0033 in the Sandiganbayan.

On November 15, 1990, upon Motion[11] of Private Respondent COCOFED, the Sandiganbayan issued a Resolution[12] lifting the sequestration of the subject UCPB shares on the ground that herein private respondents — in particular, COCOFED and the so-called CIIF companies — had not been impleaded by the PCGG as parties-defendants in its July 31, 1987 Complaint for reconveyance, reversion, accounting, restitution and damages. The Sandiganbayan ruled that the Writ of Sequestration issued by the Commission was automatically lifted for PCGG's failure to commence the corresponding judicial action within the six-month period ending on August 2, 1987 provided under Section 26, Article XVIII of the 1987 Constitution. The anti-graft court noted that though these entities were listed in an annex appended to the Complaint, they had not been named as parties-respondents.

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[10] *Republic v. Sandiganbayan*, *supra.*, note 8, p. 418.

[11] Entitled "Class Action Omnibus Motion," *Rollo*, pp. 418-446.

[12] Resolution dated November 15, 1990; *Rollo*, pp. 448-465.

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This Sandiganbayan Resolution was challenged by the PCGG in a Petition for *Certiorari* docketed as GR No. 96073 in this Court. Meanwhile, upon motion of Cojuangco, the anti-graft court ordered the holding of elections for the Board of Directors of UCPB. However, the PCGG applied for and was granted by this Court a Restraining Order enjoining the holding of the election. Subsequently, the Court lifted the Restraining Order and ordered the UCPB to proceed with the election of its board of directors. Furthermore, it allowed the sequestered shares to be voted by their registered owners.

The victory of the registered shareholders was fleeting because the Court, acting on the solicitor general's Motion for Clarification/ Manifestation, issued a Resolution on February 16, 1993, declaring that "the right of petitioners [herein private respondents] to vote stock in their names at the meetings of the UCPB cannot be conceded at this time. That right still has to be established by them before the Sandiganbayan. Until that is done, they cannot be deemed legitimate owners of UCPB stock and cannot be accorded the right to vote them."[13] The dispositive portion of the said Resolution reads as follows:

"IN VIEW OF THE FOREGOING, the Court recalls and sets aside the Resolution dated March 3, 1992 and, pending resolution on the merits of the action at bar, and until further orders, suspends the effectivity of the lifting of the sequestration decreed by the Sandiganbayan on November 15, 1990, and directs the restoration of the status *quo ante*, so as to allow the PCGG to continue voting the shares of stock under sequestration at the meetings of the United Coconut Planters Bank."[14]

On January 23, 1995, the Court rendered its final Decision in GR No. 96073, nullifying and setting aside the November 15, 1990 Resolution of the Sandiganbayan which, as earlier stated, lifted the sequestration of the subject UCPB shares. The express impleading of herein Respondents COCOFED

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[13] Resolution dated February 16, 1993, pp. 5-6; *Rollo*, pp. 72-73.

[14] *Ibid.*, p. 6; *Rollo*, p. 73

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et al. was deemed unnecessary because "the judgment may simply be directed against the shares of stock shown to have been issued in consideration of ill-gotten wealth."[15] Furthermore, the companies "are simply the *res* in the actions for the recovery of illegally acquired wealth, and there is, in principle, no cause of action against them and no ground to implead them as defendants in said case."[16]

A month thereafter, the PCGG — pursuant to an Order of the Sandiganbayan — subdivided Case No. 0033 into eight Complaints and docketed them as Case Nos. 0033-A to 0033-H.

Six years later, on February 13, 2001, the Board of Directors of UCPB received from the ACCRA Law Office a letter written on behalf of the COCOFED and the alleged nameless one million coconut farmers, demanding the holding of a stockholders' meeting for the purpose of, among others, electing the board of directors. In response, the board approved a Resolution calling for a stockholders' meeting on March 6, 2001 at three o'clock in the afternoon.

On February 23, 2001, "COCOFED, *et al.* and Ballares, *et al.*" filed the "Class Action Omnibus Motion"[17] referred to earlier in Sandiganbayan Civil Case Nos. 0033-A, 0033-B and 0033-F, asking the court *a quo*:

"1. To enjoin the PCGG from voting the UCPB shares of stock registered in the respective names of the more than one million coconut farmers; and

"2. To enjoin the PCGG from voting the SMC shares registered in the names of the 14 CIIF holding companies including those registered in the name of the PCGG."[18]

On February 28, 2001, respondent court, after hearing the parties on oral argument, issued the assailed Order.

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[15] *Republic v. Sandiganbayan*, *supra.*, per Narvasa, *CJ.*

[16] *Ibid.*

[17] *Rollo*, pp. 42-67.

[18] *Ibid.*, p. 42; original in upper case.

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Hence, this Petition by the Republic of the Philippines represented by the PCGG.[19]

The case had initially been raffled to this Court's Third Division which, by a vote of 3-2,[20] issued a Resolution[21] requiring the parties to maintain the status *quo* existing before the issuance of the questioned Sandiganbayan Order dated February 28, 2001. On March 7, 2001, Respondent COCOFED et al. moved that the instant Petition be heard by the Court *en banc*.[22] The Motion was unanimously granted by the Third Division.

On March 13, 2001, the Court *en banc* resolved to accept the Third Division's referral.[23] It heard the case on Oral Argument in Baguio City on April 17, 2001. During the hearing, it admitted the intervention of a group of coconut farmers and farm worker organizations, the *Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa ng Niyugan* (PKSMMN). The coalition claims that its members have been excluded from the benefits of the coconut levy fund. *Inter alia*, it joined petitioner in praying for the exclusion of private respondents in voting the sequestered shares.

Issues

Petitioner submits the following issues for our consideration:[24]

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[19] Pursuant to this Court's Resolution dated April 17, 2001, the parties submitted their respective Memoranda: on May 2, 2001, the Court received those of the main parties and on May 8, 2001, the Memorandum for the intervenors. Finally, on May 21, 2001, intervenors filed their Manifestation (In Aid of Memorandum). The case was deemed submitted for decision on the last-mentioned date.

[20] Justices Vitug, Panganiban and Gonzaga-Reyes voted in favor and Justices Melo and Sandoval-Gutierrez voted against.

[21] Resolution dated March 6, 2001; *Rollo*, p. 221.

[22] Urgent Motion dated March 7, 2001; *Rollo*, pp. 224-230.

[23] Resolution dated March 13, 2001; *Rollo*, p. 728-A.

[24] Urgent Petition, pp. 12-13; *Rollo*, pp. 13-14. Original in upper case.

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"A.

Despite the fact that the subject sequestered shares were purchased with coconut levy funds (which were declared public in character) and the continuing effectivity of Resolution dated February 16, 1993 in G.R. No. 96073 which allows the PCGG to vote said sequestered shares, Respondent Sandiganbayan, with grave abuse of discretion, issued its Order dated February 28, 2001 enjoining PCGG from voting the sequestered shares of stock in UCPB.

"B.

The Respondent Sandiganbayan violated petitioner's right to due process by taking cognizance of the Class Action Omnibus Motion dated 23 February 2001 despite gross lack of sufficient notice and by issuing the writ of preliminary injunction despite the obvious fact that there was no actual pressing necessity or urgency to do so."

In its Resolution dated April 17, 2001, the Court defined the issue to be resolved in the instant case simply as follows:

"Did the Sandiganbayan commit grave abuse of discretion when it issued the disputed Order allowing respondents to vote UCPB shares of stock registered in the name of respondents?"

This Court's Ruling

The Petition is impressed with merit.

Main Issue:
Who May Vote the Sequestered Shares of Stock?

Simply stated, the gut substantive issue to be resolved in the present Petition is: "Who may vote the sequestered UCPB shares while the main case for their reversion to the State is pending in the Sandiganbayan?"

This Court holds that the government should be allowed to continue voting those shares inasmuch as they were purchased with coconut levy funds — funds that are *prima facie* public in character or, at the very least, are "clearly affected with public interest."

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General Rule: Sequestered Shares Are Voted by the Registered Holder

At the outset, it is necessary to restate the general rule that the registered owner of the shares of a corporation exercises the right and the privilege of voting.[25] This principle applies even to shares that are sequestered by the government, over which the PCGG as a mere conservator cannot, as a general

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[25] Sec. 24 of the Corporation Code (*Batas Pambansa Blg.* 68) provides as follows:

"SEC. 24. *Election of directors or trustees.* — At all elections of directors or trustees, there must be present, either in person or by representative authorized to act by written proxy, the owners of the majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote. The election must be by ballot if requested by any voting stockholder or member. In stock corporations, every stockholder entitled to vote shall have the right to vote in person or by proxy the number of shares of stock standing, at the time fixed in the by-laws, in his own name on the stock books of the corporation, or where the by-laws are silent, at the time of the election; and said stockholder may vote such number of shares for as many persons as there are directors to be elected or he may cumulate said shares and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares shall equal, or he may distribute them on the same principle among as many candidates as he shall see fit: *Provided*, That the total number of votes cast by him shall not exceed the number of shares owned by him as shown in the books of the corporation multiplied by the whole number of directors to be elected: *Provided, however*, That no delinquent stock shall be voted. Unless otherwise provided in the articles of incorporation or in the by-laws, members of corporations which have no capital stock may cast as many votes as there are trustees to be elected but may not cast more than one vote for one candidate. Candidates receiving the highest number of votes shall be declared elected. Any meeting of the stockholders or members called for an election may adjourn from day to day or from time to time but not *sine die* or indefinitely if, for any reason, no election is held, or if there are not present or represented by proxy, at the meeting, the owners of a majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote."

Under this Section, a director must own at least one share in his name.

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rule, exercise acts of dominion.[26] On the other hand, it is authorized to vote these sequestered shares registered in the names of private persons and acquired with allegedly ill-gotten wealth, if it is able to satisfy the *two-tiered test* devised by the Court in *Cojuangco v. Calpo*[27] and *PCGG v. Cojuangco Jr.*,[28] as follows:

(1) Is there *prima facie* evidence showing that the said shares are ill-gotten and thus belong to the State?

(2) Is there an imminent danger of dissipation, thus necessitating their continued sequestration and voting by the PCGG, while the main issue is pending with the Sandiganbayan?

Sequestered Shares Acquired with Public Funds Are an Exception

From the foregoing general principle, the Court in *Baseco v. PCGG*[29] (hereinafter "*Baseco*") and *Cojuangco Jr. v. Roxas*[30] ("*Cojuangco-Roxas*") has provided two clear "public character" exceptions under which the government is granted the authority to vote the shares:

(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.

The exceptions are based on the common-sense principle that legal fiction must yield to truth; that public property registered in the names of non-owners is affected with trust relations;

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[26] *Baseco v. PCGG*, infra; and *Cojuangco Jr. v. Roxas*, *infra*.

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

[28] 302 SCRA 217, GR No. 133197, January 27, 1999.

[29] 150 SCRA 181, L-75885, May 27, 1987.

[30] 195 SCRA 797, GR No. 91925, April 16, 1991.

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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."[31]

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."[32]

Citing an earlier Resolution, it ruled further:

"'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*

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[31] *Baseco v. PCGG*, *supra*, p. 219, per Narvasa, *J.* later *CJ*).

[32] *Ibid.*, p. 237.

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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."[33] (Italics supplied)

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."[34] (Italics supplied)

The exception was cited again by the Court in *Cojuangco-Roxas*[35] 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.*"[36] (Italics supplied)

The "public character" test was reiterated in many subsequent cases; most recently, in *Antiporda v. Sandiganbayan.*[37]

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[33] *Id.*, p. 239.

[34] *Id.*, p. 253.

[35] *Supra.*

[36] *Ibid.*, p. 813, per Gancayco, *J.*

[37] GR No. 116941, May 31, 2001.

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Expressly citing *Cojuangco-Roxas*,[38] 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 these 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."[39]

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 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 exceptions in *Baseco v. PCGG* and *Cojuangco Jr. v. Roxas* prevail; that is, the government shall vote the shares.

