Supreme Court E-Library

In three recent cases[1] involving similar violations, this Court imposed the penalty of reprimand on the erring judges. Hence, the same penalty should be imposed on Judge Mendoza.

WHEREFORE, Judge Salvador B. Mendoza is hereby *REPRIMANDED* with the *WARNING* that a repetition of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.

Davide, Jr., C. J. (Chairman), Puno and *Pardo, JJ.,* concur.

Ynares-Santiago, J., on leave.

EN BANC

[G.R. Nos. 104637-38. September 14, 2000]

SAN MIGUEL CORPORATION, NEPTUNIA CORPORATION LIMITED, ANDRES SORIANO III AND ANSCOR-HAGEDORN SECURITIES, INC., *petitioners, vs.* **SANDIGANBAYAN (FIRST DIVISION), PHILIPPINE COCONUT PRODUCERS FEDERATION, INC. (COCOFED), MARIA CLARA L. LOBREGAT, BIENVENIDO MARQUEZ, JOSE R. ELEAZAR, JR., DOMINGO ESPINA, JOSE GOMEZ, CELESTINO SABATE, MANUEL DEL ROSARIO, JOSE MARTINEZ, JR., JOSE REYNALDO MORENTE AND ELADIO CHATTO,** *respondents.*

---

[1] Issuance of Hold Departure Order of Judge Luisito T. Adaoag, MTC, Camiling, Tarlac, A.M. No. 98-8-126-MTC, September 22, 1999; Hold Departure Order issued by Judge Eusebio M. Barot, MCTC, Branch 2, Aparri, Calayan, Cagayan, A.M. No. 98-8-108-MCTC, August 25, 1999; Re: Hold Departure Order dated April 13, 1998 issued by Judge Juan C. Nartatez, Municipal Trial Court, Branch 3, Davao City, 298 SCRA 710 (1998).

Supreme Court E-Library

[G.R. No. 109797. September 14, 2000]

SAN MIGUEL CORPORATION, NEPTUNIA CORPORATION LIMITED, ANDRES SORIANO III AND ANSCOR-HAGEDORN SECURITIES, INC., *petitioners, vs.* **SANDIGANBAYAN (FIRST DIVISION), PHILIPPINE COCONUT PRODUCERS FEDERATION, INC. (COCOFED), MARIA CLARA L. LOBREGAT, BIENVENIDO MARQUEZ, JOSE R. ELEAZAR, JR., DOMINGO ESPINA, JOSE GOMEZ, CELESTINO SABATE, MANUEL DEL ROSARIO, JOSE MARTINEZ, JR., JOSE REYNALDO MORENTE AND ELADIO CHATTO,** *respondents.*

SYNOPSIS

Petitioners San Miguel Corporation, Neptunia Corporation Limited, Andres Soriano III and Anscor-Hagedorn Securities, Inc., in these two (2) consolidated petitions for *certiorari* under Rule 65 of the Rules of Court, sought to set aside as null and void the Resolution of the Sandiganbayan dated October 25, 1991, which ordered that all Certificates of Stock representing sequestered shares in the SMC be physically deposited with the PCGG and requiring SMC to pay the cash dividends due or actually earned by the said shares and to deliver them to PCGG; and its earlier Resolution dated September 30, 1991 which allowed COCOFED and other private respondents to intervene in Case No. 0102 and admitted their Counter-Petition. Petitioners alleged that the Sandiganbayan acted without or in excess of jurisdiction or with grave abuse of discretion in issuing the questioned Resolutions.

The Supreme Court dismissed the petitions.

The Court held that the Sandiganbayan did not commit grave abuse of discretion when it ordered the petitioners to deliver the treasury shares to PCGG and pay their corresponding dividends. The Sandiganbayan, in the exercise of its discretion, could require a party-litigant to deliver a sequestered property to the PCGG. The Court cited the case of *Baseco vs. PCGG* wherein it held that "the power of the PCGG to sequester

Supreme Court E-Library

property claimed to be 'ill-gotten' means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including 'business enterprises and entities,' — for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving the same — until it can be determined, through appropriate judicial proceedings, whether the property was in truth 'ill-gotten,' ..."

In addition, the Court did not set aside the assailed Resolution for it constitute cautious move to preserve the character of the sequestered shares pending the determination of their true owners.

The Court affirmed the resolution of the Sandiganbayan allowing the intervention of COCOFED, *et al.,* in Civil Case No. 0102. The right of COCOFED, *et al.,* to intervene in cases involving the SMC shares has long been recognized by the Court.

Under the rules on intervention, the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court. Discretion is a faculty of a court or an official by which he may decide a question either way, and still be right. The permissive tenor of the rules shows an intention to give to the court the full measure of discretion in permitting or disallowing the intervention. The discretion of the court, once exercised, cannot be reviewed by *certiorari* nor controlled by *mandamus* save in instances where such discretion has been so exercised in an arbitrary or capricious manner.

SYLLABUS

1. **REMEDIAL LAW; COURTS; SANDIGANBAYAN HAS JURISDICTION OVER COMPROMISE AGREEMENT INVOLVING SEQUESTERED SHARES OF STOCKS.** — The cases at bar do not merely involve a *compromise agreement dealing with private interest.* The Compromise Agreement here involves sequestered shares of stock now worth *more than nine (9) billions of pesos*, per estimate given by COCOFED. Their ownership is still under litigation. It is not yet known whether the shares are part of the alleged ill-gotten wealth of

Supreme Court E-Library

former President Marcos and his "cronies." Any Compromise Agreement concerning these sequestered shares falls within the unquestionable jurisdiction of and has to be approved by the Sandiganbayan. x x x The *PCGG Resolution of June 15, 1990 also imposed the approval* of the Sandiganbayan as a condition *sine qua non* for the transfer of these sequestered shares of stock, *viz:* Thus, the *petitioners voluntarily submitted* to the jurisdiction of the Sandiganbayan by asking for the approval of the said Compromise Agreement. In fine, the *jurisdiction* of the Sandiganbayan to pass upon the parties' Compromise Agreement is *beyond dispute*.

2. ID.; ID.; SANDIGANBAYAN'S ORDER CONVERTING SHARES OF STOCK TO TREASURY SHARES MERELY PREVENTIVE IN NATURE. — The order of the Sandiganbayan regarding the subject treasury shares is merely *preservative in nature*. When the petitioners and UCPB Group filed their Joint Manifestation of Implementation of the Compromise Agreement and of Withdrawal of Petition, the Sandiganbayan *cautioned* that "the PCGG, the UCPB and the SMC Group shall always act with due regard to the sequestered character of the shares of stock involved as well as the fruits thereof, *more particularly to prevent the loss or dissipation of their value.*"71 The caution was wisely given in view of the many contested provisions of the Compromise Agreement. For one, the Sandiganbayan observed that the conversion of the SMC shares to treasury shares will result in a *change in the status* of the sequestered shares in that: 1. When the SMC converts these common shares to treasury stock, it is converting those outstanding shares into the corporation's property for which reason *treasury shares do not earn dividends*. 2. The *retained dividends* which would have accrued to hose shares if converted to treasury *would go into the corporation* and enhance the corporation as a whole. The enhancement to the specific sequestered shares, however, would be only to the extent aliquot in relation to all the other outstanding SMC shares. 3. By converting the 26.45 million shares of stock into treasury shares, the *SMC has altered* not only the *voting power* of those shares of stock since treasury shares do not vote, but the SMC will have actually enhanced the voting strength of the other outstanding shares of stock to the extent that these 26.45 million shares no longer vote. Art. 2035, Civil Code. No compromise upon the following questions shall be valid: 1. civil status of persons; 2. The validity

Supreme Court E-Library

3. ID.; ID.; JURISDICTION IS VESTED BY LAW AND ONCE COURT HAS ASSUMED JURISDICTION, THE SAME SHALL CONTINUE UNTILCASE IS TERMINATED; CASE AT BAR. — We again emphasize that petitioners and the UCPB Group voluntarily submitted to and invoked the jurisdiction of the Sandiganbayan when they filed their Joint Petition for Approval of the Compromise Agreement and Amicable Settlement. The Sandiganbayan then *immediately exercised its jurisdiction* as can be gleaned from the numerous hearings conducted and orders it issued resolving various incidents of the case. Among others, it ordered persons and entities with known legal interest on the subject shares to file their comments on the Joint Petition. This order was *not seasonably challenged by the petitioners.* Pursuant thereto, COCOFED, et al., claiming beneficial interests on the shares, intervened. Mr. Eduardo Cojuangco, Jr. also manifested his intent to intervene. *The right of these persons and entities to have their claims heard and resolved cannot be defeated by the petitioners by the simple act of withdrawing their Joint Petition for Approval of Compromise Agreement and immediately implementing its provisions.* To allow the unilateral withdrawal is to allow the petitioners to make a plaything of the jurisdiction of the Sandiganbayan, submit to it when it is in their favor and repudiate it *when it threatens to turn against their interest.* Jurisdiction is vested by law and the all too familiar rule is that once a court has assumed jurisdiction over a case, its jurisdiction shall continue until the case is terminated.

4. ID.; ID.; SANDIGANBAYAN'S EXCLUSIVE JURISDICTION TO DETERMINE THE JUDICIAL QUESTION OF OWNERSHIP OVER SEQUESTERED PROPERTIES DISTINGUISHED FROM THE INCIDENTS OF THE EXERCISE BY THE PCGG OF ITS PURELY ADMINISTRATIVE AND EXECUTIVE FUNCTIONS AS CONSERVATOR OF SEQUESTERED PROPERTIES. — Petitioners cannot insist on their right to have their Compromise Agreement approved on the ground that it bears the imprimatur of the PCGG. To be sure, the consent of the PCGG is a factor that should be considered in the approval or disapproval of the subject Compromise Agreement but it is not the only factor. In *Republic vs. Sandiganbayan*,94 this Court had the occasion to categorically draw the distinctions between (i) the Sandiganbayan's exclusive jurisdiction to determine the judicial question of ownership over sequestered properties and (ii) the

Supreme Court E-Library

incidents of the exercise by the PCGG of its purely administrative and executive functions as conservator of sequestered properties, as follows: "In other words, neither in *Peña* nor in any other case did this Court ever say that orders of sequestration, seizure or take-over of the PCGG *or other acts done in the exercise of its so-called 'primary administrative jurisdiction'* are beyond judicial review, or beyond the power of the courts to reverse or nullify. It is true, of course, that those acts are entitled to much respect, the findings and conclusions motivating and justifying them should be accorded great weight, 'like the factual findings of the trial and appellate courts,' and such findings and conclusions of the PCGG may not be superseded and substituted by the judgment of the courts. But obviously the principle does not and cannot sanction arbitrary, whimsical, capricious or oppressive exercise of power and discretion on the part of the PCGG, *or its performance of acts* without or in excess of its authority and competence under the law. And in accordance with applicable law, review of those acts, and correction or invalidation thereof, when called for, can only be undertaken by the Sandiganbayan, which has exclusive original jurisdiction over all cases regarding 'the funds, moneys, assets and properties illegally acquired or misappropriated by former President Ferdinand E. Marcos, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees.'"95 (emphasis supplied) This ruling has stronger application in the cases at bar considering that COCOFED, et al. have challenged the legality of the consent given by PCGG to the Compromise Agreement on various grounds but especially in light of the "arbitration fee" it received in the form of SMC shares of substantial value. COCOFED, *et al.'s* position that the Compromise Agreement is a sell out of its interest is also a repudiation of the so called "business judgment" of UCPB which petitioners insist should bind COCOFED, *et al.*

5. ID.; ID.; SANDIGANBAYAN MUST NOT BE BURIAL GROUND OF CASES OF FAR REACHING IMPORTANCE TO THE PEOPLE. —The cases at bar involve shares of stock estimated to be worth more than P9 billion now. These shares were sequestered in 1986 and the government filed Civil Case No. 0033 in 1987 to determine whether they are part of the alleged ill-gotten wealth of former President Marcos and his "cronies." We did not set aside the impugned resolutions of the

Supreme Court E-Library

Sandiganbayan in the cases at bar for they constitute cautious moves to preserve the character of the sequestered shares pending determination of their true owners. Be that as it may, we note that Civil Case No. 0033 has remained unresolved by the Sandiganbayan. The delay is no longer tolerable for it locks in billions of pesos which could well rev-up our sputtering economy. Worse, it constitutes another embarrassing evidence of snail-paced justice, so long lamented but mostly by our lips alone. The Sandiganbayan must not be the burial ground of cases of far-reaching importance to our people. It is time for it to write finis to Civil Case No. 0033.

6. **ID.; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; COMPLAINT MAY BE DISMISSED BEFORE SERVICE OF ANSWER OR OF A MOTION FOR SUMMARY JUDGMENT; CONTEMPLATES A COMPLAINT WHERE THERE IS A PLAINTIFF AND A DEFENDANT WITH REAL CONFLICTING INTEREST.** —Petitioners cannot invoke section 1, Rule 17 of the Rules of Court which provides "that a complaint may be dismissed by the plaintiff by filing a notice of dismissal at; any time before service of the answer or of a motion for summary judgment." The provision contemplates a complaint where there is a plaintiff and a defendant with *real conflicting interests*. The cases at bar, however, are different. They started as a *Joint Petition* for Approval of Compromise Agreement and Amicable Settlement. Known persons and entities claiming adverse interests on the subject shares were not impleaded. In other words, no party that can assail the validity of the Compromise Agreement that involves billions of pesos and substantial state interests was impleaded in any capacity. Yet, petitioners are aware that the subject shares of stock are sequestered and their ownership is still under litigation in Case No. 0033. The attempt to bypass these persons and entities with interests in the subject shares is hardly tenable and the withdrawal of the petition and its immediate implementation when they opposed it makes petitioners' posture doubly untenable.

7. **ID.; ID.; ID.; COMPLAINT MAY BE WITHDRAWN BY PLAINTIFF BEFORE DEFENDANT HAS ANSWERED IT OR FILED A MOTION FOR SUMMARY JUDGMENT; PETITIONERS CAN NO LONGER UNILATERALLY WITHDRAW THEIR JOINT PETITION IN CASE AT BAR.** — There is another reason why petitioners cannot rely on section

Supreme Court E-Library

1, Rule 17 of the Rules of Court. This provision allows the plaintiff to withdraw his complaint before defendant has answered it or filed a motion for summary judgment. In fine, before the defendant has pleaded to the complaint. At that point, defendant has hardly been exposed to any kind of damage or prejudice, hence, the plaintiff is unilaterally allowed to withdraw his complaint. In the cases at bar, before the petitioners and the UCPB Group can file their Manifestation of Withdrawal of Joint Petition for Approval of Compromise Agreement and Amicable Settlement, COCOFED, et al. have already filed their Opposition in Intervention and Compulsory Counter-Petition and Counterclaim for Damages. In the same vein, the Republic, thru the OSG, has already filed its Opposition. These pleadings of COCOFED, et al. and the Republic assail the legality of the Compromise Agreement. They can be deemed as answers to the Joint Petition, hence, petitioners can no longer unilaterally withdraw their Joint Petition.

8. ID.; ID.; INTERVENTION; RIGHT OF COCOFED TO INTERVENE, RECOGNIZED BY THE COURT.—We also affirm the resolution of the Sandiganbayan allowing the intervention of COCOFED, et al. in Civil Case No. 0102. It is the posture of the petitioners that intervention is improper since Case No. 0102 has already been withdrawn as of July 4, 1991. They hinge the right to withdraw the Joint Petition to approve their Compromise Agreement on section 1, Rule 17 of the Rules of Court. We do not agree. The right of COCOFED, et al. to intervene in cases involving these SMC shares has long been recognized by this Court. In *Soriano III v. Yuzon,* we ruled: xxx The Philippine Coconut Producers Federation (COCOFED) also came into the picture. A Manifestation dated March 15, 1988 was filed in its behalf by its President, Ma. Clara Lobregat. The Manifestation contained a discussion of the laws passed (and the official action taken pursuant thereto) establishing the coconut levy and providing for the management and utilization of the funds thereby generated. It advocated the thesis that the question of whether or not the investments of the coconut levy fund constitute public property, essentially involves issues of fact and law which should be resolved in the first instance by a trial court of competent jurisdiction at a hearing on the merits, and the COCOFED should be conceded the right to demonstrate at such a hearing that the coconut farmers, through the so-called CIIF companies, and not Mr. Cojuangco, Jr. or any of

Supreme Court E-Library

his companies, are the beneficial owners of the disputed block of SMC shares. Alternatively, the COCOFED prayed that it be given the opportunity to substantiate the points it thus raises in G.R. No. 74910, or in Civil Case No. 13865 of the Regional Trial Court at Makati, or in Civil Case No. 0033 of the Sandiganbayan entitled 'Republic v. Eduardo Cojuangco, Jr., et al.,' or in any other case which may hereafter be filed in litigation of the issues." In said case, we dismissed all the actions 87 brought to us, directed the dismissal of cases pending before the Regional Trial Courts and Securities and Exchange Commission, and ruled that: This dismissal is without prejudice to the assertion and ventilation before the Sandiganbayan by the parties of their respective claims by such appropriate modes as are prescribed by law . . ."

9. ID.; ID.; ID.; WHO CAN INTERVENE. —Petitioners further contend that COCOFED, et al. cannot intervene because Case No. 0102 is not an action or a suit and they did not implead any adverse party and set forth no claims. Petitioners' contention cannot merit the assent of the Court. Regardless of its nature as an action or suit, the fault of the Joint Petition precisely lies in the attempt to bypass parties with legitimate interests on the subject shares. The existence of these parties is known to the petitioners yet they were not impleaded. Their failure to be impleaded is bad enough but worse still is petitioners' submission that since they were not impleaded, ergo, they cannot intervene. It is now a musty principle of justice that a right cannot arise from a wrong. Moreover, the Sandiganbayan did not treat the Joint Petition as an "action or suit" but as a mere incident of Case No. 0033. In any event, Section 1, Rule 19 of the Rules of Court provides the rule on who can intervene, *viz*: "A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof, may, with leave of court, be allowed to intervene in the action." The legal interest of COCOFED, et al. which justifies their intervention is extensively discussed in the impugned resolution of the Sandiganbayan, *viz:*

10. ID.; ID.; ID.; ALLOWANCE OR DISALLOWANCE OF A MOTION TO INTERVENE ADDRESSED TO SOUND DISCRETION OF COURT. — Under the rules on intervention, the allowance or disallowance of a motion to intervene is

Supreme Court E-Library

addressed to the sound discretion of the court.91 *Discretion is a faculty of a court or an official by which he may decide a question either way, and still be right.* The permissive tenor of the rules shows an intention to give to the court the full measure of discretion in permitting or disallowing the intervention. The discretion of the court, once exercised, cannot be reviewed by certiorari nor controlled by mandamus save in instances where such discretion has been so exercised in an arbitrary or capricious manner.

11. ID.; ID.; DOCKET FEE; NEEDS TO BE PAID BY PARTY WHO ALLEGED A COMPANY CLAIM. — Nor are we impressed by petitioners' submission that COCOFED, et al. should pay a docket fee for their counter-petition and counterclaim for damages. We note that it was the Sandiganbayan itself that ordered COCOFED and the other defendants in Civil Case No. 0033 to give their comment to the Joint Petition for Approval of Compromise Agreement, etc. In response to this order, COCOFED, et al. filed their Opposition-in-Intervention and Compulsory Counter-Petition and Counterclaim for Damages. COCOFED, et al. alleged that the Compromise Agreement is illegal and its approval would bring damages to themselves. In effect, COCOFED, et al. alleged a compulsory counterclaim for which they need not pay any docket fee.

12. CONTITUTIONAL LAW; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT; POWER TO SEQUESTER ILL-GOTTEN PROPERTY, MEANING. — We cannot condemn and annul this order as capricious. In the exercise of its *discretion,* the Sandiganbayan can require a party-litigant to deliver a sequestered property to the PCGG. We held in *Baseco vs. PCGG* [69] that "the power of the PCGG to sequester property claimed to be 'ill-gotten' means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including 'business enterprises and entities,' — *for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving the same — until* it can be determined, through appropriate judicial proceedings, whether the property was in truth 'ill-gotten,' i.e. acquired through or as a result of improper or illegal use or the conversion of funds belonging to the government or any of its branches, instrumentalities, enterprises, banks or

Supreme Court E-Library

financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State."

13. COMMERCIAL LAW; CORPORATION LAW; TREASURY SHARES; LIMITED NATURE THEREOF, EXPLAINED. — These significant changes in the character of the SMC shares cannot be denied. In *Commissioner of Internal Revenue vs. Manning*,73 we explained the limited nature of treasury shares, thus:"Although authorities may differ on the exact legal and accounting status of the so-called 'treasury shares,' they are more or less in agreement that treasury shares are stocks issued and fully paid for and re-acquired by the corporation either by purchase, donation, forfeiture or other means. Treasury shares are therefore issued shares, but being in the treasury they do not have the status of outstanding shares. Consequently, although a treasury share, not having been retired by the corporation re-acquiring it, may be re-issued or sold again, such share, as long as it is held by the corporation as a treasury share, participates neither in dividends, because dividends cannot be declared by the corporation to itself, nor in the meetings of the corporation as voting stock, for otherwise equal distribution of voting powers among stockholders will be effectively lost and the directors will be able to perpetuate their control of the corporation, though it still foregoing essential features of a treasury stock are lacking in the questioned shares . . ."

PARDO, *J.Dissenting Opinion:*

SYLLABUS

1. CIVIL CODE; COMPROMISE; PROHIBITION. — In First Philippines, the Court held that, "Under the Civil Code, the court may reject a compromise only if it is covered by the prohibition under Art. 2035, Civil Code. No compromise upon the following question shall be valid: 1. The civil status of persons; 2. the validity of a marriage or legal separation; 3. Any ground for legal separation; 4. Future support; 5. The jurisdiction of courts; 6. Future legitime."

Supreme Court E-Library

2. **ID.; ID.; PERFECTED UPON MEETING OF MINDS OF PARTIES; JUDICIAL APPROVAL NOT REQUIRED FOR PERFECTION OF A COMPROMISE.** — Article 2036, Civil Code provides that "a compromise comprises only objects which are definitely stated therein, or which by necessary implication from its terms should be deemed to have been included in the same. A general renunciation of rights is understood to refer only to those that are connected with the dispute which is the subject of the compromise, or if it is, in general, contrary to "law, morals, good customs, public order or public policy." Compromises, being consensual contracts, are perfected upon meeting of minds of the parties. Judicial approval is not required for its perfection.

3. **CONSTITUTIONAL LAW; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT; MAY VALIDLY ENTER INTO COMPROMISE AGREEMENTS.** — In *Republic of the Philippines vs. Sandiganbayan,* "this Court categorically stated that amicable settlements and compromises are not only allowed but actually encouraged in civil cases. In *Benedicto vs. Board of Administrators of Television Stations RPN, BBC and IBC,* the Court ruled that the authority of the PCGG to validly enter into compromise agreements for the purpose of avoiding litigation or putting an end to one already commenced was indisputable. The Court took cognizance of the fact that the compromise agreement which is now the subject of the present petition was pending before the Sandiganbayan for determination and approval and, therefore, dismissed the petition directed against the agreement's implementation and enforcement."

4. **REMEDIAL LAW; COURTS; SANDIGANBAYAN; EXCEEDED ITS JURISDICTION WHEN IT REQUIRED SAN MIGUEL CORPORATION TO TURN OVER SHARES AND PAY DIVIDENDS ON TREASURY SHARES.** — We can not take as facts what was related in the book of Senator Jovito R. Salonga that the money used to purchase the disputed shares would come from the sale by a San Miguel subsidiary of a profitable Hong Kong company to Anheuser Busch for HK $1 or roughly ₱2.6 billion. This assertion was based on "reliable account" not on indubitable facts. In fact, in *SMC vs. Khan,* it was alleged through the petition filed by Atty. Eduardo de los Angeles that, on April 1, 1986 Soriano, Khan and Roxas, as directors of Neptunia Corporation, LTD., had met and passed a resolution authorizing the company to borrow up to $26,

Supreme Court E-Library

500,000.00 from the Hongkong Shanghai Banking Corporation, Hongkong, to enable the Soriano family to initiate steps and sign an agreement for the purchase of some 33, 133,266 shares of San Miguel Corporation. The loan of $ 26,500,000.00 was obtained on the same day, the loan agreement was signed for Neptunia by Ralph Karr and Carl Ottiger. Consequently, there is no basis for ruling that the money involved in the compromise agreement would come from an illegal source. The Sandiganbayan exceeded its jurisdiction and acted with grave abuse of discretion when it required SMC to turn over treasury shares to the Sandiganbayan, and worse, to pay dividends on treasury shares. By law, treasury shares do not earn dividends.