UCPB Shares Were Acquired with Coconut Levy Funds

In the present case before the Court, it is not disputed that the money used to purchase the sequestered UCPB shares came from the Coconut Consumer Stabilization Fund (CCSF), otherwise known as the coconut levy funds.

This fact was *plainly admitted* by private respondent's counsel, Atty. Teresita J. Herbosa, during the Oral Arguments held on April 17, 2001 in Baguio City, as follows:

"Justice Panganiban:

"In regard to the theory of the Solicitor General that the funds used to purchase [both] the original 28 million and the subsequent 80 million came from the CCSF, Coconut Consumers Stabilization Fund, do you agree with that?

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[38] *Supra*.

[39] GR No. 116941, May 31, 2001, p. 16, per Ynares-Santiago, *J*.

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"Atty. Herbosa:

"Yes, Your Honor.

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"Justice Panganiban:

"So it seems that the parties [have] agreed up to that point that the funds used to purchase 72% of the former First United Bank came from the Coconut Consumer Stabilization Fund?

"Atty. Herbosa:

"Yes, Your Honor."[40]

Indeed in *Cocofed v. PCGG,*[41] this Court categorically declared that the UCPB was acquired "with the use of the Coconut Consumers Stabilization Fund in virtue of Presidential Decree No. 755, promulgated on July 29, 1975."

Coconut Levy Funds Are Affected With Public Interest

Having conclusively shown that the sequestered UCPB shares were purchased with coconut levies, we hold that these funds and shares are, at the very least, "affected with public interest."

The Resolution issued by the Court on February 16, 1993 in *Republic v. Sandiganbayan*[42] stated that coconut levy funds were "clearly affected with public interest"; thus, herein private respondents – even if they are the registered shareholders — cannot be accorded the right to vote them. We quote the said Resolution in part, as follows:

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[40] Transcript of Oral Arguments, April 17, 2001, pp. 171, 173. During the same Oral Argument, Private Respondent Cojuangco similarly admitted that the "entire amount" paid for the shares had come from the Philippine Coconut Authority. TSN, p. 115.

[41] 178 SCRA 236, 245-246, October 2, 1989, per Narvasa, *J.* (later *CJ*).

[42] Resolution dated February 16, 1993, GR No. 96073.

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"The coconut levy funds being 'clearly affected with public interest, it follows that the corporations formed and organized from those funds, and all assets acquired therefrom should also be regarded as 'clearly affected with public interest.'"[43]

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"Assuming, however, for purposes of argument merely, the lifting of sequestration to be correct, may it also be assumed that the lifting of sequestration removed the character of the coconut levy companies of being affected with public interest, so that they and their stock and assets may now be considered to be of private ownership? May it be assumed that the lifting of sequestration operated to relieve the holders of stock in the coconut levy companies — affected with public interest — of the obligation of proving how that stock had been legitimately transferred to private ownership, or that those stockholders who had had some part in the collection, administration, or disposition of the coconut levy funds are now deemed qualified to acquire said stock, and freed from any doubt or suspicion that they had taken advantage of their special or fiduciary relation with the agencies in charge of the coconut levies and the funds thereby accumulated? The obvious answer to each of the questions is a negative one. It seems plain that the lifting of sequestration has no relevance to the nature of the coconut levy companies or their stock or property, or to the legality of the acquisition by private persons of their interest therein, or to the latter's capacity or disqualification to acquire stock in the companies or any property acquired from coconut levy funds.

"This being so, the right of the [petitioners] to vote stock in their names at the meetings of the UCPB cannot be conceded at this time. That right still has to be established by them before the Sandiganbayan. Until that is done, they cannot be deemed legitimate owners of UCPB stock and cannot be accorded the right to vote them."[44] (Italics supplied)

It is however contended by respondents that this Resolution was in the nature of a temporary restraining order. As such, it was supposedly interlocutory in character and became *functus*

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[43] *Ibid.*, p. 3.

[44] *Id.*, pp. 5-6.

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oficio when this Court decided GR No. 96073 on January 23, 1995.

This argument is aptly answered by petitioner in its Memorandum, which we quote:

"The ruling made in the Resolution dated 16 February 1993 confirming the public nature of the coconut levy funds and denying claimants their purported right to vote is an affirmation of doctrines laid down in the cases of ***COCOFED v. PCGG*** *supra*, ***Baseco v. PCGG***, *supra*, and ***Cojuangco v. Roxas***, supra. Therefore it is of no moment that the Resolution dated 16 February 1993 has not been ratified. *Its jurisprudential bases remain.*" [45] (Italics supplied)

Granting *arguendo* that the Resolution is interlocutory, the truth remains: the coconut levy funds are still "clearly affected with public interest." That was the truth in 1989 as quoted by this Court in its February 16, 1993 Resolution, and so it is today. Said the Court in 1989:

"The utilization and proper management of the coconut levy funds, raised as they were by the State's police and taxing powers, are certainly the concern of the Government. It cannot be denied that it was the welfare of the entire nation that provided the prime moving factor for the imposition of the levy. It cannot be denied that the coconut industry is one of the major industries supporting the national economy. It is, therefore, the State's concern to make it a strong and secure source not only of the livelihood of a significant segment of the population but also of export earnings the sustained growth of which is one of the imperatives of economic stability. *The coconut levy funds are clearly affected with public interest. Until it is demonstrated satisfactorily that they have legitimately become private funds, they must prima facie and by reason of the circumstances in which they were raised and accumulated be accounted subject to the measures prescribed in E.O. Nos. 1, 2, and 14 to prevent their concealment, dissipation, etc., which measures include the sequestration and other orders of the PCGG complained of.*"[46] (Italics supplied)

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[45] Memorandum for Petitioner, pp. 56-57.

[46] *Cocofed v. PCGG*, *supra*, pp. 252-253.

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To repeat, the foregoing juridical situation has not changed. It is still the truth today: "the coconut levy funds are clearly affected with public interest." Private respondents have not "demonstrated satisfactorily that they have legitimately become private funds."

If private respondents really and sincerely believed that the *final* Decision of the Court in *Republic v. Sandiganbayan* (GR No. 96073, promulgated on January 23, 1995) granted them the right to vote, why did they wait for the lapse of six long years before definitively asserting it (1) through their letter dated February 13, 2001, addressed to the UCPB Board of Directors, demanding the holding of a shareholders' meeting on March 6, 2001; and (2) through their Omnibus Motion dated February 23, 2001 filed in the court *a quo,* seeking to enjoin PCGG from voting the subject sequestered shares during the said stockholders' meeting? Certainly, if they even half believed their submission now — that they already had such right in 1995 — why are they suddenly and imperiously claiming it *only now*?

It should be stressed at this point that the assailed Sandiganbayan Order dated February 28, 2001 — allowing private respondents to vote the sequestered shares — is not based on any finding that the coconut levies and the shares have "legitimately become private funds." Neither is it based on the alleged lifting of the TRO issued by this Court on February 16, 1993. Rather, it is anchored on the grossly mistaken application of the two-tiered test mentioned earlier in this Decision.

To stress, the two-tiered test is applied only when the sequestered asset in the hands of a private person is alleged to have been acquired with ill-gotten wealth. Hence, in *PCGG v. Cojuangco*,[47] we allowed Eduardo Cojuangco Jr. to vote the sequestered shares of the San Miguel Corporation (SMC) registered in his name, but alleged to have been acquired with ill-gotten wealth. We did so on his representation that he had acquired them with borrowed funds *and* upon failure of the

[47] *Supra.*

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PCGG to satisfy the "two-tiered" test. This test was, however, not applied to sequestered SMC shares that were purchased with coco levy funds.

In the present case, the sequestered UCPB shares are confirmed to have been acquired with coco levies, not with alleged ill-gotten wealth. Hence, by parity of reasoning, the right to vote them is not subject to the "two-tiered test" but to the public character of their acquisition, which per *Antiporda v. Sandiganbayan* cited earlier, must *first* be determined.

Coconut Levy Funds Are Prima Facie Public Funds

To avoid misunderstanding and confusion, this Court will even be more categorical and positive than its earlier pronouncements: *the coconut levy funds are not only affected with public interest; they are, in fact,* ***prima facie*** *public funds.*

Public funds are those moneys belonging to the State or to any political subdivision of the State; more specifically, taxes, customs duties and moneys raised by operation of law for the support of the government or for the discharge of its obligations.[48] Undeniably, *coconut levy funds satisfy this general definition of public funds,* because of the following reasons:

1. Coconut levy funds are raised with the use of the police and taxing powers of the State.
2. They are levies imposed by the State for the benefit of the coconut industry and its farmers.
3. Respondents have judicially admitted that the sequestered shares were purchased with public funds.
4. The Commission on Audit (COA) reviews the use of coconut levy funds.
5. The Bureau of Internal Revenue (BIR), with the acquiescence of private respondents, has treated them as public funds.

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[48] *Beckner v. Commonwealth*, 5 SE2d 525, November 20, 1939.

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6. The very laws governing coconut levies recognize their public character.

We shall now discuss each of the foregoing reasons, any one of which is enough to show their public character.

1. Coconut Levy Funds Are Raised Through the State's Police and Taxing Powers.

Indeed, coconut levy funds partake of the nature of taxes which, in general, are enforced proportional contributions from persons and properties, exacted by the State by virtue of its sovereignty for the support of government and for all public needs.[49]

Based on this definition, a tax has three elements, namely: a) it is an enforced proportional contribution from persons and properties; b) it is imposed by the State by virtue of its sovereignty; and c) it is levied for the support of the government. The coconut levy funds fall squarely into these elements for the following reasons:

(a) They were generated by virtue of statutory enactments imposed on the coconut farmers requiring the payment of prescribed amounts. Thus, PD No. 276, which created the Coconut Consumer Stabilization Fund (CCSF), mandated the following:

"a. A levy, initially, of ₱15.00 per 100 kilograms of copra *resecada* or its equivalent in other coconut products, shall be imposed on every first sale, in accordance with the mechanics established under RA 6260, effective at the start of business hours on August 10, 1973.

"The proceeds from the levy shall be deposited with the Philippine National Bank or any other government bank to the account of the Coconut Consumers Stabilization Fund, as a separate trust fund which shall not form part of the general fund of the government."[50]

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[49] *Fitch v. Wisconsin Tax Commission*, 230 NW 37, April 1, 1930, citing Cooley on *Taxation* (3rd ed.).

[50] Par. 1(a), PD No. 276, August 20, 1973.

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The coco levies were further clarified in amendatory laws, specifically PD No. 961[51] and PD No. 1468[52] — in this wise:

"The Authority (Philippine Coconut Authority) is hereby empowered to impose and collect a levy, to be known as the Coconut Consumers Stabilization Fund Levy, on every one hundred kilos of copra *resecada*, or its equivalent in other coconut products delivered to, and/or purchased by, copra exporters, oil millers, desiccators and other end-users of copra or its equivalent in other coconut products. The levy shall be paid by such copra exporters, oil millers, desiccators and other end-users of copra or its equivalent in other coconut products under such rules and regulations as the Authority may prescribe. Until otherwise prescribed by the Authority, the current levy being collected shall be continued."[53]

Like other tax measures, they were not voluntary payments or donations by the people. They were enforced contributions exacted on pain of penal sanctions, as provided under PD No. 276:

"3. Any person or firm who violates any provision of this Decree or the rules and regulations promulgated thereunder, shall, in addition to penalties already prescribed under existing administrative and special law, pay a fine of not less than ₱2,500 or more than ₱10,000, or suffer cancellation of licenses to operate, or both, at the discretion of the Court."[54]

Such penalties were later amended thus:

"Whenever any person or entity willfully and deliberately violates any of the provisions of this Act, or any rule or regulation legally promulgated hereunder by the Authority, the person or persons responsible for such violation shall be punished by a fine of not more than ₱20,000.00 and by imprisonment of not more than five years.