APPEARANCES OF COUNSEL

Roco Bunag Kapunan & Millagos for petitioners AS III and AHSI.

Valmores Paquinto Aldaba Law Offices for private respondents.

Solicitor General for public respondent.

D E C I S I O N

PUNO, *J.*:

It appears that on March 26, 1986, the Coconut Industry Investment Fund Holding Companies[1] ("CIIF" for brevity) sold 33,133,266 shares of the outstanding capital stock of San Miguel Corporation to Andres Soriano III of the SMC Group payable in four (4) installments.[2]

---

[1] Composed of fourteen companies, namely: Soriano Shares, Inc.; ASC Investors Inc.; Roxas Shares, Inc.; ARC Investors, Inc.; APHOLDINGS, Inc.; TODA Holdings, Inc.; Fernandez Holdings, Inc.; San Miguel Officers Corps, Inc.; Te Deum Resources, Inc.; ANGLO Ventures, Inc.; First Meridian Development, Inc.; Rock Steel Resources, Inc.; Randy Allied Ventures, Inc. and Valhalla Properties Limited, Inc.

[2] Annex "A" of Petition in G.R. No. 104637-38; *Rollo* (Vol. I), pp. 34-50.

Supreme Court E-Library

On April 1, 1986, Andres Soriano III paid the initial ₱500 million to the UCPB as administrator of the CIIF. The sale was transacted through the stock exchange and the shares were registered in the name of Anscor-Hagedorn Securities, Inc. (AHSI).

On April 7, 1986, the Presidential Commission on Good Government (PCGG) then led by the former President of the Senate, the Honorable Jovito R. Salonga, sequestered the shares of stock subject of the sale.[3] Due to the sequestration, the SMC Group (hereinafter referred to as the petitioners) suspended payment of the balance of the purchase price of the subject stocks. In retaliation, the UCPB Group rescinded the sale.

On June 2, 1986, UCPB and CIIF Holding Companies went to court. They filed a complaint with the Regional Trial Court of Makati against the petitioners for confirmation of rescission of sale with damages.[4] On June 5, 1986, the petitioners assailed in this Court the jurisdiction of the Makati RTC on the ground that primary jurisdiction was vested with the PCGG since the SMC shares were sequestered shares.[5] On August 10, 1988, we upheld the petitioners. We ordered, among others, the dismissal of the rescission case filed in the Makati RTC without prejudice to the ventilation of the parties' claims before the Sandiganbayan.[6]

The record shows that the petitioners and the UCPB Group were able to thresh out their dispute extrajudicially. In March 1990, they signed a Compromise Agreement and Amicable Settlement.[7] Its pertinent provisions state:

"3.1. The sale of the shares covered by and corresponding to the *first installment* of the 1986 Stock Purchase Agreement consisting of Five Million SMC Shares is hereby *recognized* by the parties as *valid* and effective as of 1 April 1986. Accordingly, said shares and all stock

---

[3] See also Salonga, *Presidential Plunder, The Quest for the Marcos Ill-Gotten Wealth,* pp. 100-101.

[4] Docketed as Civil Case No. 13865.

[5] Entitled *"Soriano III, et al. vs. Hon. Manuel Yuzon, et al.,"* and docketed as G.R. No. 74910.

[6] *Soriano III vs. Yuzon,* 164 SCRA 226 (1988).

[7] Annex "F" of Petition in G.R. No. 104637-38; *Rollo* (Vol. I), pp. 90-99

Supreme Court E-Library

and cash *dividends* declared thereon after 1 April 1986 shall pertain, and are hereby assigned, to SMC. x x x

3.2. The First Installment Shares shall revert to the SMC *treasury* for dispersal pursuant to the SMC Stock Dispersal Plan attached as Annex "A-1" hereof. The parties are aware that these First Installment Shares shall be sold to raise funds at the soonest possible time for the expansion program of SMC. x x x

3.3. The sale of the shares vered by and corresponding to the *second, third and fourth installments* of the 1986 Stock Purchase Agreement is hereby *rescinded* effective 1 April 1986 and deemed null and void, and of no force and effect. Accordingly, all stock and cash *dividends* declared after 1 April 1986 corresponding to the second, third and fourth installments shall pertain to *CIIF Holding Corporations. x x x*"[8] (italics supplied)

They likewise agreed to pay an *"arbitration fee"* of 5,500,000 SMC shares composed of 3,858,831 "A" shares and 1,641,169 "B" shares to the *PCGG* to be held in trust for the Comprehensive Agrarian Reform Program.[9]

On March 23, 1990, the petitioners and the UCPB Group filed with the Sandiganbayan a *Joint Petition for Approval of the Compromise Agreement and Amicable Settlement.* The petition was docketed as Civil Case No. 0102.[10]

On March 29, 1990, the Sandiganbayan *motu proprio* directed that copies of the Joint Petition be furnished to *E. Cojuangco, Jr., M. Lobregat* and others who are defendants in Civil Case No. 0033. The same SMC shares are the subject of Civil Case No. 0033 and alleged as part of the alleged ill-gotten wealth of former President Marcos and his "cronies."[11]

On April 25, 1990, the *Republic* of the Philippines, through the Office of the Solicitor General (OSG), *opposed*[12] the

---

[8] *Id.*, pp. 93-94.

[9] Joint Manifestation for Implementation of Compromise Agreement and Amicable Settlement and of Withdrawal of Petition, Annex "L" of Petition in G.R. No. 104637-38, pp. 2-3; *Rollo* (Vol. I), pp. 192-193.

[10] Annex "G", *Ibid.; Rollo* (Vol. I), pp. 100-117.

[11] Annex "I" of Petition in G.R. No. 109797; *Rollo,* p. 95.

[12] Annex "5" of COCOFED, *et al.,'s* Supplemental Comment in G.R. No. 109797; *Rollo,* pp. 390-435.

Supreme Court E-Library

Compromise Agreement and Amicable Settlement. It contended that the involved coco-levy funds, whether in the form of earnings or dividends therefrom, or in the form of the value of liquidated corporate assets represented by all sequestered shares (like the value of assets sold/mortgaged to finance the ₱500M first installment), or in the form of cash, or, as in the case of subject "Settlement," in the form of "proceeds" of sale or of "payments" of certain alleged obligations are public funds. As public funds, the coco-levy funds, in any form or transformation, are beyond or "outside the commerce," and perforce not within the private disposition of private individuals.[13]

The reliefs prayed for by the Solicitor General state:

"1. That the "Settlement" be stricken off the record or at most referred back to the PCGG for serious study and consideration. While the PCGG under its legal mandate (as sustained in G.R. No. 84895, *"Republic v. Campos"*) in principle encourages settlement agreements on ill-gotten wealth to expedite recovery thereof for the benefit of the Government, the herein privately proposed *"Settlement" subject of the petition contains private proposals of "utilization and management of" public funds that are prejudicial to the Government,* without "full disclosures" as normally required by PCGG and over which in respect of declarant immunity may even be granted.

2. That this Petition be consolidated with, or treated as a premature motion or incident in Civil Case No. 0033, and brought by improper parties. To repeat, the plaintiff Republic through PCGG is *not* a party to what in effect will be a judicial compromise in Civil Case No. 0033. Nowhere does the "Settlement" mention that its terms are subject to the judicial outcome of *this* Civil Case No. 0033. It is to be emphasized that even in the "Pepsi-Cola Settlement" cited by the petitioners, the alleged loan payments therein to liquidate alleged obligations are subject in no uncertain terms to the final outcome of the main Civil Case No. 0033 pending before this Honorable Court,

> 'The concern of the Court in matters such as this has always been to see to it that the properties in sequestration would be well (and profitably, if possible) *preserved* either *for the government, if the plaintiff proves*

[13] *Id.*, pp. 26-28; *Rollo*, pp. 415-417.

Supreme Court E-Library

> the 'crony' and 'ill-gotten' character of the property, or for the defendants if not,'

considering that one of the reliefs prayed for or one of causes of action in the Republic's Complaint in Civil Case No. 0033 is precisely for *Accounting and/or Damages*. In the instant "Settlement", the "crony" and "ill-gotten character of the property" involved is a matter of public record if not public notoriety. Plaintiff Republic need not prove the public character of the coco-levy funds. This is a matter of settled law and jurisprudence, a "given" fact, to quote the Honorable Supreme Court."[14] (italics supplied)

On April 18, 1990, Mr. Eduardo M. Cojuangco, Jr. moved to intervene alleging legal interest in the approval or disapproval of the Compromise Agreement and Amicable Settlement.[15]

On May 24, 1990, the Philippine Coconut Producers' Federation, Inc. (COCOFED), *et al.*,[16] filed an "Omnibus Class Action *Motion for Leave to Intervene* and to Admit: (1) *Opposition*-in-Intervention, and (2) *Compulsory Counter-Petition and Counterclaim for Damages*."[17] They alleged that they are the ultimate *beneficial owners* of the SMC shares subject of the Compromise Agreement.

On June 18, 1990, the PCGG filed its Manifestation[18] attaching a copy of the Resolution[19] of the Commission *en banc* dated June 15, 1990. PCGG joined the Solicitor General in praying that the Joint Petition for Approval of Compromise Agreement should be treated as an incident of Case No. 0033.[20] PCGG, however, interposed no objection to the implementation of the Compromise Agreement subject to the incorporation of the following provisions:

---

[14] *Id.*, pp. 42-44; *Rollo*, pp. 431-433.

[15] Annex "O" of Petition in G.R. No. 109797; *Rollo,* pp. 144-146.

[16] Referring to Maria Clara L. Lobregat, Bienvenido Marquez, Jose R. Eleazar, Jr., Domingo Espina, Jose Gomez, Celestino Sabate, Manuel del Rosario, Jose Martinez, Jr., Jose Reynaldo Morente and Eladio Chatto.

[17] Annex "Q" of Petition in G.R. No. 109797; *Rollo,* pp. 149-164.

[18] Annex "H" in G.R. No. 104637-38; *Rollo* (Vol. I), pp. 118-119.

[19] Annex "H-1", *Id.*, pp. 120- 136.

[20] *Supra* note 18.

Supreme Court E-Library

however, interposed no objection to the implementation of the Compromise Agreement subject to the incorporation of the folowing provision:

"1. As stated in the COMPROMISE, the 5 million SMC shares (now 26,450,000) paid for by the ₱500 million first installment shall be delivered to SMC, kept in treasury, and sold as soon as feasible in accordance with a plan to be agreed upon by the Commission and SMC; provided, that SMC shall not unreasonably withhold its consent to a sales plan approved by PCGG.

The ₱500 million paid by SMC as first installment shall be accounted for by UCPB and the CIIF companies to the extent respectively received by them, and any portion thereof in excess of the usual business needs of the possessor shall be delivered by it to the Commission, to be held in escrow for the ultimate owner.

2. On Delivery Date, the stock certificates for the balance of the SHARES in the name of the 14 holding companies shall be delivered to PCGG and deposited with the Central Bank for safekeeping to await their sale in accordance with the plan of dispersal that PCGG and UCPB shall agree to establish for them. As soon as practicable, but with proper account of market conditions, all those shares shall be sold, and the proceeds thereof disposed as provided below. UCPB shall not unreasonably withhold its consent to a sales plan approved by PCGG in accordance with this paragraph.