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[51] July 14, 1976.

[52] June 11, 1978.

[53] Art. III, §1, PD No. 961, July 14, 1976; and Art. III, §1, PD No. 1468, June 11, 1978.

[54] Par. 3, PD No. 276, August 20, 1973.

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If the offender be a corporation, partnership or a juridical person, the penalty shall be imposed on the officer or officers authorizing, permitting or tolerating the violation. Aliens found guilty of any offenses shall, after having served his sentence, be immediately deported and, in the case of a naturalized citizen, his certificate of naturalization shall be cancelled."[55]

(b) The coconut levies were imposed pursuant to the laws enacted by the proper legislative authorities of the State. Indeed, the CCSF was collected under PD No. 276, issued by former President Ferdinand E. Marcos who was then exercising legislative powers.[56]

(c) They were clearly imposed for a public purpose. There is absolutely no question that they were collected to advance the government's avowed policy of protecting the coconut industry. This Court takes judicial notice of the fact that the coconut industry is one of the great economic pillars of our nation, and coconuts and their byproducts occupy a leading position among the country's export products; that it gives employment to thousands of Filipinos; that it is a great source of the State's wealth; and that it is one of the important sources of foreign exchange needed by our country and, thus, pivotal in the plans of a government committed to a policy of currency stability.

Taxation is done not merely to raise revenues to support the government, but also to provide means for the rehabilitation and the stabilization of a threatened industry, which is so affected with public interest as to be within the police power of the State, as held in *Caltex Philippines v. COA*[57] and *Osmeña v. Orbos*.[58]

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[55] Art. IV, §1, PD No. 961, July 14, 1976; and Art. IV, §1, PD No. 1468, June 11, 1978. It should be noted that in PD No. 1468, the last sentence reads, "Aliens found guilty of any offense shall, after having served his *sentence*, be immediately deported x x x."

[56] Memorandum for Petitioner, *supra*, p. 23.

[57] 208 SCRA 726, May 8, 1992.

[58] 220 SCRA 703, March 31, 1993.

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Even if the money is allocated for a special purpose and raised by special means, it is still public in character. In the case before us, the funds were even used to organize and finance State offices. In *Cocofed v. PCGG,*[59] the Court observed that certain agencies or enterprises "were organized and financed with revenues derived from coconut levies imposed under a succession of laws of the late dictatorship x x x with deposed Ferdinand Marcos and his cronies as the suspected authors and chief beneficiaries of the resulting coconut industry monopoly."[60] The Court continued: "x x x. It cannot be denied that the coconut industry is one of the major industries supporting the national economy. It is, therefore, the State's concern to make it a strong and secure source not only of the livelihood of a significant segment of the population, but also of export earnings the sustained growth of which is one of the imperatives of economic stability. x x x."[61]

2. Coconut Funds Are Levied for the Benefit of the Coconut Industry and Its Farmers.

Just like the sugar levy funds, the coconut levy funds constitute state funds even though they may be held for a special public purpose.

In fact, Executive Order No. 481 dated May 1, 1998 specifically likens the coconut levy funds to the sugar levy funds, *both being special public funds acquired through the taxing and police powers of the State.* The sugar levy funds, which are strikingly similar to the coconut levies in their imposition and purpose, were declared public funds by this Court in *Gaston v. Republic Planters Bank,*[62] from which we quote:

"The stabilization fees collected are in the nature of a tax which is within the power of the State to impose for the promotion of the

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[59] *Supra.*

[60] *Ibid.*, p. 239.

[61] *Id.*, p. 252.

[62] 158 SCRA 626, March 15, 1988, per Melencio-Herrera, *J.*

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sugar industry (*Lutz vs. Araneta,* 98 Phil. 148). They constitute sugar liens (Sec. 7[b], P.D. No. 388). The collections made accrue to a 'Special Fund,' a 'Development and Stabilization Fund,' almost identical to the 'Sugar Adjustment and Stabilization Fund' created under Section 6 of Commonwealth Act 567. The tax collected is not in a pure exercise of the taxing power. It is levied with a regulatory purpose, to provide means for the stabilization of the sugar industry. The levy is primarily in the exercise of the police power of the State. (*Lutz vs. Araneta, supra.*)."[63]

The Court further explained:[64]

"The stabilization fees in question are levied by the State upon sugar millers, planters and producers for a special purpose – that of 'financing the growth and development of the sugar industry and all its components, stabilization of the domestic market including the foreign market.' *The fact that the State has taken possession of moneys pursuant to law is sufficient to constitute them as state funds, even though they are held for a special purpose (Lawrence v. American Surety Co., 263 Mich 586. 294 ALR 535, cited in 42 Am. Jur., Sec. 2., p. 718). Having been levied for a special purpose, the revenues collected are to be treated as a special fund, to be, in the language of the statute, 'administered in trust' for the purpose intended. Once the purpose has been fulfilled or abandoned, the balance, if any, is to be transferred to the general funds of the Government. That is the essence of the trust intended (see 1987 Constitution, Art. VI, Sec. 29[3], lifted from the 1935 Constitution, Article VI, Sec. 23[1].* (Italics supplied)

"The character of the Stabilization Fund as a special fund is emphasized by the fact that the funds are deposited in the Philippine National Bank and not in the Philippine Treasury, moneys from which may be paid out only in pursuance of an appropriation made by law (1987 Constitution, Article VI, Sec. 29[1], 1973 Constitution, Article VIII, Sec. 18[1]).

"That the fees were collected from sugar producers, planters and millers, and that the funds were channeled to the purchase of shares of stock in respondent Bank do not convert the funds into a trust fund for their benefit nor make them the beneficial owners of the

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[63] *Ibid.*, pp. 632-633.

[64] *Id.*, pp. 633-634.

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shares so purchased. It is but rational that the fees be collected from them since it is also they who are to be benefited from the expenditure of the funds derived from it. The investment in shares of respondent Bank is not alien to the purpose intended because of the Bank's character as a commodity bank for sugar conceived for the industry's growth and development. Furthermore, of note is the fact that one-half (1/2) or ₱0.50 per picul, of the amount levied under P.D. No. 388 is to be utilized for the 'payment of salaries and wages of personnel, fringe benefits and allowances of officers and employees of PHILSUCOM' thereby immediately negating the claim that the entire amount levied is in trust for sugar, producers, planters and millers.

"To rule in petitioners' favor would contravene the general principle that revenues derived from taxes cannot be used for purely private purposes or for the exclusive benefit of private persons. The Stabilization Fund is to be utilized for the benefit of the entire sugar industry, 'and all its components, stabilization of the domestic market including the foreign market,' the industry being of vital importance to the country's economy and to national interest."

In the same manner, this Court has also ruled that the oil stabilization funds were public in character and subject to audit by COA. It ruled in this wise:

"Hence, it seems clear that while the funds collected may be referred to as taxes, they are exacted in the exercise of the police power of the State. Moreover, that the OPSF is a special fund is plain from the special treatment given it by E.O. 137. It is segregated from the general fund; and while it is placed in what the law refers to as a 'trust liability account,' the fund nonetheless remains subject to the scrutiny and review of the COA. The Court is satisfied that these measures comply with the constitutional description of a 'special fund.' Indeed, the practice is not without precedent."[65]

In his Concurring Opinion in *Kilosbayan v. Guingona*,[66] Justice Florentino P. Feliciano explained that the funds raised by the On-line Lottery System were also public in nature. In his words:

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[65] *Osmeña v. Orbos*, 220 SCRA 703, 711, March 31, 1993, per Narvasa, *CJ.*

[66] 232 SCRA 110, 155, May 5, 1994.

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"x x x. In the case presently before the Court, the funds involved are clearly public in nature. The funds to be generated by the proposed lottery are to be raised from the population at large. Should the proposed operation be as successful as its proponents project, those funds will come from well-nigh every town and barrio of Luzon. The funds here involved are public in another very real sense: they will belong to the PCSO, a government owned or controlled corporation and an instrumentality of the government and are destined for utilization in social development projects which, at least in principle, are designed to benefit the general public. x x x. The interest of a private citizen in seeing to it that public funds, from whatever source they may have been derived, go only to the uses directed and permitted by law is as real and personal and substantial as the interest of a private taxpayer in seeing to it that tax monies are not intercepted on their way to the public treasury or otherwise diverted from uses prescribed or allowed by law. It is also pertinent to note that the more successful the government is in raising revenues by non-traditional methods such as PAGCOR operations and privatization measures, the lesser will be the pressure upon the traditional sources of public revenues, *i.e.*, the pocket books of individual taxpayers and importers."[67]

Thus, the coconut levy funds — like the sugar levy and the oil stabilization funds, as well as the monies generated by the On-line Lottery System — are funds exacted by the State. Being enforced contributions, they are *prima facie* public funds.

3. Respondents Judicially Admit That the Levies Are Government Funds.

Equally important as the fact that the coconut levy funds were raised through the taxing and police powers of the State is respondents' effective judicial admission that these levies are government funds. As shown by the attachments to their pleadings,[68] respondents concede that the Coconut Consumers

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[67] *Ibid.*, pp. 155-156.

[68] Exh. "196." This Exhibit is the July 18, 1975 letter of Rolando de la Cuesta, acting corporate secretary of the Philippine Coconut Authority, to Finance Secretary Cesar Virata, submitted as part of the Class Action Omnibus Motion for Respondents COCOFED, *et al.* (which was adopted by Private Respondent Cojuangco), found in Folder 6.

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Stabilization Fund (CCSF) and the Coconut Investment Development Fund "constitute government funds x x x for the benefit of coconut farmers."

"Collections on both levies constitute government funds. However, unlike other taxes that the Government levies and collects such as income tax, tariff and customs duties, *etc.*, the collections on the CCSF and CIDF are, by express provision of the laws imposing them, for a definite purpose, not just for any governmental purpose. As stated above part of the collections on the CCSF levy should be spent for the benefit of the coconut farmers. And in respect of the collections on the CIDF levy, P.D. 582 mandatorily requires that the same should be spent *exclusively* for the establishment, operation and maintenance of a hybrid coconut seed garden and the distribution, for free, to the coconut farmers of the hybrid coconut seednuts produced from that seed garden.

"On the other hand, the laws which impose special levies on specific industries, for example on the mining industry, sugar industry, timber industry, *etc.*, do not, by their terms, expressly require that the collections on those levies be spent exclusively for the benefit of the industry concerned. And if the enabling law thus so provide, the fact remains that the governmental agency entrusted with the duty of implementing the purpose for which the levy is imposed is vested with the discretionary power to determine when and how the collections should be appropriated."[69]

4. The COA Audit Shows the Public Nature of the Funds.

Under COA Office Order No. 86-9470 dated April 15, 1986,[70] the COA reviewed the expenditure and use of the coconut levies allocated for the acquisition of the UCPB. The audit was aimed at ascertaining whether these were utilized for the purpose for which they had been intended.[71] Under the 1987 Constitution, the powers of the COA are as follows:

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[69] *Ibid.*

[70] Attachment "M" of the Memorandum for Petitioner.

[71] *Ibid.*

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"The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities x x x."[72]

Because these funds have been subjected to COA audit, there can be no other conclusion than that they are *prima facie* public in character.

5. The BIR Has Pronounced That the Coconut Levy Funds Are Taxes.

In response to a query posed by the administrator of the Philippine Coconut Authority regarding the character of the coconut levy funds, the Bureau of Internal Revenue has affirmed that these funds are public in character. It held as follows: "[T]he coconut levy is not a public trust fund for the benefit of the coconut farmers, but is in the nature of a tax and, therefore, x x x public funds that are subject to government administration and disposition."[73]

Furthermore, the executive branch treats the coconut levies as public funds. Thus, Executive Order No. 277, issued on September 24, 1995, directed the mode of treatment, utilization, administration and management of the coconut levy funds. It provided as follows:

'(a) The coconut levy funds, which include all income, interests, proceeds or profits derived therefrom, as well as all assets, properties and shares of stocks procured or obtained with the use of such funds, *shall be treated, utilized, administered and managed as public funds* consistent with the uses and purposes under the laws which constituted them and the development priorities of the government, including the government's coconut productivity, rehabilitation, research extension, farmers organizations, and market promotions programs, which are designed to advance the development of the

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[72] Art. IX-D, §2(1).