3. So much of the proceeds of the sale as may be necessary shall be used a) to finance the obligations of the CIIF Companies under the COMPROMISE, and b) to liquidate the obligations of the CIIF Companies to UCPB for the purchase price of the SHARES. The balance shall be kept by the PCGG in escrow to await final judicial determination of the ownership of the various coconut-related companies and of all the other assets involved here. The cash dividends that have been declared on the SHARES may be applied for the above purposes before proceeds from the sale of shares are realized.The balance of such cash dividends shall be held in escrow in the same manner as the sales proceeds.

Supreme Court E-Library

4. All SHARES shall continue to be sequestered even beyond Delivery Date. Sequestration on them shall be lifted as they are sold consequent to approval of the sale by the Sandiganbayan, and in accordance with the dispersal plan approved by the Commission. All of the SHARES that are unsold will continue to be voted by PCGG while still unsold.

5. The consent of PCGG to the transfer of the sequestered shares of stock in accordance with the COMPROMISE, and to the lifting of the sequestration thereon to permit such transfer, shall be effective only when approved by the Sandiganbayan. The Commission makes no determination of the legal rights of the parties as against each other. The consent it gives here conforms to its duty to care for the sequestered assets, and to its purpose to prevent the repetition of the national plunder. It is not to be construed as indicating any recognition of the legality or sufficiency of any act of any of the parties."[21]

The petitioners and the UCPB Group filed their Joint Manifestation[22] accepting the conditions imposed by PCGG. They also opposed the intervention of COCOFED, *et al.*

On October 12, 1990, the petitioners moved for early resolution of the Joint Petition for Approval of the Compromise Agreement and Amicable Settlement together with its pending incidents.[23]

On October 16, 1990, the Sandiganbayan issued an Order[24] integrating Case No. 0102 as an incident of Civil Case No. 0033, thus:

"Considering the interest expressed by the different parties in Civil Case No. 0033, and considering further that the subject matter of the amicable settlement which is presented before this Court for approval, the Court has deemed it best that Civil Case No. 0102 be integrated with, and be made an incident to, Civil Case No. 0033. x x x "[25]

---

[21] *Supra* note 19, pp. 129-131.

[22] Annex "H-2", *id.*, pp. 137-139.

[23] Annex "J-1", *id.*, pp. 158-189.

[24] Annex "T" of Petition in G.R. No. 109797; *Rollo*, p. 225.

[25] *Ibid.*

Supreme Court E-Library

The petitioners did not challenge the Order.

In its Manifestation[26] dated November 19, 1990, the Solicitor General maintained his Opposition to the Compromise Agreement and Amicable Settlement.

On November 23, 1990, Sandiganbayan deferred consideration of the Compromise Agreement "until the parties thereto take the initiative to restore the same in the Court's calendar."[27] On February 5, 1991, it also deferred resolution of Cojuangco's Motion to Intervene.

On February 21, 1991, the UCPB Group filed a Motion to set the Joint Petition for hearing.[28] In its Order dated February 27, 1991, the Sandiganbayan required the parties to comment on the propriety of the said court's continuing to entertain the Compromise Agreement.[29] In compliance with the said Order, the petitioners filed its Manifestation dated March 15, 1991 expressly recognizing the jurisdiction of the Sandiganbayan to rule on the petition for the approval of the compromise agreement.[30]

On June 3, 1991, the Sandiganbayan issued the following Resolution:[31]

"It appearing that the sequestered character of the shares of stock subject of the instant petition for the approval of the compromise agreement, which are shares of stock in the San Miguel Corporation in the name of the CIIF Corporations, is independent of the transaction involving the contracting parties in the Compromise Agreement between what may be labeled as the "SMC Group" and the "UCPB Group," and it appearing further that the said sequestered SMC shares

---

[26] Annex "6" of COCOFED, *et al.,'s* Memorandum; *Rollo,* G.R. No. 104637-38 (Vol. II), pp. 781-797.

[27] Annex "U" of Petition in G.R. No. 109797; *Rollo,* p. 226.

[28] Annex "7" of COCOFED, *et al.,'s* Memorandum; *Rollo,* G.R. No. 104637-38 (Vol. II), pp. 798-801.

[29] Annex "8", *Ibid.; Rollo* (Vol. II), pp. 802-803.

[30] Annex "9", *Ibid.; Rollo* (Vol. II), pp. 804-807.

[31] Annex "K" of Petition in G.R. No. 104637-38; *Rollo* (Vol. I), p. 190.

Supreme Court E-Library

of stock have not been physically seized nor taken over by the PCGG, so much so that the reversions contemplated in said Compromise Agreement are without prejudice to the perpetuation of the sequestration thereon, until such time as a judgment might be rendered on said sequestration (which issue is not before this Court as (sic) this time), and it appearing finally that the PCGG has not interposed any objection to the contractual resolution of the problems confronting the "SMC Group" and the "UCPB Group" to the extent that the sequestered character of the shares in question is not affected, *this Court will await the pleasure of the Presidential Commission on Good Government before consideration of the Compromise Agreement is reinstated in the Court's calendar.*

While this is, in effect, a denial of the "UCPB Group's" Motion to set consideration of the Compromise Agreement herein, this denial is without prejudice to a reiteration of the motion or any other action by the parties should developments hereafter justify the same."

On July 4, 1991, the petitioners and the UCPB Group filed a Joint Manifestation that they have *implemented* the Compromise Agreement and Amicable Settlement with the conditions set by the PCGG and *accordingly, withdrew their Joint Petition.*[32] They informed that they have executed the following corporate acts:

"a. On instructions of the SMC Group, the certificates of stock registered in the name of Anscor-Hagedorn Securities, Inc. (AHSI) representing 175,274,960 SMC shares were surrendered to the SMC corporate secretary.

b. The said SMC shares were reissued and registered in the record books of SMC in the following manner:

i) Certificates for 25,450,000 SMC shares were registered in the name of SMC, as treasury;

ii) Certificates for 144,324,960 SMC shares were registered in the name of the CIIF Holding Companies;

iii) Certificates for 5,500,000 SMC shares were registered in the name of the PCGG.

---

[32] Annex "L", *id.*, pp. 191-193.

Supreme Court E-Library

c. The UCPB Group has delivered to the SMC Group the amount of ₱500,000,000.00 in full payment of the UCPB preferred shares.

d. The SMC Group delivered to the UCPB Group the amount of ₱481,628,055.99 representing accumulated dividends (from April 1, 1986) on the shares reverted to the CIIF Holding Companies."[33]

The PCGG manifested that it has no objection to the action taken by the petitioners and the UCPB Group.[34] *COCOFED, et al., and Cojuangco, Jr. filed their respective motions,*[35] *both dated July 4, 1991 to nullify the implementation of the compromise agreement.*

Acting on the Joint Manifestation of Implementation of Compromise Agreement and of Withdrawal of Petition, the Sandiganbayan on July 5, 1991 *noted* the same "with the *observation* that the PCGG, the UCPB Group and the SMC Group shall always act with *due regard to the sequestered character* of the shares of stock involved herein as well as in the fruits thereof, more particularly to prevent the loss or dissipation of their value" and *"without prejudice* to whatever might be the resolution of this Court on the Motion to Nullify the Compromise Agreement filed by Eduardo Cojuangco, Jr."[36]

On July 8, 1991, the Sandiganbayan issued two (2) Orders. The first was to hear the defendants in Civil Case No. 0033 on the matter of the Compromise Agreement whether under Civil Case No. 0102 or as an incident to Civil Case No. 0033.[37] The second required the petitioners and the UCPB Group as well as PCGG to formally state in writing the different holders

---

[33] *Id.*, pp. 2-3.

[34] Annex "M", *Id.*, pp. 194-195.

[35] Cojuangco, Jr. filed his Motion to Nullify Implementation of "Compromise Agreement and Amicable Settlement" dated March 20 and 22, 1991 with Urgent Prayer for Temporary Restraining Order, Annex "N", *id.*, pp. 196-201; COCOFED, *et al.*, filed their Class Action Manifestation and Motion, Annex "N-1", *id.*, pp. 204-212.

[36] Annex "O", *Id.*, p. 213.

[37] Annex "10" of COCOFED, *et al.'s* Memorandum; *Rollo*, G.R. No. 104637-38 (Vol . II), pp. 808-809.

Supreme Court E-Library

of the SMC shares subject of the compromise agreement. The Sandiganbayan further ordered PCGG to indicate on the face of the subject shares their sequestered character.[38]

On July 16, 1991, petitioners filed their Manifestation where they declared that Stock Certificate Nos. A 0004129 and A 0015556 representing 25,450,000 shares were issued in the name of SMC *as treasury stocks*.[39]

On July 23, 1991, the Sandiganbayan noted the Manifestations of the PCGG, the petitioners and the UCPB group that the certificates of stock for the subject SMC shares which are intended to form part of the corporation's treasury shares have been marked "sequestered" by SMC and are in the custody of the PCGG.[40]

On August 5, 1991, the Sandiganbayan issued an order requiring SMC to deliver the certificates of stock representing the subject matter of the Compromise Agreement to the PCGG in view of the oral manifestations of Commissioner Maceren seeking clarification of portions of Sandiganbayan's July 23, 1991 Resolution.[41]

On August 9, 1991, the UCPB Group filed a Motion to Allow it to Utilize Dividends on SMC shares for the payment of the loans of CIIF Companies to UCPB.[42] The motion was granted on September 2, 1991.[43]

On August 15, 1991, COCOFED, *et al.,* filed their Urgent Motion to Compel Surrender of the Cash Dividends pertaining

---

[38] Annex "P" of Petition in G.R. No. 104637-38; *Rollo* (Vol. I), pp. 214-215.

[39] Annex "11" of COCOFED, *et al.,'s* Memorandum; *Rollo* (Vol. II), pp. 810-813.

[40] Annex "Q" of Petition in G.R. No. 104637-38; *Rollo* (Vol. I), pp. 216-218.

[41] Annex "T", *Id.*, p. 231.

[42] Annex "12" of COCOFED, *et al.,'s* Memorandum; *Rollo,* G.R. No. 104637-38 (Vol. II), pp. 949-953.

[43] Annex "R" of Petition in G.R. No. 104637-38; *Rollo (*Vol. I), pp. 219-220.

Supreme Court E-Library

to (a) the 4.5 million SMC shares allegedly delivered to PCGG trust for the Comprehensive Agrarian Reform Program and (b) the SMC shares allegedly delivered to SMC as treasury shares.[44]

On August 22, 1991, petitioners filed a Manifestation and Motion stating that the SMC shares have reverted to the SMC treasury as treasury shares and are not entitled to dividends.[45]

On October 1, 1991, the Sandiganbayan issued a Resolution allowing COCOFED, *et al.,* to intervene. [46] On March 30, 1992, it denied the separate motions for reconsideration filed by the petitioners and the UCPB Group.[47]

On October 25, 1991, the Sandiganbayan issued another Resolution requiring SMC to deliver the 25.45 million SMC treasury shares to the PCGG.[48] On March 18, 1992, it denied petitioners' Motion for Reconsideration and further ordered SMC to pay dividends on the said treasury shares and to deliver them to the PCGG.[49]

On April 13, 1992, petitioners filed a Motion to Dismiss Intervention and/or Motion for Clarification with *Ad Cautelam* Motion to Suspend Time.[50] The motion was denied in the Sandiganbayan's Resolution dated March 17, 1993.[51]

Before this Court now are two (2) consolidated petitions for *certiorari* under Rule 65 of the Rules of Court filed by petitioners San Miguel Corporation, Neptunia Corporation Limited, Andres Soriano III and Anscor-Hagedorn Securities, Inc. They seek to annul the following resolutions of the Sandiganbayan:

---

[44] Annex "V", *id.,* pp. 257-262.

[45] Annex "U" *id.,* p. 257-237.

[46] Annex "A" of Petition in G. R. No. 109797; *Rollo,* pp. 25-38.

[47] Annex "B" *Ibid., Rollo,* pp. 39-45.

[48] Annex "W" of Petitioner in G.R. No. 104637-; *Rollo* (Vol. I), pp.266-270.

[49] Annex "Y", *Ibid., Rollo* (Vol. I), pp. 291-314.

[50]Annex "AA" of Petition in G. R. No. 109797; *Rollo,* pp. 242-247.