[73] BIR Ruling No. 354-92, December 15, 1992.

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coconut industry and the welfare of the coconut farmers."[74] (Italics supplied)

Doctrinally, acts of the executive branch are *prima facie* valid and binding, unless declared unconstitutional or contrary to law.

6. Laws Governing Coconut Levies Recognize Their Public Nature.

Finally and tellingly, the very laws governing the coconut levies recognize their public character. Thus, the third *Whereas* clause of PD No. 276 treats them as special funds for a specific public purpose. Furthermore, PD No. 711 transferred to the general funds of the State all existing special and fiduciary funds including the CCSF. On the other hand, PD No. 1234 specifically declared the CCSF as a special fund for a special purpose, which should be treated as a special account in the National Treasury.

Moreover, even President Marcos himself, as the sole legislative/executive authority during the martial law years, struck off the phrase *which is a private fund of the coconut farmers* from the original copy of Executive Order No. 504 dated May 31, 1978, and we quote:

"WHEREAS, by means of the Coconut Consumers Stabilization Fund ('CCSF'), *which is the private fund of the coconut farmers* (deleted), essential coconut-based products are made available to household consumers at socialized prices." (Italics supplied)

The phrase in bold face — ***which is the private fund of the coconut farmers*** — was crossed out and duly initialed by its author, former President Marcos. This deletion, clearly visible in "Attachment C" of petitioner's Memorandum,[75] was a categorical legislative intent to regard the CCSF as public, not private, funds.

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[74] Vital Legal Documents, pp. 329-330.

[75] EO No. 504 directed the COA "to make an examination into the x x x Coconut Consumers Stabilization Fund Levy."

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Having Been Acquired With Public Funds, UCPB Shares Belong, Prima Facie, to the Government

Having shown that the coconut levy funds are not only affected with public interest, but are in fact *prima facie* public funds, this Court believes that the government should be allowed to vote the questioned shares, because they belong to it as the *prima facie* beneficial and true owner.

As stated at the beginning, voting is an act of dominion that should be exercised by the share owner. One of the recognized rights of an owner is the right to vote at meetings of the corporation. The right to vote is classified as the right to control.[76] Voting rights may be for the purpose of, among others, electing or removing directors, amending a charter, or making or amending bylaws.[77] Because the subject UCPB shares were acquired with government funds, the government becomes their *prima facie* beneficial and true owner.

Ownership includes the right to enjoy, dispose of, exclude and recover a thing without limitations other than those established by law or by the owner.[78] Ownership has been aptly described as the most comprehensive of all real rights.[79] And the right to vote shares is a mere incident of ownership. In the present case, the government has been shown to be the *prima facie* owner of the funds used to purchase the shares. Hence, it should be allowed the rights and privileges flowing from such fact.

And paraphrasing *Cocofed v. PCGG*, already cited earlier, the Republic should continue to vote those shares until and unless private respondents are able to demonstrate, in the main

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[76] Agbayani, *Commentaries and Jurisprudence on the Commercial Laws of the Philippines*, Vol. III, 1996 ed., p. 535.

[77] *Ibid.*

[78] Vitug, *Compendium of Civil Law and Jurisprudence*, 1993 ed., p. 283.

[79] *Ibid.*

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cases pending before the Sandiganbayan, that "they [the sequestered UCPB shares] have legitimately become private."

Procedural and Incidental Issues: Grave Abuse of Discretion, Improper Arguments and Intervenors' Relief

Procedurally, respondents argue that petitioner has failed to demonstrate that the Sandiganbayan committed grave abuse of discretion, a demonstration required in every petition under Rule 65.[80]

We disagree. We hold that the Sandiganbayan gravely abused its discretion when it contravened the rulings of this Court in *Baseco* and *Cojuangco-Roxas* — thereby unlawfully, capriciously and arbitrarily depriving the government of its right to vote sequestered shares purchased with coconut levy funds which are *prima facie* public funds.

Indeed, grave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence. In one case,[81] this Court ruled that the lower court's resolution was "tantamount to overruling a judicial pronouncement of the highest Court x x x and unmistakably a very grave abuse of discretion."[82]

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

[81] *Cuison v. Court of Appeals*, 289 SCRA 161, April 15, 1998, per Panganiban, *J.*, citing *People v. Court of Appeals*, 101 SCRA 450, 465, per Melencio-Herrera, *J.*

[82] *Ibid.*, p. 173.

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The Public Character of Shares Is a Valid Issue

Private respondents also contend that the public nature of the coconut levy funds was not raised as an issue before the Sandiganbayan. Hence, it could not be taken up before this Court.

Again we disagree. By ruling that the two-tiered test should be applied in evaluating private respondents' claim of exercising voting rights over the sequestered shares, the Sandiganbayan effectively held that the subject assets were private in character. Thus, to meet this issue, the Office of the Solicitor General countered that the shares were not private in character, and that quite the contrary, they were and are public in nature because they were acquired with coco levy funds which are public in character. In short, the main issue of who may vote the shares cannot be determined without passing upon the question of the public/private character of the shares and the funds used to acquire them. The latter issue, although not specifically raised in the Court *a quo*, should still be resolved in order to fully adjudicate the main issue.

Indeed, this Court has "the authority to waive the lack of proper assignment of errors if the unassigned errors closely relate to errors properly pinpointed out or if the unassigned errors refer to matters upon which the determination of the questions raised by the errors properly assigned depend."[83]

Therefore, "where the issues already raised also rest on other issues not specifically presented as long as the latter issues bear relevance and close relation to the former and as long as they arise from matters on record, the Court has the authority to include them in its discussion of the controversy as well as to pass upon them."[84]

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[83] *Diamante v. CA*, 206 SCRA 52, 63-64, February 7, 1992, per Davide, Jr., *J.* (now *CJ*), citing *Insular Life Assurance Co. Ltd. Employees Association — NATU v. Insular Life Assurance Co. Ltd.*, 76 SCRA 50, 61-62, March 10, 1997, per Castro, *CJ.*

[84] *Ibid.*

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No Positive Relief For Intervenors

Intervenors anchor their interest in this case on an alleged right that they are trying to enforce in another Sandiganbayan case docketed as SB Case No. 0187.[85] In that case, they seek the recovery of the subject UCPB shares from herein private respondents and the corporations controlled by them. Therefore, the rights sought to be protected and the reliefs prayed for by intervenors are still being litigated in the said case. The purported rights they are invoking are mere expectancies wholly dependent on the outcome of that case in the Sandiganbayan.

Clearly, we cannot rule on intervenors' alleged right to vote at this time and in this case. That right is dependent upon the Sandiganbayan's resolution of their action for the recovery of said sequestered shares. Given the patent fact that intervenors are not registered stockholders of UCPB as of the moment, their asserted rights cannot be ruled upon in the present proceedings. Hence, no positive relief can be given them now, except insofar as they join petitioner in barring private respondents from voting the subject shares.

Epilogue

In sum, we hold that the Sandiganbayan committed grave abuse of discretion in grossly contradicting and effectively reversing existing jurisprudence, and in depriving the government of its right to vote the sequestered UCPB shares which are *prima facie* public in character.

In making this ruling, we are in no way preempting the proceedings the Sandiganbayan may conduct or the final judgment it may promulgate in Civil Case Nos. 0033-A, 0033-B and 0033-F. Our determination here is merely *prima facie,* and should not bar the anti-graft court from making a final ruling, after proper trial and hearing, on the issues and prayers in the said civil cases, particularly in reference to the ownership of the subject shares.

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[85] *Rollo*, pp. 779-797.

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We also lay down the caveat that, in declaring the coco levy funds to be *prima facie* public in character, we are not ruling in any final manner on their classification — whether they are general or trust or special funds — since such classification is not at issue here. Suffice it to say that the public nature of the coco levy funds is decreed by the Court only for the purpose of determining the right to vote the shares, pending the final outcome of the said civil cases.

Neither are we resolving in the present case the question of whether the shares held by Respondent Cojuangco are, as he claims, the result of private enterprise. This factual matter should also be taken up in the final decision in the cited cases that are pending in the court *a quo*. Again suffice it to say that the only issue settled here is the right of PCGG to vote the sequestered shares, pending the final outcome of said cases.

This matter involving the coconut levy funds and the sequestered UCPB shares has been straddling the courts for about 15 years. What we are discussing in the present Petition, we stress, is just an incident of the main cases which are pending in the anti-graft court — the cases for the reconveyance, reversion and restitution to the State of these UCPB shares.

The resolution of the main cases has indeed been long overdue. Every effort, both by the parties and the *Sandiganbayan*, should be exerted to *finally* settle this controversy.

WHEREFORE, the Petition is hereby *GRANTED* and the assailed Order *SET ASIDE*. The PCGG shall continue voting the sequestered shares until Sandiganbayan Civil Case Nos. 0033-A, 0033-B and 0033-F are finally and completely resolved. Furthermore, the Sandiganbayan is *ORDERED* to decide with finality the aforesaid civil cases within a period of six (6) months from notice. It shall report to this Court on the progress of the said cases every three (3) months, on pain of contempt. The Petition in Intervention is *DISMISSED* inasmuch as the reliefs prayed for are not covered by the main issues in this case. No costs.

SO ORDERED.

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Davide, Jr., C.J., Bellosillo, Mendoza, Quisumbing, Buena, De Leon, Jr., and *Carpio, JJ.,* concur.

Melo, J., see dissenting opinion.

Puno, J., joins the separate opinion of *J.* Vitug.

Vitug, J., see separate opinion.

Kapunan, Ynares-Santiago, Sandoval-Gutierrez, JJ., concur with the dissenting opinion of *J.* Melo.

Pardo, J., joins in the result of the dissents.

VITUG, *J.,* *separate opinion:*

The Presidential Commission on Good Government ("PCGG"), representing the Republic of the Philippines, assails in the instant special action for *certiorari* under Rule 65 of the Rules of Court, the order, dated 28 February 2001, of public respondent Sandiganbayan (First Division) in Civil Cases No. 0033-A, 0033-B, and 0033-F, entitled *"Republic of the Philippines vs. Eduardo Cojuangco, Jr., et al.,"* on the ground of grave abuse of discretion amounting to lack of jurisdiction. In the order, the Sandiganbayan enjoined the PCGG from voting the sequestered shares of stock of the United Coconut Planters' Bank ("UCPB") and authorized private respondents Philippines Coconut Producers Federation, Inc. ("COCOFED"), *et al.*, Ballares, *et al.*, and Eduardo Cojuangco, Jr., *et al.*, to vote the UCPB shares registered in their names and themselves be voted upon at the stockholders' meeting of the bank.

The institution of sequestration proceedings by the PCGG against the shares of stock of the UCPB claimed to be owned by one million coconut farmers and the "Coconut Industry Investment Fund" ("CIIF") companies, was among the measures undertaken by the Aquino Government shortly after the February 1986 Revolution for the recovery of "ill-gotten wealth" said to have been amassed by former President and Mrs. Ferdinand E. Marcos, their relatives, friends and business associates. Among the initial cases filed with the Sandiganbayan was Case No.003 against private respondent Eduardo Cojuangco, Jr., and

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sixty others, for reconveyance, reversion, accounting, restitution and damages. Sequestration orders were later issued by the Sandiganbayan.

Subsequently, however, Sandiganbayan issued a resolution lifting the sequestration of the UCPB shares of stock registered in the name of the coconut farmers and the CIIF companies on the thesis that these entities were not so impleaded by the PCGG as party-defendants, having merely been listed in an annex appended to the complaint in Case No.003. The PCGG questioned, *via* a petition for *certiorari*, docketed G.R. No. 96073, that resolution before this Court. In the interim, the Sandiganbayan authorized the holding of a stockholders' meeting for the election of the members of the Board of Directors of the UCPB. Ruling in favor of a petition filed by Eduardo Cojuangco, Jr., this Court lifted the temporary restraining order it issued against the holding of said meeting and allowed private respondents to vote the sequestered shares of stock. On 16 February 1993, the Court recalled this order by issuing another resolution, directing the restoration of the *status quo ante* in G.R. No. 96073. The resolution allowed the PCGG to continue voting the sequestered shares of stock of the UCPB at the bank's meetings, pending determination of the validity of the Sandiganbayan resolution lifting the sequestration of said shares. Justifying the new order, the Court adverted to its earlier decision in COCOFED *vs.* PCGG[1] which dismissed the petition of private respondent COCOFED to nullify the sequestration order against, *inter alia,* the UCPB shares of stock. The acquisition of the UCPB shares was explained thusly:

"The United Coconut Planters Bank (or the UCPB) is a commercial bank acquired 'for the benefit of the coconut farmers' (Section 1, PD 755) with the use of the Coconut Consumers Stabilization Fund (CCSF) in virtue of P.D. 755, promulgated on 29 July 1975. The Decree authorized the Bank to provide the intended beneficiaries with 'readily available credit facilities at preferential rates' (*Ibid.*). It also authorized the distribution of the Bank's shares of stock, free, to the coconut farmers; and some 1,405,366 purported recipients have

[1] 178 SCRA 236.

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been listed as UCPB stockholders as of 10 April 1986 (Item A. 1. 1. Of the UCPB List of Stockholders.)"

The Coconut Consumers Stabilization Fund (CCSF) was established by P.D. 276 on 29 August 1973. Its funds, used in acquiring UCPB, were derived from the collection of a "Stabilization Fund Levy" of fifteen pesos (₱15.00) on the first sale of every 100 kilograms of copra *resecada* or equivalent product. The CCSF, later firmed up by amendatory decrees, was intended to subsidize the sale of coconut-based products at prices set by the Price Control Council in order to stabilize the price of edible oil and other coconut oil-based products for the benefit of consumers.[2]

Relying on these pronouncements, the Court, in its 16th February 1993 resolution, raised the following relevant questions: *"How is it that shares of stock in such entities which were organized and financed by revenues derived from coconut levy funds which were imbued with public interest ended up in private hands who are not farmers or beneficiaries; and whether or not the holders of said stock, who in one way or another had had some part in the collection, administration, disbursement or other disposition of the coconut levy funds, were qualified to acquire stock, in the corporations formed and operated from those funds."* These issues, the Court noted, were still unresolved and, in fact, unaffected by the issue of the automatic lifting of the sequestration. Thus, the resolution declared: "*The right of the petitioners to vote stock in their names at the meetings of the UCPB cannot be conceded at this time. That right still has to be established by them before the Sandiganbayan. Until that is done, they cannot be deemed legitimate owners of UCPB stock and cannot be accorded the right to vote them.*"

On 23 January 1995, the Court, in a consolidated decision which, among other cases, included G.R. No. 96073, nullified

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[2] *Id.*, p. 242.

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and set aside the disputed Sandiganbayan resolution and upheld the sequestration of the UCPB shares of stock on the ground that the impleading of the subject firms would be unnecessary since, if warranted by the evidence, judgments could be handed down against the defendants divesting them of their ownership of said shares and imposing upon them the obligation of surrendering the shares of stock to the Government. The decision, while not expressly ratifying the 16th February 1993 resolution, was a mandate, nevertheless, for the maintenance of the *status quo ante* that embraced the exercise by the PCGG of its voting rights on the sequestered shares of stock of the UCPB.

Since 1986, the PCGG had been able to effectively install its nominees to the Board of Directors of the UCPB. Such was the state of affairs when the Sandiganbayan so issued the challenged resolution on 28 February 2001, authorizing COCOFED, *et al.*, Ballares, *et al.*, and Eduardo Cojuangco, Jr., *et al.*, along with all other registered stockholders of UCPB, to vote the shares of stock and themselves be voted upon at stockholders' meetings of the UCPB. In support of this order, preempting the final disposition of the main case in Case No. 003, Sandiganbayan applied the two-tiered test enunciated in *Eduardo Cojuangco, Jr., vs. CaIpo*[3] and *PCGG vs. Eduardo Cojuangco, Jr.*[4] As so aptly argued by petitioner, however, the test would find no application to a case of the "takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands."[5] The Court acknowledged to be a fact that the money used to purchase and capitalize the UCPB had come from the CCSF,[6] a fund raised from the exercise by the State of its inherent police and taxing powers.

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[3] G.R. No. 115352, 10 June 1997.

[4] 302 SCRA 217.

[5] *Cojuangco vs. Roxas*, 195 SCRA 797; *BASECO vs. PCGG*, 150 SCRA 181.

[6] *COCOFED vs. PCGG, supra.*

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To account for their equity holdings in the bank, COCOFED, *et al.*, in their Memorandum,[7] would advance that, in 1975, COCOFED, a private national association of coconut producers, was designated 'by the Philippine Coconut Authority ("PCA") as being the implementing agency for the free distribution of the shares of stock of the UCPB to the coconut farmers. By 02 May 1981, 232,805,852.16 of said shares were distributed to the farmers. Still there remained 15,619,419.84 shares registered in the name of COCOFED which, according to it, were ultimately given to the farmers. Prior to June 1986, a substantial number of the coconut farmers sold their shares in the bank at prices below par value. By way of a financial assistance to the selling coconut farmers, the UCPB Board of Directors authorized the CIIF companies to purchase their holdings in the bank at par value. These transactions, nevertheless, did not change the character of the UCPB shares, these having been bought with coconut levy funds which the Court distinctly characterized to be "clearly affected with public interest" and "raised such as they were by the State's police and taxing powers."[8]

The fundamental rule is that tax proceeds may only be used for a public purpose, which may either be a general public purpose to support the existence of the state or a special public purpose to pursue certain legitimate objects of government in the exercise of police power, and none other. As a measure to ensure the proper utilization of money collected for a specified public purpose, the 1987 Constitution, restating another general principle, treats the proceeds as a special fund to be paid out for such purpose. If, however, that purpose has been fulfilled or is no longer forthcoming, the balance, if any, shall then be transferred to the general funds of the government,[9] which may thereafter

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[7] Memorandum for Respondents *COCOFED, et al.* and *Ballares, et al.*, pp. 4-6.

[8] *COCOFED vs. PCGG, supra.*

[9] Article VI, Section 29, par. 3, 1987 Constitution.

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be appropriated by Congress and expended for any legitimate purpose within the scope of the general fund. An entity, whether public or private, which holds the tax money has no authority to disburse it or to pay any of it to anyone, the power to dispose of such money being vested in the legislature.[10] *Thus, the 1987 Constitution, like its counterparts in the 1935 and the 1973 Constitution, mandates that no money shall be paid out of the national treasury except in pursuance of an appropriation made by law.*[11]

Respondent Eduardo Cojuangco, Jr., upon the other hand, in claiming ownership over a portion of the sequestered UCPB shares, advanced two documents — an agreement in May 1975, where he appeared to have exercised his option to acquire the UCPB shares of stock owned by the family of the late Don Jose Cojuangco, Sr., amounting to 72.2% equity holding in the bank, at two hundred pesos (Php 200.00) per share, and the "Agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers of the Philippines", dated 25 May 1975, whereby the PCA purchased with funds from the CCSF the aforesaid UCPB shares from Eduardo Cojuangco, Jr., also at two hundred pesos (Php 200.00) per share.[12] In the latter agreement, it was stipulated that as compensation for exercising his personal and exclusive option to acquire the UCPB shares and for transferring such shares to the PCA, Eduardo Cojuangco, Jr., would receive one (1) share for every nine (9) shares acquired by the PCA and additional equity in the bank. In sum, correlating the two agreements, Eduardo Cojuangco, Jr., would contend, in effect, that he retained title over roughly 10% equity holding in the bank and established his *prima facie* right over the corresponding shares independently sourced from

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[10] *Corpus Juris Secundum*, 1057-1059; *State ex rei. Sathre vs. Hopton*, 265 N.W. 395, 66 N.D. 313; citing *Glendale Union High School Dist. No.11*, 99 P. 2d 482, 55 Ariz. 151.

[11] Art. VI, Sec. 29 (1), 1987 Constitution.

[12] Memorandum for Respondent Eduardo Cojuangco, Jr., p.3; Comment on the Petition, Annex A and B.

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the coconut levy funds. Even if it were to be conceded that the said 10% holding in UCPB of Eduardo Cojuangco, Jr., could be assailed, pending a conclusive determination on the legality of such a retention, however, it would neither be right nor just to deprive him from meanwhile exercising his right to at least vote the same.

For the foregoing reasons, I vote to *grant* the petition in part and to *deny* it insofar as the shares of stock pertaining to the 10% of the 72% equity retention standing in the name of Eduardo Cojuangco, Jr., are concerned.

In passing, I should like to state my understanding of the ruling of the Court. I must first clarify, however, that sequestration does not mean the vesting of title in the hands of the sequestering authority; rather, the term implies the preservation of assets. Neither ownership nor rights thereover are acquired or lost by virtue alone of sequestration — a mere ancillary remedy to secure a disputed asset.

(a) By a vote of ten justices, namely Chief Justice Davide and Justices Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Buena, de Leon and Carpio, the coconut levy funds have been declared *prima facie* to be "public funds."

Justices Melo, Kapunan, Pardo, Ynares-Santiago and Sandoval-Gutierrez have dissented from the view of the majority.

(b) The Sandiganbayan must now determine conclusively and with deliberate dispatch the status of sequestered shares of stock, as well as whether or not the shares have been acquired utilizing the coconut levy funds, and ultimately, the ownership thereof.

(c) Meanwhile, the right to vote the disputed shares belongs to whoever or whichever can show *prima facie* ownership or a better right thereover. Chief Justice Davide and Justices Bellosillo, Mendoza, Panganiban, Quisumbing, Buena, de Leon and Carpio hold that such *prima facie* showing exists in favor of the government on all the disputed shares. Justices Puno and Vitug concur except for the 10% of the 72% disputed shares

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in the name of respondent Cojuangco over which the PCGG will yet have to establish a *prima facie* right of ownership.

Justice Melo, Kapunan, Pardo, Ynares-Santiago and Sandoval-Gutierrez maintain the view that, the coconut levy funds not being public funds and the government not having been able to satisfactorily establish to date its title over the sequestered shares, the PCGG has no right to vote any of the disputed shares.

MELO, *J.*, *dissenting opinion*:

I respectfully dissent from the majority opinion, penned by Mr. Justice Panganiban, upholding the right of the PCGG to vote the sequestered UCPB shares of stock.

The petition sprung from the following factual antecedents:

In 1986 and 1987, numerous business enterprises, entities, and pieces of property, real and personal, were sequestered or taken over by the PCGG on the ground that these were ill-gotten property of former President Marcos, his family, and close associates. Among these sequestered property were shares of stock in the United Coconut Planters Bank (UCPB) registered in the name of 1,405,366 coconut farmers and of the so-called Coconut Industry Investment Fund (CIIF) companies.

In connection with the sequestration and take-over of said UCPB shares of stock, the PCGG, on July 31, 1987, instituted an action for reconveyance, reversion, accounting, restitution, and damages against Eduardo Cojuangco, Jr. and sixty others with the *Sandiganbayan,* docketed therein as Case No. 0033.