[51] Annex "C" of Petition in G.R. No. 109797; *Rollo,* p. 46.

Supreme Court E-Library

In G.R. No. 104637-38:

1. The Resolution dated October 25, 1991 reiterating[52] that all Certificates of Stock representing sequestered shares in the SMC be *physically deposited with the PCGG* and requiringSMC to *pay the cash dividends* due or actually earned by the said shares and deliver them to PCGG;[53]

2. The Resolution dated March 18, 1992[54] requiring SMC to deliver to the PCGG the 25.45 million shares as well as the cash and/or stock dividends which have accrued thereto from March 26, 1986 to date and which might have further accrued thereto had not said shares of stock been declared *treasury shares.*[55]

In G.R. No. 109797:

1. The Resolution dated September 30, 1991 *allowing COCOFED* and other private respondents *to intervene* in Case No. 0102 and admitting their Counter-Petition;[56]

2. The Resolution dated March 27, 1992 *denying* the motions of petitioners and the UCPB Group for reconsideration of the Resolution dated September 30, 1991; and[57]

3. The Resolution dated March 17, 1993 *denying* petitioners' motion to dismiss the *Counter-Petition* filed by COCOFED, *et al.*[58]

Petitioners contend:

In G.R. No. 104637-38:

---

[52] Reiterating Sandiganbayan Resolution dated July 23, 1991 and denying petitioners' Manifestation and Motion for Reconsideration.

[53] Annex "W" of Petition in G.R. No. 104637-38; *Rollo* (Vol. I), pp. 266-270.

[54] The Resolution denied petitioners' Motion for Reconsideration.

[55] Annex "Y" of Petition in G.R. No. 104637-38; *Rollo* (Vol. I), pp. 291-314.

[56] Annex "A" of Petition in G.R. No. 109797; *Rollo,* pp. 25-38.

[57] Annex "B", *Ibid.; Rollo*, pp. 39-45.

[58] Annex "C", *Ibid., Rollo*, p. 46.

Supreme Court E-Library

"GROUNDS FOR CERTIORARI

The questioned orders of the Sandiganbayan were issued without or in excess of its jurisdiction, and with grave abuse of discretion amounting to lack of jurisdiction. They should be set aside as null and void.

A

The questioned orders would deprive SMC of property already paid for. They unduly protect the claimants of sequestered companies, at the expense of SMC.

B

The Sandiganbayan over-reached its jurisdiction in issuing the questioned orders.

1. The fact of sequestration, by itself, does not mean that the possessor of the sequestered assets must be dispossessed thereof at all costs. In the present case, there are weighty reasons why the treasury shares and any "dividends" thereon should remain with SMC.

2. The purported issue of ownership does not justify the dispossession of SMC of these shares.

C

The PCGG is the entity primarily charged with the duty and responsibility of preserving sequestered assets. Absent any showing that the PCGG betrayed this duty when it allowed SMC to keep the shares already paid for in treasury, the Sandiganbayan has no jurisdiction to over-rule the PCGG's judgment.

D

The questioned orders will foment litigation, in violation of the clear policy of the law that compromise is encouraged.

E

The sequestered (sic) assets threaten and put the sequestered assets at risk.

F

The Sandiganbayan gravely abused its discretion when it treated the contracting parties to the compromise agreement differently."[59]

---

[59] Petition in G.R. No. 104637-38, p. 12; *Rollo* (Vol. I), p. 17.

Supreme Court E-Library

In G.R. No. 109797:

"GROUNDS TO GRANT PETITION

The Sandiganbayan acted without or in excess of jurisdiction or with grave abuse of discretion in issuing the questioned Resolutions in that:

I

Civil Case No. 0102 has been withdrawn. COCOFED, *et al.,* cannot intervene in a withdrawn case.

II

The Sandiganbayan's motu propio consolidation of Case 102 with Case 33 did not make SMC Group parties to Case 33. It did not result in a merger of the two cases which preserved their separate identity.

III

By their own allegations, COCOFED, *et al.,* have no cause of action.

1. COCOFED, *et al.,* are not real parties in interest. They deny the Sandiganbayan's basis for finding that they are real parties in interest, *i.e.,* that the SMC shares were acquired with coco-levy funds.

2. COCOFED, *et al.,* are estopped from claiming to act for the UCPB Group.

IV

COCOFED, *et al.,* are bound by the business judgment of the UCPB Group that the compromise is to the best interest of the UCPB Group.

V

In violation of the public policy that frowns on litigation and encourages fair compromise, the questioned resolutions foment litigation on issues settled by the compromise.

VI

COCOFED, *et al.,* paid no docket fees for the counter-petition. The Sandiganbayan acquired no jurisdiction over the counter-petition."[60]

---

[60] Petition in G.R. No. 109797, pp. 10-11; *Rollo*, pp. 11-12.

Supreme Court E-Library

Vis-a-vis these arguments, private respondents COCOFED, *et al.,* contend:

In G.R No. 104637-38:

I. That the Sandiganbayan has not yet resolved the matter of the compromise agreement. By insisting that it has implemented the compromise agreement and thus need not turn over the SMC shares corresponding to the ₱500 million first installment and the dividends thereon to the PCGG, the SMC Group is preempting the Sandiganbayan.

II. The Order of the Sandiganbayan to turn over the SMC shares corresponding to the ₱500 million first installment and the dividendsthereon is proper because the SMC Group is not entitled thereto, having forfeited the first installment as liquidated damages for its refusal and failure to make subsequent installment payments.

III. At any rate, the transformation of the SMC shares into treasury shares is but part and parcel of the compromise agreement which has not yet been approved. Thus, it is premature for the SMC Group to treat these shares as such and to refuse to turn over the same as well as the accrued dividends thereon to the PCGG, as ordered by the Sandiganbayan. Moreover, the transformation is extremely disadvantageous to the CIIF Companies.

IV. The PCGG appointed directors of UCPB, the CIIF Companies, and SMC cannot enter into a compromise agreement which is tantamount to a disposition or dissipation of sequestered assets. Moreover, the PCGG is not entitled to any arbitration fee.

V. While the law encourages amicable settlements, the law likewise provides that any compromise should not only be legal but must also be fair. In this case, the proposed compromise is contrary to law and grossly disadvantageous to the CIIF Companies, UCPB and the coconut farmers/producers.

VI. The perceived danger of risk on the sequestered assets is purely speculative and is not supported by adequate proof. Moreover, the SMC shares are sufficient to cover the losses which may be sustained in pursuing the recovery of the SMC shares.

VII. The CIIF Companies, being the disputed owners of the SMC shares, are entitled to have the dividends on the SMC shares applied to its indebtedness to UCPB. On the other hand, until the question

Supreme Court E-Library

of which entity is entitled thereto is settled, the SMC shares corresponding to the ₱500 million first installment and the dividends thereon should be turned over to the PCGG.[61]

and in G.R. No. 109797:

I. Civil Case No. 0102 may not be withdrawn sans the approval of the Sandiganbayan. Further, the filing by COCOFED, *et al.,* of the Intervention was in accordance with the ruling in *Soriano III case* which vests on COCOFED, *et al.,* the right to ventilate its claims over the SMC shares.

II. The COCOFED case settled with finality that COCOFED, *et al.,* are real parties in interest to the coconut levy funds as well as the corporations organized and investments acquired or funded from out of the coconut levy funds.

III. Where the business judgment is unsound and violative of law or public policy, affected persons may question such decision.

IV. The admission of the intervention is consistent with the ruling laid down in the Soriano III case.

V. The Intervention is in the nature of an Answer with Compulsory Counterclaim. As such, the Sandiganbayan acquired jurisdiction despite non-payment of docket fees.[62]

We stress at the outset that the instant petitions were brought to us through a special civil action of *certiorari* under Rule 65 of the Rules of Court to annul and set aside the above mentioned Sandiganbayan resolutions for having been allegedly issued without or in excess of jurisdiction and with grave abuse of discretion. To justify the issuance of the writ of *certiorari,* the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent as to amount to an evasion of positive duty or to a virtual refusal to perform enjoined,or to act at all, in contemplation of law, as to be

---

[61] COCOFED, *et al.'s,* Comment in G.R. No. 104637-38, pp. 25-26; *Rollo* (Vol. I), pp. 384-385.

[62] COCOFED, et al.'s Comment in G.R. No. 109797, pp. 10-11; *Rollo,* pp. 275-276.

Supreme Court E-Library

equivalent to having acted without jurisdiction.[63] We shall now use this unyielding yardstick.

RE: ISSUE OF DELIVERY OF CERTIFICATES OF STOCK OF SMC SHARES AND THE DIVIDENDS THEREON TO THE PCGG IN G.R. NO. 104637-38

We find *no* grave abuse of discretion on the part of Sandiganbayan when it ordered the petitioners to deliver the treasury shares to PCGG and pay their corresponding dividends for the following reasons:

First. The cases at bar do not merely involve a *compromise agreement dealing with private interest.* The Compromise Agreement here involves sequestered shares of stock now worth *more than nine (9) billions of pesos*, per estimate given by COCOFED.[64] Their ownership is still under litigation. It is not yet known whether the shares are part of the alleged ill-gotten wealth of former President Marcos and his "cronies." Any Compromise Agreement concerning these sequestered shares falls within the unquestionable jurisdiction of and has to be approved by the Sandiganbayan. The parties themselves recognized this jurisdiction. In the Compromise Agreement itself, the *petitioners and the UCPB Group expressly acknowledged* the need to obtain the approval by the Sandiganbayan of its terms and conditions, thus:

"5. Unless extended by mutual agreement of the parties, the 'Delivery Date' shall be on the 10th Day from and after receipt by any party of the notice of *approval of this Compromise Agreement and Amicable Settlement by the Sandiganbayan.* Upon receipt of such notice, all other parties shall be immediately informed."[65] (italics supplied)

---

[63] *Toyota Autoparts, Phil., Inc. vs. Director of Bureau of Labor Relations of the Department of Labor and Employment,* 304 SCRA 95 (1999).

[64] Respondent COCOFED estimates the value of the shares as ₱9.4 billion. See Consolidated Memorandum, p. 46; *Rollo* (Vol. II) in G.R. No. 104637-38, p. 762.

[65] Annex "F" of Petition in GR No. 104637-38, p. 7; *Rollo* (Vol. I), p. 96.

Supreme Court E-Library

The *PCGG Resolution of June 15, 1990 also imposed the approval* of the Sandiganbayan as a condition *sine qua non* for the transfer of these sequestered shares of stock, *viz:*

> 4. All SHARES shall continue to be sequestered even beyond Delivery Date. Sequestration on them shall be lifted as they are sold *consequent to approval of the sale by the Sandiganbayan*, and in accordance with the dispersal plan approved by the Commission. All of the SHARES that are unsold will continue to be voted by PCGG while still unsold.
>
> 5. The consent of PCGG to the transfer of the sequestered shares of stock in accordance with the COMPROMISE, and to the lifting of the sequestration thereon to permit such transfer, *shall be effective only when approved by the Sandiganbayan.* The Commission makes no determination of the legal rights of the parties as against each other. The consent it gives here conforms to its duty to care for the sequestered assets, and to its purpose to prevent the repetition of the national plunder. It is not to be construed as indicating any recognition of the legality or sufficiency of any act of any of the parties."[66] (italics supplied)

Thus, the *petitioners voluntarily submitted* to the jurisdiction of the Sandiganbayan by asking for the approval of the said Compromise Agreement. They stated in their Manifestation dated March 15, 1991[67] that:

> "1. The Compromise Agreement subject matter of this petition categorically states that '(a)ll the terms of th(e) Agreement are subject to approval by the Presidential Commission on Good Government(PCGG) as may be required by Executive Orders numbered 1, 2, 14 and 14-A. *(T)he Agreement and the PCGG approval thereof shall be submitted to the Sandiganbayan.' x xx*

PCGG has consented to the Compromise Agreement. But its consent is 'effective only when approved by the Sandiganbayan' (PCGG Resolution dated 15 June 1990, In Re: *Compromise Agreement between San Miguel Corporation, et al. , and United Coconut*

---

[66] Annex "H-1" of Petition in G.R. No. 104637-38, pp. 11-12; *Rollo* (Vol. I), pp. 130-131.