On November 19, 1990, and during the pendency of the case, the *Sandiganbayan* issued a resolution lifting the sequestration of the UCPB shares of stock registered in the name of "1 million coconut farmers" and the CIIF companies, on the ground that these entities were not impleaded by the PCGG as party-defendants within the 6-month period — ending on August 2, 1987 — fixed by the Constitution, having merely been listed in an annex appended to the complaint in Case No. 0033.

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This Resolution was challenged by the PCGG in a petition for *certiorari* filed with the Court, docketed herein as G.R. No. 96073. Pending resolution of the case, the *Sandiganbayan,* on March 4, 1991, ordered the holding of elections for members of the Board of Directors of UCPB. Opposing the holding of elections, PCGG applied for, and was granted by the Court a restraining order enjoining the holding of a stockholders' meeting for the election of the Board of Directors of UCPB.

However, on March 3, 1992, acting on a petition filed by Eduardo Cojuangco, Jr., the Court lifted the restraining order it had issued and ordered instead that UCPB elect its Board of Directors. Furthermore, the Court allowed the sequestered shares of UCPB to be voted by the registered owners thereof. The shareholders' victory would, however, be fleeting. On February 17, 1993, acting on the Solicitor General's *Clarification/ Manifestation with Motion,* the Court issued a subsequent Resolution declaring that "the right of the petitioners to vote stock in their names at the meetings of the UCPB cannot be conceded at this time. That right still has to be established by them before the *Sandiganbayan.* Until that is done, they cannot be deemed legitimate owners of UCPB stock and cannot be accorded the right to vote them." Accordingly, the dispositive portion of said Resolution provided:

> IN VIEW OF THE FOREGOING, the Court recalls and sets aside the Resolution dated March 3; 1992 and; pending resolution on the merits of the action at bar, and until further orders, suspends the effectivity of the lifting of the sequestration decreed by the *Sandiganbayan* on November 15, 1990, and directs the restoration of the *status quo ante,* so as to allow the PCGG to continue voting the shares of stock under sequestration at the meetings of the United Coconut Planters Bank.
>
> IT IS SO ORDERED.
>
> (*Rollo*, p. 73.)

Two years thereafter, on January 23, 1995, the Court rendered a decision in G.R. No. 96073 (240 SCRA 376) nullifying and setting aside the November 19, 1990 Resolution of the

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Sandiganbayan lifting the sequestration of the shares of stock of UCPB registered in the name of "1 million coconut farmers" and of the CIIF companies on the ground that "as regards actions in which the complaints seek recovery of defendants' shares of stock in existing corporations (*e.g.* San Miguel Corporation, Benguet Corporation, Meralco, *etc.*) because allegedly purchased with misappropriated public funds, in breach of fiduciary duty, or otherwise under illicit or anomalous conditions, the impleading of said firms would clearly appear to be unnecessary" since, if warranted by the evidence, judgments could be handed down against the defendants divesting them of their ownership of said stock and imposing upon them the obligation of surrendering said stock to the Government. It may be noted that in said decision, the Court did not reaffirm and maintain its Resolution dated February 17, 1993.

A month thereafter, the PCGG, pursuant to the order of the *Sandiganbayan,* subdivided Case No. 0033 into eight complaints, docketed as Cases No. 0033-A to 0033-H.

Six years thereafter, on February 13, 2001, the Board of Directors of UCPB, received a letter from the ACCRA Law Office. Written on behalf of the Philippine Coconut Producers' Federation (COCOFED), *et al.* and the more than one million coconut farmers who are registered stockholders of UCPB, the letter demanded of UCPB, which had not held any stockholders' meeting since 1986, to call such a meeting on March 6, 2001, at 3 o'clock in the afternoon, for the purpose of, among other things, electing the Board of Directors. In the same letter, COCOFED also requested information as to whether UCPB had investigated and reported to the Bangko Sentral ng Pilipinas the large scale estafa allegedly committed by the previous members of the board and other responsible officials of UCPB.

On February 26, 2001, the UCPB Board of Directors, by way of response to the aforementioned letter, passed and approved a resolution calling for a stockholders' meeting of the bank on March 6, 2001 at 3 o'clock in the afternoon, the date fixed in the bank's By-Laws.

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In anticipation of the announced stockholders' meeting, COCOFED, *et al.* and Ballares, *et al.*, filed, in the following *Sandiganbayan* cases:

Civil Case No. 0033-A;
Civil Case No. 0033-B; and
Civil Case No. 0033-F,

a class action omnibus motion dated February 23, 2001, seeking to enjoin the PCGG from voting in the announced stockholders' meeting of March 6, 2001 (a) the UCPB shares of stock registered in the names of the more than one million coconut farmers; (b) the San Miguel Corporation (SMC) shares registered in the names of the 14 CIIF Holding Companies and beneficially owned by COCOFED; and (c) the shares of stock registered in the name of PCGG itself.

Because of the motion's extreme urgency, and as prayed for by the movants themselves, the *Sandiganbayan* (1st Division) heard the motion on February 28, 2001. Lorenzo *v.* Tan, President of UCPB, was present during this hearing and in a manifestation, he asked to be heard therein.

The *Sandiganbayan* noted the manifestation of Mr. Lorenzo V. Tan, as follows:

> At a certain state of the argument on this matter, the UCPB sought to be heard in "executive session" upon the alleged significant matters of fact to be conveyed by the UCPB to this Court. Duly warned by the engaged counsel for the UCPB, Atty. Roberto San Juan, the Court excluded all private individuals and all counsel not related to these cases so that whatever matters of a restricted or confidential character of significance to banks in the business community, and of the UCPB in particular, could be heard in confidence.
>
> The bank's President in the person of Mr. Lorenzo V. Tan was heard.
>
> While the matters he put forth might be relevant to the bank, the entire thrust of the clarification made by the president was the need to dispose of this case expeditiously so that question of ownership of the shares and therefore of the bank, would be resolved with finality;

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this apparently is a desirable element in the business world and in the market in which banks operate, as much for drawing investments as for acceptability of other transactions and "products" of banks in the market. It must be stated that the matter, while important in itself, is of minor relevance to the issue at bar.

(p. 3, Order dated February 28, 2001.)

Following the conclusion of the hearing, the *Sandiganbayan* issued in open court on the same date — February 28, 2001- the Order authorizing COCOFED, et al., Ballares, et al. and Eduardo Cojuangco, Jr., et al. and all other registered stockholders of UCPB to vote their shares of stock and themselves to be voted upon at the UCPB announced stockholders' meeting of March 6, 2001 or in any subsequent continuation or resetting thereof, and to perform such acts as will normally follow in the exercise of their rights as registered stockholders. More specifically, the pertinent portion of the Order declared:

In view hereof, the movants COCOFED, et al. and Ballares, et al. as well as Eduardo Cojuangco, *et al.* who were acknowledged to be registered stockholders of the UCPB are authorized, as are all other registered stockholders of the United Coconut Planters Bank, until further orders from this Court, to exercise their rights to vote their shares of stock and themselves to be voted upon in the United Coconut Planters Bank (UCPB) at the scheduled Stockholders' Meeting on May 6, 2001 or on any subsequent continuation or resetting thereof, and to perform such acts as will normally follow in the exercise of these rights as registered stockholders.

On March 1, 2001, the *Sandiganbayan* issued a writ of preliminary injunction enjoining PCGG or any person acting in its behalf from voting the sequestered shares of UCPB at its scheduled stockholders' meeting of March 6, 2001, or at anytime at which the meeting may be continued or reset until otherwise ordered by the same court. In the same writ, the *Sandiganbayan* also directed the chairman and the secretary of the stockholders' meeting of UCPB on the above scheduled date and other dates to which the meeting may be reset, to acknowledge the right of Eduardo M. Cojuangco, Jr., *et al.* to vote the shares of stock

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registered in their names on all matters that may be properly considered before said stockholders' meeting.

Such was the state of things when, on March 5, 2001, herein petitioner Republic of the Philippines, represented by the PCGG, filed the instant petition premised on the fact that at all times prior to the questioned order, PCGG had been voting the sequestered UCPB shares registered in the names of private respondents under the authority of the Court's pronouncement in G.R. No. 96073 and 104850. PCGG claimed that the right granted to it to vote the sequestered shares was the *status quo* and for this *status quo* to be disturbed, there must be a clear showing that this Court has reversed or, at the very least, modified its prior pronouncements on the matter. Since there was none, petitioner contended that respondent *Sandiganbayan* gravely abused its discretion, tantamount to lack or excess of jurisdiction, when it granted the right to vote said sequestered shares to private respondents COCOFED, Ballares, and Cojuangco, Jr. *et al.* PCGG likewise insisted that the subject sequestered shares were purchased with coconut levy funds, funds declared public in character, and that the Resolution issued by this Court dated February 13, 1993 in G.R. No. 96073 remains effective.

In its Resolution of April 17, 2001, the Court defined the issue to be resolved in the instant case in this fashion:

> Did the *Sandiganbayan* commit grave abuse of discretion when it issued the disputed order allowing respondents to vote UCPB shares of stock registered in the name of respondents?

While the majority declares that, indeed, the *Sandiganbayan* acted with grave abuse of discretion in allowing respondents to vote their UCPB shares of stock registered in their names, I respectfully submit that it did not.

In determining whether there has been "grave abuse of discretion," under Rule 65, the "unyielding yardstick" is whether the abuse of discretion is "so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law,

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as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility *(Sinon vs. Civil Service Commission,* 215 SCRA 410 [1992]; *Planters Products, Inc. vs. Court of Appeals,* 193 SCRA 563 [1991]; *Litton Mills, Inc. vs. Galleon Trader, Inc.,* 163 SCRA 489 [1988]; *Esguerra vs. Court of Appeals,* 267 SCRA 380 [1997]; *Republic vs. Villarama,* 278 SCRA 736 [1997]).

To discharge its burden of showing that the *Sandiganbayan* acted with grave abuse of discretion, the PCGG relies principally on the Court's February 16, 1993 Resolution in *Republic vs. Sandiganbayan, et al.,* G.R. No. 96073 where we ordered the restoration of the *status quo ante* so as to allow PCGG to continue voting the shares of stock under sequestration at the meetings of the UCPB.

As correctly pointed out by respondents, the February 16, 1993 Resolution, is in the nature of a temporary restraining order, having been issued to recall the March 3, 1992 Resolution lifting of the temporary restraining order previously issued by the Court on March 5, 1991. In other words, the subject resolution merely reinstated the temporary restraining order which the Court had earlier issued enjoining private respondents from voting the sequestered shares registered in their names. Being in the nature of a restraining order, the same is interlocutory in character and it became *functus oficio* when this Court decided the PCGG Sequestration Cases, including G.R. No. 96073, on January 23, 1995. A restraining order is but a *provisional remedy* to which parties may resort "for the preservation or protection of their rights or interests, and for no other purpose, *during the pendency of the principal action* (*Commissioner of Customs vs. Cloribel,* 19 SCRA 234 [1967]).

Moreover, the Resolution of February 16, 1993 explicitly provided that it shall be effective only "pending resolution on the merits of the action at bar." G.R. No. 96073, the "action at bar" referred to, was decided on the merits on January 23, 1995. The dispositive portion of the decision in the aforementioned PCGG Sequestration Cases, including G.R. No.96073, provided:

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WHEREFORE, judgment is hereby rendered:

A. NULLIFYING AND SETTING ASIDE:

xxx x x x xxx

B. CONFIRMING AND MAINTAINING the temporary restraining orders issued in G.R. Nos. 104883, 105170, 105206, 105808, 105809, 107233, and 107908, which shall continue in force and effect during the continuation of the proceedings in the corresponding civil actions in the *Sandiganbayan,* subject to the latter's power to modify or terminate the same in the exercise of its sound discretion in light of such evidence as may be subsequently adduced; and

C. DISMISSING the petitions in G.R. Nos. 107908 and 109592, for lack of merit

(*Republic v. Sandiganbayan [First Division,* 240 SCRA 376 [1995], at pp. 474-476.)