[67] Annex "9" of COCOFED, *et al.'s,* Memorandum in G.R. No. 104637-38; *Rollo* (Vol. II), pp. 804-807.

Supreme Court E-Library

Planters Bank, et al.,). Petitioners accepted this condition, and incorporatedby reference such condition as an integral part of the Compromise Agreement."[68] (italics supplied)

In fine, the *jurisdiction* of the Sandiganbayan to pass upon the parties' Compromise Agreement is *beyond dispute.*

Second. Given its undisputed jurisdiction, the Sandiganbayan ordered that the treasury shares should be delivered to PCGG and that their dividends should be paid *pending determination of their real ownership* which is the key to the question whether they are part of the alleged ill-gotten wealth of former President Marcos and his "cronies."

We cannot condemn and annul this order as capricious. In the exercise of its *discretion,* the Sandiganbayan can require a party-litigant to deliver a sequestered property to the PCGG. We held in *Baseco vs. PCGG* [69] that "the power of the PCGG to *sequester property* claimed to be 'ill-gotten' *means* to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including 'business enterprises and entities,' — *for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving the same — until* it can be determined, through appropriate judicial proceedings, whether the property was in truth 'ill-gotten,' *i.e.* acquired through or as a result of improper or illegal use or the conversion of funds belonging to the government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichmentof the ostensible owner and grave damage and prejudice to the State."[70]

The order of the Sandiganbayan regarding the subject treasury shares is merely *preservative in nature.* When the petitioners

---

[68] *Id.*, p. 804.

[69] 150 SCRA 181 (1987).

Supreme Court E-Library

and UCPB Group filed their Joint Manifestation of Implementation of the Compromise Agreement and of Withdrawal of Petition, the Sandiganbayan *cautioned* that "the PCGG, the UCPB and the SMC Group shall always act with *due regard* to the sequestered character of the shares of stock involved as well as the fruits thereof, *more particularly to prevent the loss or dissipation of their value.*"[71] The caution was wisely given in view of the many contested provisions of the Compromise Agreement. For one, the Sandiganbayan observed that the conversion of the SMC shares to treasury shares will result in a *change in the status* of the sequestered shares in that:

1. When the SMC converts these common shares to treasury stock, it is converting those outstanding shares into the corporation's property for which reason *treasury shares do not earn dividends.*

2. The *retained dividends* which would have accrued to hose shares if converted to treasury *would go into the corporation* and enhance the corporation as a whole. The enhancement to the specific sequestered shares, however, would be only to the extent aliquot in relation to all the other outstanding SMC shares.

3. By converting the 26.45 million shares of stock into treasury shares, the *SMC has altered* not only the *voting power* of those shares of stock since treasury shares do not vote, but the SMC will have actually enhanced the voting strength of the other outstanding shares of stock to the extent that these 26.45 million shares no longer vote.[72]

These significant changes in the character of the SMC shares cannot be denied. In *Commissioner of Internal Revenue vs.*

---

[70] *Id.*, pp. 208-209.

[71] Resolution dated July 5, 1991, Annex "O" of Petition in G.R. No. 104637-38; *Rollo* (Vol. I), p. 213.

[72] Sandiganbayan Resolution dated March 18, 1992, pp. 19-20; Annex "Y" of Petition in G. R. No. 104637-38; *Rollo* (Vol. I) pp. 310-311.

Supreme Court E-Library

Manning,[73] we explained the limited nature of treasury shares, thus:

"Although authorities may differ on the exact legal and accounting status of the so-called 'treasury shares,' they are more or less in agreement that treasury shares are stocks issued and fully paid for and re-acquired by the corporation either by purchase, donation, forfeiture or other means. Treasury shares are therefore issued shares, but being in the treasury they do not have the status of outstanding shares. Consequently, although a treasury share, not having been retired by the corporation re-acquiring it, may be re-issued or sold again, *such share, as long as it is held by the corporation as a treasuryshare, participates neither in dividends, because dividends cannot be declared by the corporation to itself, nor in the meetings of the corporation as voting stock,* for otherwise equal distribution of voting powers among stockholders will be effectively lost and the directors will be able to perpetuate their control of the corporation, though it still foregoing essential features of a treasury stock are lacking in the questioned shares . . ."[74] (italics supplied)

For another, the payment to the PCGG of an *arbitration fee* in the form of 5,500,000 of SMC shares[75] is denounced as illegal, shocking and unconscionable.[76] COCOFED, *et al.,* have assailed the legal right of PCGG to act as arbiter as well as the fairness of its acts as arbiter. COCOFED, *et al.*, estimate that the value of the SMC shares given to PCGG as arbitration fee which allegedly is not deserved, can run to *₱1,966,635,000.00*.[77] This is a serious allegation and the Sandiganbayan cannot becharged with grave abuse of discretion when it ordered that SMC should be temporarily dispossessed of *the subject treasury shares and that SMC should pay their dividends while the Compromise Agreement involving them is still under question.*

---

[73] 66 SCRA 14(1975).

[74] *Id.*, pp. 23-24.

[75] Broken down as 3858,831 class "A" share and 1,641,169 class "B" shares.

[76] See COCOFED, *et al.'s,* Consolidated Memorandum, p. 47; *Rollo* (Vol. II) in G. R. No. 104637-38, p. 763.

[77] *Id.*, p. 48. It considered the shares' stock market value and a premium of 3.48 times the composite price.

Supreme Court E-Library

Petitioners cannot rely on the case of *First Phil. Holdings Corp. vs. Sandiganbayan*[78] to justify their insistence that the ₱500 million payment made by Soriano III should be validated. They contend that the rules encouraging amicable settlement in civil cases should apply to cases involving sequestered properties.[79] In *First Phil. Holdings*, this Court gave due course to the petition and ordered the Sandiganbayan to approve the PCGG Resolution lifting the sequestration of MERALCO shares. We noted that the Republic of the Philippines has agreed to settle the controversy and the agreement will not in any way prejudice the rights of third persons.

In the cases at bar, the record is clear that the *Republic* of the Philippines, through the Office of the Solicitor General,vigorously *opposed* the Compromise Agreement on legal and moral grounds. COCOFED, *et al.,* also opposed and contend that the conversion of the SMC shares into treasury shares is highly prejudicial to the interests of the coconut farmers. It cannot be gainsaid that if it is later proved that SMC is not the lawful owner of the shares in question, what the adjudged lawful owner will receive are treasury shares with diminished value. The impugned order of the Sandiganbayan was issued to avoid this mischief.

Petitioners also argue that the Sandiganbayan gravely abused its discretion when it treated the contracting parties to the Compromise Agreement differently.[80] They argue that it should not have allowed the dividend income of the sequestered sharesIin the name of the CIIF Holding Companies to be applied to their indebtedness to the UCPB. Again, we do not agree for the order of the Sandiganbayan is consistent with the need to preserve and enhance the value of the sequestered assets. We quote its explanation:

---

[78] 202 SCRA 212 (1991).

[79] SMC's Memorandum, pp. 29-30; *Rollo* (Vol. II) in G.R. No. 104637-38, pp. 1026-1027.

[80] Petition in G.R. No. 104637-38, p. 23; *Rollo (*Vol. I), p. 28.

Supreme Court E-Library

"The application of the dividend income of the CIIF-owned SMC shares (which remain sequestered) to the debts of these CIIF companies in favor of the UCPB was meritorious on its own account.

The CIIF companies remain sequestered companies; the shares of stock in these companies and in the UCPB remain sequestered. If the UCPB shares and the CIIF companies (and, therefore, their assets and properties) are adjudged to have been 'ill-gotten' and 'crony-owned,' then all the sequestered properties, including the SMC shares and the resulting dividends will go to the government; otherwise, the CIIF companies will go to their registered stockholders, *i.e.,* allegedly the coconut farmers, and the debts of the CIIF companies to the UCPB will have been duly paid or diminished. The period of sequestration will not have been unduly prejudicial to these corporation or on the coconut farmers. sequestration will not have been unduly prejudicial to these corporations or to the coconut farmers.

Furthermore, if the debts of the CIIF companies to the UCPB had remained unpaid or unserviced at all, the bank itself (which is also heavily sequestered) would also suffer since it would, according to the UCPB, be violating the instructions of the Monetary Board (MB) thereon (p. 546, Record III). Compliance with the MB's instructions would save the UCPB from punitive action from the Central Bank.

The release of the dividends in this case would, therefore, protect the contingent rights of the coconut farmers as well as of the Republic in the UCPB itself. After all, nobody else is in contention for the benefits resulting from the payment of the debts of the CIIF companies except for the Government by reason of the sequestrations imposedand the registered stockholders thereof. Nobody else would suffer the consequences if the SMC shares owned by the CIIF companies were seized by the UCPB and/or the UCPB became impaired should the heavy debts of the CIIF companies not be serviced or partially paid.

2. On the other hand, the SMC Group has not justified its desire to retain the custody of the 25.45 million sequestered shares of stock, which it had converted to Treasury Shares despite sequestration, and to retain the dividends due thereon, on its own merits.

The SMC Group's primary justification for non-compliance with the Resolution of this Court requiring it to turn over the certificates of stock for the 25.45 million sequestered shares as well as the cash dividends already accrued thereon is the fact that the shares of stock have allegedly now become Treasury Shares.

Supreme Court E-Library

The SMC Group, however, forgets two things:

'(a) Under the Corporation Code 'Treasury shares are shares of stock which have been issued and fully paid for, but subsequently reacquired by, the issuing corporation by purchase, redemption, donation or through some lawful means . . .' (Sec. 9, B.P. Blg. 68, Corporation Code). These 26.45 million shares of stock or any portion thereof can, therefore, become Treasury Shares, *i.e.,* property of the San Miguel Corporation, *only if the sale between the UCPB Group and the SMC Group is allowed;* otherwise these shares cannot even begin to be deemed to have been 're-acquired by the issuing corporation,' *i.e.,* the San Miguel Corporation;

(b) Even then, under the AGREEMENT between the UCPB Group and the SMC Group on March 26, 1986 for the sale of 33.1 million shares of SMC, the buyers were not only the San Miguel Corporation but also Andres Soriano, III, the Neptunia Corporation Limited of Hongkong and the Anscor-Hagedorn Securities, Inc. Under the letter of the PCGG Commissioner Ramon Diaz dated May 19, 1986 (item No. 6, *supra*), the Corporate Secretary of the San Miguel Corpo and encumbrance of these shares without the PCGG's approval. This was by virtue of the PCGG's powers under Sec. 2 of E.O. No. 2.'

Unless, therefore, the right of Neptunia, Andres Soriano, III and the Anscor-Hagedorn Securities, Inc. to these 26.45 million shares shall have been transferred to the SMC, the SMC cannot be deemed to have 'reacquired' these shares. They would remain co-owned by all four (4) entities.

The SMC Group's claim, therefore, that these 26.45 million shares are now Treasury Shares is unfounded.

But even if, indeed, these shares are treasury shares, they remain sequestered so that any movement of these shares cannot be of any pernament character that will alter their being sequestered shares and, therefore, *in 'custodia legis,'* that is to say, under the control and disposition of this Court.

It must finally be said that the conversion of the 26.45 (or 25.45) million shares by the SMC Group into Treasury Shares is of the SMC Group's own making and the SMC Group cannot perform acts that will, by its own say-so, take property away from *'custodia legis.'*

Supreme Court E-Library

The position taken by the SMC Group here is self-serving and unacceptable. It is also contrary to jurisprudence."[81]

The claim of petitioners to fairness hardly impresses. It is planted on the assumption that their purchase of the subject shares is above board. The assumption begs the question for the Sandiganbayan has yet to decide the real ownership of the subject shares, *i.e.,* whether or not they are part of the allegedillegal wealth of former President Marcos and his "cronies." Nor have petitioners shown that they will suffer a legal prejudice if they deliver the shares and the dividends thereon to the PCGG. It need not be stressed that in the event the petitioners are found to be the lawful owners of these shares, they will be awarded the cash and stock dividends which have accrued thereon. We agree with the conclusion of the Sandiganbayan in its assailed Resolution of March 18, 1992 that "the SMC Group has not justified its desire to retain the custody of the 25.45 million sequestered shares of stock, which it had converted to treasury shares despite sequestration, and to retain the dividends due thereon, on its own merits."[82]

More unimpressive is petitioners' submission that the "delivery of the shares to the PCGG may create legal problems and may give an impression that these shares are outstanding and maybe sold and transferred, when under the law, all that can be done is for SMC to reissue the shares pursuant to procedures mandated by the applicable laws."[83] Such fear is clearly unfounded and needs no elaborate refutation.