Even a casual study of the above dispositive portion would show that the Court's Resolution dated February 16, 1993 is not among the temporary restraining orders "confirmed and maintained" in the January 23, 1995 decision.

In fact, in *Calpo vs. Sandiganbayan (Third Division)* (265 SCRA 380 [1996]), the Court clarified that the "PCGG Sequestration Cases," including G.R. No. 96073, did not involve the issue of PCGG's right to vote sequestered corporate shares. The Court held thus:

The crucial question in "The PCGG Sequestration Cases," capsulized by the Court in its resolution of 23 January 1995, is this:

"DOES INCLUSION IN THE COMPLAINTS FILED BY THE PCGG BEFORE THE SANDIGANBAYAN OF SPECIFIC ALLEGATIONS OF CORPORATIONS BEING "DUMMIES" OR UNDER THE CONTROL OF ONE OR ANOTHER OF THE DEFENDANTS NAMED THEREIN AND USED AS INSTRUMENTS FOR ACQUISITION, OR AS BEING DEPOSITARIES OR PRODUCTS, OF ILL-GOTTEN WEALTH; OR THE ANNEXING TO SAID COMPLAINTS OF A LIST OF SAID FIRMS, BUT WITHOUT ACTUALLY IMPLEADING THEM AS DEFENDANTS, SATISFY THE CONSTITUTIONAL

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REQUIREMENT THAT IN ORDER TO MAINTAIN A SEIZURE EFFECTED IN ACCORDANCE WITH EXECUTIVE ORDER NO. 1, s. 1986, THE CORRESPONDING "JUDICIAL ACTION OR PROCEEDING" SHOULD BE FILED WITHIN THE SIX-MONTH PERIOD PRESCRIBED IN SECTION 26, ARTICLE XVIII, OF THE (1987) CONSTITUTION?

x x x x x x x x x

Neither the qualifications of the PCGG nominees to sit in the SMC Board of Directors *nor the right of the PCGG to vote the sequestered corporate shares have been mentioned,* even in passing, by the Court. In fact, the promulgation of the Court's resolution in the PCGG sequestration cases should now pave the way for the cognizance by the *Sandiganbayan* of the *quo warranto* proceedings.

(p. 386-387; italics supplied.)

The issue being limited to the propriety of impleading the firms and corporations subject of sequestration, the Court's failure to "confirm and maintain" the February 16, 1993 Resolution only means that it became *functus oficio* upon resolution of the main action on January 23, 1995. The PCGG cannot, therefore, claim the continuing effectivity of said Resolution so as to authorize it to continue voting the sequestered UCPB shares.

The majority opinion, however, claims that PCGG's right to vote said shares remains on the ground that the *jurisprudential bases* for the Court's Resolution dated February 16, 1993 still remain. In *Buayan Cattle Co. vs. Quintillan* (128 SCRA 276 [1984]), the Court categorically declared that a complaint for injunctive relief must be construed strictly against the pleader. Even if the jurisprudential bases for the Resolution are still extant, the fact that said Resolution was not "confirmed and maintained" by the Court after it decided the main action militates against its continuing effectivity, otherwise a temporary restraining order would no longer be "temporary."

With the February 16, 1993 Resolution having lost effectivity, the question as to who could then vote the sequestered shares should then revert to the *Sandigabayan,* in accordance with

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our ruling in *Philippine Coconut Producers Federation, Inc. (COCOFED) vs. Presidential Commission on Good Government* (178 SCRA 236 [1989]), where we directed:

> 3. The incidents concerning the voting of the sequestered shares, the COCOFED elections, and the replacement of directors, being matters incidental to the sequestration, should be addressed to the *Sandiganbayan* in accordance with the doctrine laid down in *PCGG vs. Pena*, 159 SCRA 556, reiterated in G.R. No. 74910, *Andres Soriano III vs. Hon. Manuel Yuzon*,; G.R. No. 75075, *Eduardo Cojuangco, Jr. vs. Securities and Exchange Commission*; G.R. No. 75094, *Clifton Ganay vs. Presidential Commission on Good Government;* G.R. No. 76397, *Board of Directors of San Miguel Corporation vs. Securities and Exchange Commission*; G.R. No.79459, *Eduardo Cojuangco, Jr. vs. Hon. Pedro N. Laggui;* G.R. No. 79520, *Neptunia Corporation, Ltd. vs. Presidential Commission on Good Government*, August 10, 1988.
>
> (p. 253.)

Significantly, even the Resolution in dispute recognizes that it is the *Sandiganbayan* which should determine who has the right to vote said shares, the same stating that "the right of the petitioners to vote stock in their names at the meetings of the UCPB cannot be conceded at this time. *That right still has to be established by them before the Sandiganbayan.*"

It must also be pointed out that even the temporary restraining orders "confirmed and maintained" by the Court in the Sequestration Cases were made subject to the *Sandiganbayan's* "powers to modify or terminate the same in the exercise of its sound discretion," thereby reinforcing the conclusion that the February 16, 1993 Resolution relied upon by PCGG (which was not "confirmed and maintained" by the Court) was, in any event, subject to modification or termination by the *Sandiganbayan*.

And in the exercise of its power to determine who should vote the sequestered shares, the *Sandiganbayan* must be guided by the principles first enunciated in *BASECO vs. PCGG* (150 SCRA 181 [1987]), and further elucidated by the Court in

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Cojuangco, Jr. vs. Roxas (195 SCRA 797 [1991]), where we stated that:

Nothing is more settled than the ruling of this Court in *BASECO vs. PCGG,* that the PCGG cannot exercise acts of dominion over property sequestered. ***It may not vote sequestered shares of stock or elect the members of the board of directors of the corporation concerned*** —

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 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. 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 the resort to the provisional remedies in question *shall 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 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; 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

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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, 'watchdog' or overseer, it is not that of manager, or innovator, much less an owner.*

xxx xxx xxx

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 x x (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 of 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 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 the 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

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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 x x (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 be henceforth be guided and governed by the norms herein laid down. They should never for a moment allow themselves to forget that 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.

xxx x x x xxx

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.

The constitutional right against deprivation of life, liberty and property without due process of law is so well- known and too precious so that the hand of the PCGG must be stayed in its indiscriminate takeover of and voting of shares allegedly ill-gotten in these cases. It is only after appropriate judicial proceedings when a clear determination is made that said shares are truly ill-gotten when such a takeover and exercise of acts of strict ownership by the PCGG are justified.

(pp. 808-813.)

These principles were subsequently refined in the cases of *Eduardo Cojuangco, Jr. vs. Calpo* (G.R. No. 115352, June

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10, 1997) and *PCGG vs. Eduardo Cojuangco, Jr.* (G.R. No. 133197, January 27, 1999) where we held that:

> 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 imminent danger of dissipation thus necessitating their continued sequestration and voting by the PCGG while the main issue pends with the *Sandiganbayan*.
>
> The foregoing two points require presentation of evidence which can only be done before the *Sandiganbayan,* it being settled that the Supreme Court is not a trier of facts.
>
> (p. 2, Resolution, June 10, 1997.)

However, the majority opinion holds that the two-tiered test above-enunciated finds no application to the case of a take-over of a business belonging to government or whose capitalization comes from public funds, but which landed in private hands, citing *Cojuangco vs. Roxas* and *BASECO* as authority therefor. The majority opinion asserts that the government is granted authority to vote sequestered shares:

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.

In fine, the majority points out that since the instant case involves shares that were acquired with public funds which somehow landed in private hands, there is no more need to apply the two-tiered test, the right to vote said shares automatically vesting in the government, acting through the PCGG.

As stated earlier, the Court, in *Cojuangco vs. Roxas,* unequivocally declared that "[t]he rule in this jurisdiction is, therefore, clear. The PCGG cannot perform acts of strict ownership of sequestered property. It is a mere conservator.

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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."

Thus, it is well-settled that *the only instance when PCGG can vote the shares in a sequestered corporation* is in case of a takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands. The foregoing principle, as stated in the majority opinion, has been reiterated in many subsequent cases, most recently in *Antiporda vs. Sandiganbayan* (G.R. No. 116941, May 31, 2001).

On the other hand, the two-tiered test, first enunciated in *Cojuangco vs. Calpo* and subsequently in *PCGG vs. Cojuangco Jr.*, provides the guidelines or requisites to be fulfilled in determining whether or not PCGG can vote shares in a sequestered corporation. Since PCGG can vote the shares in a sequestered corporation only in case of a takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands, plainly the two-tiered test is applicable only in this instance. In other words, the two-tiered test is designed precisely to verify whether or not the sequestered corporation is a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands! Thus, I submit that the *Sandiganbayan* did not err when it applied the two-tiered test in disallowing the PCGG to vote the sequestered shares.

In authorizing COCOFED, Ballares, and Eduardo Cojuangco, Jr. to exercise their right to vote their shares of stock, the *Sandiganbayan* stated:

> Jurisprudence, from as far back as the leading case of *Baseco* (150 SCRA 181), has clearly defined the functions and authority of the PCGG in relation to sequestered property. Be it noted by way of footnote that government agencies as well as government officials, do not have rights in the exercise of the functions of the office. They have only duties to perform and authority by means of which they may comply with those duties under the law.

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In this instance, the issue is whether or not the authority of the PCGG exists to remain in control of the voting rights of sequestered shares of stock in general, and whether or not the sequestered shares of stock in the UCPB in particular may be voted by it as part of its functions as sequestor of these shares of stock; corollarily, may the moving stockholders exercise of their proprietary rights over the shares of stock, save for the limitations of free disposal, until judgment shall have been rendered against them thereon.

It may be stated that jurisprudence has evolved from certain categorical positions originally enunciated to more refinements as time and events demonstrated to be appropriate. Let it also be noted that jurisprudence has not reversed itself; rather, jurisprudence has re-stated the rules as the circumstances and the facts presented before the courts had required in order to put in proper perspective the earlier assertions of jurisprudence.

In this light, the Court is faced now with the question: Who may vote sequestered shares of stock in general, and who may vote them in the particular instance of the UCPB shares of stock at its scheduled Stockholders' Meeting on March 5, 2001?

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In the light of all of the above, the Court submits itself to jurisprudence and with the statements of the Supreme Court in G.R. No. 115352 entitled *Enrique Cojuangco, Jr., et al. vs. Jaime Calpo, et al.* dated June 10, 1997, as well as the resolution of the Supreme Court promulgated on January 27, 1999 in the case of *PCGG vs. Eduardo Cojuangco, Jr., et al.*, G.R. No. 13319 which included the *Sandiganbayan* as one of the respondents. In these two cases, the Supreme Court ruled that the voting of sequestered shares of stock is governed by two considerations, namely,

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 imminent danger of dissipation thus necessitating their continued sequestration and voting by the PCGG while the main issue pends with the *Sandiganbayan.*

(p. 5, *Presidential Commission on Good Government vs. Eduardo M. Cojuangco, Jr., et al., supra)*

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This ruling does not state where, what or who the cause of the dissipation might be to justify the vote by the PCGG of the shares under sequestration. If the registered stockholders, however, have not participated in the management of the corporation, and the dissipation has not been demonstrated to have been caused either by the stockholders' action in the past, nor by action independent of the management during sequestration, then whatever "imminent danger of dissipation necessitating their continued sequestration and voting by the PCGG..." could not be raised against the voting rights of the asserting stockholders.

The Court has sought to obtain by all means any form of reinforcement from the PCGG on this matter, not only this morning but over the months that go as far back as July of the year 2000. Much to the impatience of this Court, the matter has not been responded to in any satisfactory manner.

(pp. 2-5, Order dated February 28, 2001.)

A perusal of the above order would show that the *Sandiganbayan,* in allowing private respondents to vote their shares, merely followed judicial precedents laid down by the Court. These decisions have not been challenged by the PCGG. Their review, much less reversal, has not been sought. They continue to express good law. I find no "patent or gross" arbitrariness or despotism by reason of passion or personal hostility in the *Sandiganbayan*'s adherence to these precedents. I thus submit that one can hardly characterize the *Sandiganbayan*'s order authorizing private respondents to vote their sequestered shares of stock as having been issued with grave abuse of discretion.