RE: ISSUE OF INTERVENTION OF COCOFED, ET AL., IN CASE NO. 0102

We also affirm the resolution of the Sandiganbayan allowing the intervention of COCOFED, *et al.,* in Civil Case No. 0102. It is the posture of the petitioners that intervention is improper since Case No. 0102 has already been withdrawn as of July 4, 1991. They hinge the right to withdraw the Joint Petition to

---

[81] Annex "Y" of Petition in G.R. No. 104637-38, pp. 13-16; *Rollo* (Vol. I), pp. 304-307.

[82] *Id.,* p. 14; *Rollo* (Vol. I), p. 305.

[83] Petition in G.R. No. 104637-38, p. 17; *Rollo* (Vol. I), p. 22.

Supreme Court E-Library

approve their Compromise Agreement on Section 1, Rule 17 of the Rules of Court.[84] We do not agree.

First. The right of COCOFED, *et al.,* to intervene in cases involving these SMC shares has long been recognized by this Court. In *Soriano III v. Yuzon,*[85] we ruled:

"xxx xxx xxx

The Philippine Coconut Producers Federation (COCOFED) also came into the picture. A Manifestation dated March 15, 1988 was filed in its behalf by its President, Ma. Clara Lobregat. The Manifestation contained a discussion of the laws passed (and the official action taken pursuant thereto) establishing the coconut levy and providing for the management and utilization of the funds thereby generated. It advocated the thesis that the question of whether or not the investments of the coconut levy fund constitute public property, essentially involves issues of fact and law which should be resolved in the first instance by a trial court of competent jurisdiction at a hearing on the merits, and the COCOFED should be conceded the right to demonstrate at such a hearing that the coconut farmers, through the so-called CIIF companies, and not Mr. Cojuangco, Jr. or any of his companies, are the beneficial owners of the disputed block of SMC shares. Alternatively, the COCOFED prayed that it be given the opportunity to substantiate the points it thus raises in G.R. No. 74910, or in Civil Case No. 13865 of the Regional Trial Court at Makati, or in Civil Case No. 0033 of the Sandiganbayan entitled '*Republic v. Eduardo Cojuangco, Jr., et al.,*' or in any other case which may hereafter be filed in litigation of the issues."[86]

In said case, we dismissed all the actions[87] brought to us, directed the dismissal of cases pending before the Regional Trial Courts and Securities and Exchange Commission, and ruled that:

---

[84] It states that "an action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment . x x x"

[85] *Supra* note 6.

[86] *Id.,* pp. 239-240.

[87] G.R. Nos. L-74910, 75075, 75094, 76397, 79459 and 79520.

Supreme Court E-Library

"This dismissal is without prejudice to the assertion and ventilation before the Sandiganbayan by the parties of their respective claims by such appropriate modes as are prescribed by law x x x"[88]

Second. We again emphasize that petitioners and the UCPB Group voluntarily submitted to and invoked the jurisdiction of the Sandiganbayan when they filed their Joint Petition for Approval of the Compromise Agreement and Amicable Settlement. The Sandiganbayan then *immediately exercised its jurisdiction* as can be gleaned from the numerous hearings conducted and orders it issued resolving various incidents of the case. Among others, it ordered persons and entities with known legal interest on the subject shares to file their comments on the Joint Petition. This order was *not seasonably challenged by the petitioners.*Pursuant thereto, COCOFED, *et al.,* claiming beneficial interests on the shares, intervened. Mr. Eduardo Cojuangco, Jr. also manifested his intent to intervene. *The right of these persons and entities to have their claims heard and resolved cannot be defeated by the petitioners by the simple act of withdrawing their Joint Petition for Approval of Compromise Agreement and immediately implementing its provisions.* To allow the *unilateral* withdrawal is to allow the petitioners to make a plaything of the jurisdiction of the Sandiganbayan, submit to it when it is in their favor and repudiate it *when it threatens to turn against their interest.* Jurisdiction is vested by law and the all too familiar rule is that once a court has assumed jurisdiction over a case, its jurisdiction shall continue until the case is terminated.[89]

Third. Petitioners cannot invoke Section 1, Rule 17 of the Rules of Court which provides "that a complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment." The provision contemplates a complaint where there is a plaintiff and a defendant with *real conflicting interests.* The cases at bar, however, are different. They started as a *Joint Petition*

---

[88] *Soriano III vs. Yuzon, supra* at 242.

[89] *Guimoc v. Rosales,* 201 SCRA 468 (1991).

Supreme Court E-Library

for Approval of Compromise Agreement and Amicable Settlement. Known persons and entities claiming adverse interests on the subject shares were not impleaded. In other words, no party that can assail the validity of the Compromise Agreementthat involves billions of pesos and substantial state interests was impleaded in any capacity. Yet, petitioners are aware that the subject shares of stock are sequestered and their ownership is still under litigation in Case No. 0033. The attempt to bypass these persons and entities with interests in the subject shares is hardly tenable and the withdrawal of the petition and its immediate implementation when they opposed it makes petitioners' posture doubly untenable.

There is another reason why petitioners cannot rely on Section 1, Rule 17 of the Rules of Court. This provision allows the plaintiff to withdraw his complaint before defendant has answered it or filed a motion for summary judgment. In fine, before the defendant has pleaded to the complaint. At that point, defendant has hardlybeen exposed to any kind of damage or prejudice, hence, the plaintiff is unilaterally allowed to withdraw his complaint. In the cases at bar, before the petitioners and the UCPB Group can file their Manifestation of Withdrawal of Joint Petition for Approval of Compromise Agreement and Amicable Settlement, COCOFED, *et al.,* have already filed their Opposition in Intervention and Compulsory Counter-Petition and Counterclaim for Damages. In the same vein, the Republic, thru the OSG, has already filed its Opposition. These pleadings of COCOFED, *et al.,* and the Republic assail the legality of the Compromise Agreement. They can be deemed as answers to the Joint Petition, hence, petitioners can no longer unilaterally withdraw their Joint Petition.

Fourth. Petitioners further contend that COCOFED, *et al.,* cannot intervene because Case No. 0102 is not an action or a suit and they did not implead any adverse party and set forth no claims. Petitioners' contention cannot merit the assent of the Court. Regardless of its nature as an action or suit, the fault of the Joint Petition precisely lies in the attempt to bypass parties with legitimate interests on the subject shares. The existence of these parties is known to the petitioners yet they

Supreme Court E-Library

were not impleaded. Their failure to be impleaded is bad enough but worse still is petitioners' submission that since they were not impleaded, ergo, they cannot intervene. It is now a musty principle of justice that a right cannot arise from a wrong. Moreover, the Sandiganbayan did not treat the Joint Petition as an "action or suit" but as a mere incident of Case No. 0033. In any event, Section 1, Rule 19 of the Rules of Court provides the rule on who can intervene, *viz*: "A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof, may, with leave of court, be allowed to intervene in the action." The legal interest of COCOFED, *et al.,* which justifies their intervention is extensively discussed in the impugned resolution of the Sandiganbayan, *viz:*

"In all fairness, the motion to intervene filed by COCOFED, *et al.,* must be granted for the following reasons:

1. The coconut planters and producers represented by COCOFED do have a legal interest in the matter of litigation and are so situated as to be adversely affected by the disposition of the sequestered shares of stock subject matter of the compromise agreement.

The rule on intervention (Section 2, Rule 12 of the Rules of Court) states:

> 'Sec. 2. Intervention — A person may, before or during a trial be permitted by the court, in its discretion, to intervene in an action, if he has legal interest in the matter of litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof.'

xxx xxx xxx

It should be borne in mind that the real subject matter of this case is the coconut levy fund of which the SMC shares in question are claimed to be but a part. x x x

Supreme Court E-Library

To start with, the coconut levy fund came from levies imposed upon the sale of copra or equivalent coconut product that was deducted from the price of copra which, as claimed by movants-farmers, would have gone to them. Thus, starting 1971, under the Coconut Investment Fund (CIF), a levy of ₱0.55 was imposed on the first domestic sale of every 100 kilograms of copra or equivalent product. In 1973, under the Coconut Consumers Stabilization Fund (CCSF), a levy of ₱15.00 on the first sale of every 100 kilograms of copra *resecada* or equivalent product was imposed. From the CCSF was established yet another fund, the Coconut Industry Development Fund (CIDF)whose initial capital of ₱100 million and regular allotment equivalent to ₱.20 per kilogram of copra resecada or its equivalent were contributed by the CCSF. (It is from this Coconut Industry Investment Fund (CIIF) that the so-called CIIF Companies were later established). From 1981, under the Coconut Industry Stabilization Fund which replaced the CCSF and CIDF, a levy of ₱50.00 for every 100 kilos of copra *resecada* or equivalent product delivered to exporters and copra users was collected and apportioned among the CIDF, COCOFED, PCA and the UCPB.

Through the years, part of the coconut levy fund was used and applied to various projects and invested or converted into different assets, properties and businesses. x x x

x x x [T]he coconut farmers and producers do have a legal interest in the SMC shares. That legal interest consists of their alleged beneficial ownership of the San Miguel shares, they being the 'registered owners and/or beneficial owners of all, or at least not less than fifty-one percent (51%), of the capital stock of the CIIF Companies' some of which wholly own the so-called CIIF Copra Trading Companies and the CIIF Holding Companies which are the registered stockholders of the SMC shares. (p. 3, COCOFED'S Omnibus Class Action x x x). Their claim is based on the specific provisions of Section 5, Article III, PD 1468, the pertinent portion of which states: 'Said fund (Coconut Consumers Stabilization Fund and the Coconut Industry Development Fund) and the disbursements thereof as herein authorized for the benefit of the coconut farmers shall be owned by them in their private capacities x x x.' This Presidential Decree has been assailed by the PCGG as a 'transgression of the basic limitation of the licit exercise of the state's taxing and police powers', but this is a legal question yet to be resolved.

It has been argued that COCOFED, *et al.,* should not be allowed to intervene because they have no actual, material, direct or immediate

Supreme Court E-Library

interest in the subject matter. To be bound entirely by the form and nature of these assets as shares of stock subject to the special laws, rules and by-laws of corporations, is to adopt an overly strict, narrow and myopic approach. It has already been alleged that these shares constitute ill-gotten wealth derived from the coconut levy fund. The form into which part of the coco-levy fund has been converted is not crucial or decisive; otherwise, it would be so easy to defeat the recovery of ill-gotten wealth by simply converting those funds, assets and properties from one form to another and using legal technicalities to thwart all attempts to reach them. The clear intention of the law is to recover all assets and properties illegally acquired by former President Marcos, *et al.,* in whatever form they may be, such as, to quote the exact wording of Executive Order No. 2, 'in the form of bank accounts, deposits, trust accounts, *shares of stocks*, buildings, shopping centers, condominium, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world.' (2nd Whereas Clause, Executive Order No. 2)

Moreover, at this stage of the proceedings, it has not yet been established who the real owners of the SMC shares are, but if we bar movants from the start, and if it should turn out in the end that they are the beneficial owners and that the Compromise Agreement did in fact prejudice their rights, then we shall have done them an irreparable injustice. Fairness and prudence dictate that — at the risk of the inconvenience of having one more group to be heard on the matter — We exercise our discretion in favor of allowing them to intervene."[90]

Under the rules on intervention, the allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court.[91] *Discretion is a faculty of a court or an official by which he may decide a question either way, and still be right.*[92] The permissive tenor of the rules shows an intention to give to the court the full measure of discretion in permitting

---

[90] Resolution dated September 30, 1991, Annex "A" of Petition in G.R. No. 109797, pp. 5-7, 9-12; *Rollo,* pp. 29-31, 33-36.

[91] Section 2 (b), Rule 12 of the Rules of Court.

[92] *Toyota Autoparts, Phil., Inc. vs. Director of Bureau of Labor Relations of the Department of Labor and Employment,* 304 SCRA 95 (1999).

Supreme Court E-Library

or disallowing the intervention. The discretion of the court, once exercised, cannot be reviewed by *certiorari* nor controlled by *mandamus* save in instances where such discretion has been so exercised in an arbitrary or capricious manner.[93]

Nor are we impressed by petitioners' submission that COCOFED, *et al.,* should pay a docket fee for their counter-petition and counterclaim for damages. We note that it was the Sandiganbayan itself that ordered COCOFED and the other defendants in Civil Case No. 0033 to give their comment to the Joint Petition for Approval of Compromise Agreement, *etc.* In response to this order, COCOFED, *et al.,* filed their Opposition-in-Intervention and Compulsory Counter-Petition and Counterclaim for Damages. COCOFED, *et al.,* alleged that the Compromise Agreement is illegal and its approval would bring damages to themselves. In effect, COCOFED, *et al.,* alleged a compulsory counterclaim for which they need not pay any docket fee.

Fifth. Petitioners cannot insist on their right to have their Compromise Agreement approved on the ground that it bears the imprimatur of the PCGG. To be sure, the consent of thePCGG is a factor that should be considered in the approval or disapproval of the subject Compromise Agreement but it is not the only factor.

In *Republic vs. Sandiganbayan,*[94] this Court had the occasion to categorically draw the distinctions between (i) the Sandiganbayan's exclusive jurisdiction to determine the judicial question of ownership over sequestered properties and (ii) the incidents of the exercise by the PCGG of its purely administrative and executive functions as conservator of sequestered properties, as follows:

"In other words, neither in *Peña* nor in any other case did this Court ever say that orders of sequestration, seizure or take-over of the PCGG *or other acts done in the exercise of its so-called*

---

[93] *Big Country Ranch Corp. vs. Court of Appeals,* 227 SCRA 161 (1993).

[94] 206 SCRA 506 (1992).

Supreme Court E-Library

'primaryadministrative jurisdiction' are beyond judicial review, or beyond the power of the courts to reverse or nullify. It is true, of course, that those acts are entitled to much respect, the findings and conclusions motivating and justifying them should be accorded great weight, 'like the factual findings of the trial and appellate courts,' and such findings and conclusions of the PCGG may not be superseded and substituted by the judgment of the courts. But obviously the principle does not and cannot sanction arbitrary, whimsical, capricious or oppressive exercise of power and discretion on the part of the PCGG, *or its performance of acts* without or in excess of its authority and competence under the law. And in accordance with applicable law, review of those acts, and correction or invalidation thereof, when called for, can only be undertaken by the Sandiganbayan, which has exclusive original jurisdiction over all cases regarding 'the funds, moneys, assets and properties illegallyacquired or misappropriated by former President Ferdinand E. Marcos, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees"' [95] (italics supplied)

This ruling has stronger application in the cases at bar considering COCOFED, *et al.,* have challenged the legality of the consent given by PCGG to the Compromise Agreement on various grounds but especially in light of the "arbitration fee" it received in the form of SMC shares of substantial value. COCOFED, *et al.,'s* position that the Compromise Agreement is a sell out of its interest is also a repudiation of the so called "business judgment" of UCPB which petitioners insist should bind COCOFED, *et al.*

A final word. The cases at bar involve shares of stock estimated to be worth more than ₱9 billion now. These shares were sequestered in 1986 and the government filed Civil Case No. 0033 in 1987 to determine whether they are part of the alleged ill-gotten wealth of former President Marcos and his "cronies." We did not set aside the impugned resolutions of the Sandiganbayan in the cases at bar for they constitute cautious moves to preserve the character of the sequestered shares pending determination of their true owners. Be that as it may,

---

[95] *Id.,* p. 517.

Supreme Court E-Library

we note that Civil Case No. 0033 has remained unresolved by the Sandiganbayan. The delay is no longer tolerable for it locks in billions of pesos which could well rev-up our sputtering economy. Worse, it constitutes another embarrassing evidenceof snail-paced justice, so long lamented but mostly by our lips alone. The Sandiganbayan must not be the burial ground of cases of far-reaching importance to our people. It is time for it to write *finis* to Civil Case No. 0033.

IN VIEW WHEREOF, the petitions in G.R. Nos. 104637-38 and in G.R. No. 109797 are *DISMISSED.* No costs.

SO ORDERED.

Davide, Jr., C. J., Melo, Vitug, Kapunan, Mendoza, Purisima, Buena, Gonzaga-Reyes, and *De Leon, Jr., JJ.*, concur.

Bellosillo, J., I vote to approve the Compromise Agreement.

Panganiban, J., took no part. As a former practising lawyer, I have rendered an opinion on the issues of the case.

Pardo, J., please see dissent.

Quisumbing, J., I join the dissent of Justice B. Pardo.

Ynares-Santiago, J., is on leave.

PARDO, *J., dissenting opinion:*

I regret to dissent from the majority decision upholding the disapproval of the compromise agreement by the Sandiganbayan.

The resolutions of the Sandiganbayan, subject of the two (2) petitions for review on *certiorari* before the Court would bar the implementation of a compromise agreement entered into by the SMC Group and the UCPB Group regarding the thirty (30) million plus shares of SMC in the name of the fourteen (14) holding companies of the CIIF Group of Companies.

On April 27, 1990, the Sandiganbayan directed the parties to Civil Case No. 0033[1] to formalize a statement of their interest

---

[1] *Republic v. Cojuanco, et al.*

Supreme Court E-Library

on the subject matter of the compromise. A majority of the parties in Civil Case No. 0033 signified that they were not intervening. Cojuangco and COCOFED, *et al.,* were the only ones who claimed indirect interest, as stockholders of SMC and UCPB. Lobregat and others not being parties to Civil Case No. 0033, filed their motion for leave to intervene and to admit their opposition and also interposed a compulsory counterclaim for damages.

On June 3, 1991, the Sandiganbayan issued a resolution that:

(a) The sequestered character of the SMC shares subject of the compromise, is independent of the transaction involving the contracting parties;

(b) The reversions contemplated are without prejudice to sequestration;

(c) The PCGG has not interposed any without objection to the contractual resolution of the problems confronting the SMC and the UCPB groups.

Pursuant to June 3, 1991 Sandiganbayan resolution, the SMC Group and the UCPB Groupd implemented the compromise agreement. They withdrew the joint petition for approval of the compromise, and the PCGG gave its express conformity to the withdrawal.

In First Philippines, the Court held that, "Under the Civil Code, the court may reject a compromise only if it is covered by the prohibition under Art. 2035, Civil Code. No compromise upon the following question shall be valid: 1. The civil status of persons; 2. The validity of a marriage or legal separation; 3. Any ground for legal separation; 4. Future support; 5. The jurisdiction of courts; 6. Future legitime."

Article 2036, Civil Code provides that "a compromise comprises only objects which are definitely stated therein, or which by necessary implication from its terms should be deemed to have been included in the same. a general nrenunciation of rights is understood to refer only to those that are connected with the dispute which is the subject of the compromise, ot if it is, in

Supreme Court E-Library

general, contrary to "law, morals, good customs, public order or public policy."[2]

Compromises, being consensual contracts, are perfected upon the meeting of minds of the parties. Judicial approval is not required for its perfection.[3]

In *Republic of the Philippines v. Sandiganbayan,*[4] "this Court categorically stated that amicable settlement and compromises are not only allowed but actually encouraged in civil cases. In *Benedicto v. Board of Administrators of Television Stations RPN, BBC and IBC,*[5] the Court ruled that the authority of the PCGG to validly enter into compromise agreements for the purpose of avoiding litigation or putting an end to one already commenced was indisputable. The Court took cognizance of the fact that the compromise agreement which is now the subject of the present petition was pending before the Sandiganbayan for determination and approval and, therefore, dismissed the petition directed against the agreement's implementation and enforcement."

The compromise is merely a contractual resolution of disputes since all that the compromise resolves and lays to rest are the rights and obligations of the seller (UCPB) and the buyer (SMC)under the March 1986 agreement (executed prior to the sequestration). Hence, Case No. 102 does not involve COCOFED, *et al.*

Advantages of the approval of the compromise agreement.

On the part of SMC, in exchange for the ₱500 million down payment, it will receive 26,450,000 million shares to be treated as treasury shares. If 25,450,000 shares will be dispersed according to a plan approved by the PCGG, the proceeds will enable SMC to be reimbursed for the ₱500 million investment costs and be able to use such proceeds for its expansion program.

---

[2] *First Philippine Holdings Corp. v. Sandiganbayan*, 202 SCRA 212, 219-220 [1991].

[3] *Sanches v. Court of Appeals*, 279 SCRA 647 [1997].

[4] 173 SCRA 729 [1989].

[5] 207 SCRA 659 [1992].

Supreme Court E-Library

On the part of the UCPB group, the CIIF companies will be entitled to the dividends which as of 1993 amounted to ₱692,343,458.57, more than enough to pay out their debts and thus prevent its collapse and foreclosure.

On the part of the PCGG, in the event that the assets involved are adjudged ill-gotten, the government will be the owner of UCPB and the CIIF companies and their assets. So it is to the interest of the government that said assets be preserved. The compromise agreement puts an end to the claim of the SMC group to the sequestered shares. The Government will receive 5,500,000 shares in trust for the Comprehensive Agrarian Reform Program (CARP).

We are concerned with the SMC shares paid for with the ₱500 million first installment. The proceeds of the sale of thefive (5) million shares converted to treasury shares are with the UCPB, a sequestered company. Thus, the interest of the government remains protected. In *Liwayway Publishing, Inc. v. PCGG,*[6] we held "rights of the parties and of the government, are adequately protected by the acceptance of a cash deposit for the shares in the name of Eduardo Cojuangco, Jr."

We can not take as facts what was related in the book of Senator Jovito R. Salonga that the money used to purchase the disputed shares would come from the sale by a San Miguel subsidiary of a profitable Hong Kong company to Anheuser Busch for HK $1 or roughly ₱2.6 billion. This assertion was based on "reliable accounts" not on indubitable facts. In fact, in *SMC v. Khan,*[7] it was alleged through the petition filed by Atty. Eduardo de los Angeles that, on April 1, 1986 Soriano, Kahn and Roxas, as directors of Neptunia Corporation, Ltd., had met and passed a resolution authorizing the company to borrow up to $26,500,000.00 from the HongKong Shanghai Banking Corporation, HongKong, to enable the Soriano family to initiate steps and sign an agreement for the purchase of some 33,133,266 shares of San Miguel Corporation. The loan

[6] 160 SCRA 716 [1998].

[7] 176 SCRA 447, 454 [1989]

Supreme Court E-Library

of $26,500,000.00 was obtained on the same day, the loan agreement was signed for Neptunia by Ralph Karr and Carl Ottiger.

Consequently, there is no basis for ruling that the money involved in the compromise agreement would come from an illegal source. The Sandiganbayan exceeded its jurisdiction andacted with grave abuse of discretion when it required SMC to turn over treasury shares to the Sandiganbayan, and worse, to pay dividends on treasury shares. By law, treasury shares do not earn dividends.[8]

IN VIEW WHEREOF, I vote to *SET ASIDE* the Sandiganbayan resolutions and to ***APPROVE*** the compromise agreement.

SECOND DIVISION

[G.R. No. 126368. September 14, 2000]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOHNNY CALABROSO, SONNY BOY MATOS, RICHARD SATA and LEONARDO DUMRIQUE**, *accused-appellants.*

SYNOPSIS

Accused-appellants were charged before the Regional Trial Court of carnapping and robbery with homicide. After due trial, all four (4) accused were found guilty of carnapping a TMX Honda motorized tricycle owned and driven by one Tranquilino Nacnac. They were all sentenced to life imprisonment. The trial court appreciated the presence of conspiracy among the four

---

[8] *Com. of Internal Revenue vs. Manning*, 66 SCRA 14 [1975].