Additionally, *Cojuangco, Jr. vs. Roxas* is cited by the other side as authority for the proposition that PCGG should be the one to vote the sequestered shares, the Court having declared in *Roxas* that: "[t]he only conceivable exception (to the rule that PCGG may not vote the shares in a corporation and elect the members of the board of directors) 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." PCGG thus, likens the facts of the instant petition to the *BASECO* case.

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The *BASECO* case does not support petitioner's position. It was proven in the *BASECO* case that 95.82% of the outstanding stock of BASECO, endorsed in blank by the owners thereof, were inexplicably in the possession of then President Marcos. More, deeds of assignment of practically all the stock of the corporations owning the aforementioned 95.82% were also inexplicably in the possession of President Marcos. Thus, in the case of *BASECO,* the directors thereof were merely Marcos nominees or dummies, it having been proven that President Marcos not only exercised control over BASECO but also that he actually owned almost 100% of BASECO's outstanding stock. Then too, it was proven that BASECO had been able to take-over and acquire the business and assets of the National Shipyard and Steel Corporation and other government-owned or controlled entities through the undue exercise by then President Marcos of his powers, authority, and influence. Upon these premises, the Court held that the government could properly exercise control and management over what appeared to be properties and assets owned and belonging to the government itself. Hereunder are the pertinent observations of the Court in said case:

> The facts show that the corporation known as BASECO was owned or 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.
>
> xxx xxx xxx
>
> 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

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> by the memorandum of the President (to the PCGG) dated June 26, 1986, particularly, where as in this case, the government can, though 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."*

In contrast, respondents in the instant case are the registered stockholders. No evidence was presented before the *Sandiganbayan* showing that respondents are mere "tools of President Marcos and were no longer owners of any stock in the firm if they ever were at all."

Nor has it been shown that the sequestered UCPB shares of stock were inexplicably acquired by respondents. Respondent Cojuangco Jr. obtained his shares by virtue of an agreement with the Philippine Coconut Authority (PCA) whereby, as compensation for exercising his personal and exclusive option to acquire UCPB shares, Cojuangco Jr. would receive 1 share for every 9 acquired by PCA. The UCPB shares of stock in the name of the 1,405,366 coconut-farmers, on the other hand, were distributed to them by virtue of Presidential Decree No. 755, which authorized the distribution of UCPB's shares of stock, free, to coconut farmers. Other UCPB shares were acquired by the CIIF companies. It is precisely the validity of these acquisitions which is under litigation in the main case pending with the *Sandiganbayan.*

The view expressed by the majority that the UCPB shares, having been acquired with the use of coconut levy funds, and, therefore belong to the government, may very well turn out to be correct. However, since these issues are still pending litigation at the *Sandiganbayan,* it would be premature, I submit, to rule on this point at this time. Verily, the validity of the acquisition by Cojuangco Jr., *et al.* of their UCPB shares is the very *lis mota* of the action for reconveyance, accounting, reversion, and restitution filed by the PCGG with the *Sandiganbayan.* To rule on this matter would be to preempt said court.

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Too, the argument that the coconut levy funds used to purchase the sequestered UCPB shares of stock are public funds does not appear to have been raised before the *Sandiganbayan*; consequently, the *Sandiganbayan* did not rule on the nature of the fund. It would be absurd to hold that the *Sandiganbayan* gravely abused its discretion in not holding that the sequestered shares belong *prima facie* to the government, the issue of whether or not coconut levy funds are public funds not having been raised before it.

Moreover, and as mentioned earlier, the nature of the funds used is a matter which should be decided first-hand by the *Sandiganbayan* when it resolves the merits of Civil Case No. 0033-A. Note should also be taken of the fact that the determination of whether the coconut levy funds are public funds involves the ascertainment of the constitutionality of Section 5, Article III of Presidential Decree No. 961 and Section 5, Article III of Presidential Decree No. 1468, both of which contain the following identical provisions:

> Section 5. *Exemptions.*— The Coconut Consumers Stabilization Fund and the Coconut Industry Development Fund as well as all disbursements of said Funds for the benefit of the coconut farmers as herein authorized shall not be construed or interpreted, under any law or regulation, as special or fiduciary funds, or as part of the general funds of the national government within the contemplation of P.D. 771; nor as a subsidy, donation, levy, government funded investment or government share within the contemplation of P.D. 898, the intention being that said Fund and the disbursements thereof as herein authorized for the benefit of the coconut farmers shall be owned by them in their own private capacities.

Presidential Decrees No. 961 and 1468 have not been repealed, revoked, or declared unconstitutional, hence they are presumed valid and binding. Without a previous declaration of unconstitutionality, the coconut levy funds may not thus be characterized as *prima facie* belonging to the government. That issue must first be resolved by the *Sandiganbayan*. In fact, when the Solicitor General, in G.R. No. 96073, filed a motion to declare the coconut levies collected pursuant to the various

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issuances as public funds and to declare Section 5, Article III of Presidential Decree No. 1468 as unconstitutional, the Court denied the same in a Resolution dated March 26, 1996.

Parenthetically, in *Philippine Coconut Producers Federation, Inc. vs. PCGG* (*supra*), the Court ruled that the fund is "affected with public interest," implying that the fund is private in character. If the coconut levy funds were public funds, then the Court would have so held and there would be no reason to describe the same as funds "affected with public interest." It may not, thus, be immediately said that the coconut levy funds are public funds, the resolution of the issue being left, at the first instance, with the *Sandiganbayan.*

And if it is to be recalled, the issue involved herein is whether or not the *Sandiganbayan* committed grave abuse of discretion when it issued the disputed order allowing respondents to vote the UCPB shares of stock registered in their names. The question of whether the coconut levy funds are public funds is not in issue here. In fact, the constitutionality of Presidential Decrees No. 961 and 1468 have not been raised by the PCGG during the proceedings before the *Sandiganbayan.*

Moreover, it should be pointed out that the avowed purpose of sequestration is to preserve the assets sequestered to assure that if, and when, judgment is rendered in favor of the petitioner, the judgment may be implemented. "Preservation," not "deprivation" before judgment, is its essence. That is why in *BASECO,* we emphasized:

d. *No Divestment of Title Over Property Seized*

It may perhaps be well at this point to stress once again the provisional, contingent character of the remedies just described. Indeed the law plainly qualifies the remedy of takeover by the adjective, "provisional." These remedies may be resorted to only for a particular exigency: to prevent in the public interest the disappearance or dissipation of property or business, and conserve it pending adjudgment in appropriate proceedings of the primary issue of whether or not the acquisition of title or other right thereto by the apparent owner was attended by some vitiating anomaly. None of the remedies is meant to deprive the owner or possessor of his title or any right

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to the property sequestered, frozen or taken over and vest it in the sequestering agency, the Government or other person. This can be done only for the causes and by the processes laid down by law.

That this is the sense in which the power to sequester, freeze or provisionally take over is to be understood and exercised, the language of the executive orders in question leaves no doubt. Executive Order No.1 declares that the sequestration of property the acquisition of which is suspect shall last *"until the transactions leading to such acquisition ... can be disposed of by the appropriate authorities."* Executive Order No. 2 declares that the assets or properties therein mentioned shall remain frozen *"pending the outcome of appropriate proceedings in the Philippines to determine whether any such assets or properties were acquired" by illegal means.* Executive Order No. 14 makes clear that judicial proceedings are essential for the resolution of the basic issue of whether or not particular assets are "ill-gotten," and resultant recovery thereof by the Government is warranted.

(pp. 211-212.)

In the instant case, however, the actuations of PCGG with regard to the sequestered shares partake more of deprivation rather than preservation. As pointed out by respondents, since 1986, only one (1) stockholders' meeting of UCPB has been held. At this meeting, PCGG voted all of the shares, as a result of which all members of the Board of UCPB, since 1986 to the present, have been PCGG nominees. When vacancies in the Board occur because of resignation, replacements are installed by the remaining members of the Board — on nomination of the PCGG. The stockholders' meeting scheduled on March 6, 2001 would have been the first stockholders' meeting since 1986 at which registered stockholders would exercise their right to vote and by their vote elect the members of the Board of Directors.

Also, the shares of stock in UCPB were sequestered in 1986. The civil action *"Republic of the Philippines v. Eduardo M. Cojuangco, Jr., Civil Case No. 033,"* was instituted before the *Sandiganbayan* on July 30, 1987. This action included, among other things, the UCPB shares of stock and was filed to maintain the effectivity of the writs of sequestration pursuant

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to Section 26, Article XVIII of the Constitution. Notwithstanding the lapse of more than 14 years, the proceedings have barely gone beyond the pre-trial stage. PCGG's exercise of the right to vote the sequestered shares of stock for a period of 14 years constitutes effectively a deprivation of a property right belonging to the registered stockholders (18 *Am. Jur.* 2d, Corporations 2d Section 1065, p. 859, citing cases), a state of affairs not within the contemplation of "sequestration" as a means of preservation of assets.

To recapitulate, evaluated in accordance with applicable jurisprudence, I hold that the issuance by respondent *Sandiganbayan* of its impugned Order dated February 28, 2001, is clearly not an act committed in grave abuse of discretion. Simply put, petitioner PCGG failed to persuade the *Sandiganbayan* — on the basis of the "two-tiered test" enunciated by this Court in the *San Miguel* case, *supra* — that it is entitled to vote the UCPB sequestered shares. Verily, the *Sandiganbayan* was duty-bound to comply with the jurisprudence laid down by the Court on the matter. This is certainly not a case of abuse, much more grave abuse of discretion, on the part of respondent *Sandiganbayan.*

I regret to say that I find unacceptable the contention that the *"law of the case"* herein should be the Resolution dated February 16, 1993 in *Republic of the Philippines vs. Sandiganbayan, et al.* For one, the UCPB shares of stock of respondents COCOFED, *et al.* and Ballares, *et al.* are not the subject of the case relied upon. Hence, the Resolution therein could not have referred to or covered said shares. For another, and more importantly, what is invoked by petitioner is, in effect, merely a restraining order which was not re-affirmed by the Court when we rendered the main decision in the said consolidated sequestration cases.

Rather, what I believe is truly applicable herein is the Court's decision in *COCOFED vs. PCGG* (178 SCRA 236 [1989]) wherein it was held that *"the incidents concerning the voting of the sequestered shares, the COCOFED elections, and*

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the replacement of directors, being matters incidental to the sequestration, should be addressed to the ***Sandiganbayan.***" Thus, the *Sandiganbayan* has been given by the Court full discretion to evaluate and to allow or disallow the duly registered stockholders of the UCPB shares to exercise the right to vote the said shares in the UCPB elections and/or appointment/replacement of its directors. If, as in the case at hand, the *Sandiganbayan,* in the exercise of its sound discretion and for justifiable reasons cited in its assailed Order of February 28, 2001, allowed herein private respondents to vote the sequestered shares in question, one would simply be at a loss to understand how such action could be said to be tainted with grave abuse of discretion.

FOR THE FOREGOING REASONS, I vote to DISMISS the instant petition for lack of merit.

SECOND DIVISION

[A.C. No. 5020. December 18, 2001]

ROSARIO JUNIO, *complainant, vs.* **ATTY. SALVADOR M. GRUPO,** *respondent.*

SYNOPSIS

A complaint for disbarment was filed against respondent Atty. Salvador M. Grupo for malpractice and gross misconduct. Complainant Rosario N. Junio alleged that she engaged the services of respondent then a private practitioner, for the redemption of a parcel of land covered by Transfer Certificate of Title No. 20394 registered in the name of her parents, spouses Rogelio and Rufina Nietes, and located at Concepcion, Loay, Bohol. Complainant entrusted to respondent the amount of