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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[G.R. No. 172556. June 9, 2006]

TRANS MIDDLE EAST (PHILS.), *petitioner, vs.* **SANDIGANBAYAN (5th Division), PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), The Board of Directors of Equitable PCI Bank, represented by its Chairman, CORAZON DELA PAZ and SABINO ACUT, JR. (in his capacity as Corporate Secretary of Equitable PCI Bank),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DOES NOT LIE UNLESS A MOTION FOR RECONSIDERATION IS FIRST FILED; EXCEPTION; PRESENT IN CASE AT BAR. — The Court first dispenses with procedural issues raised that are ultimately minor. The petition is denominated as one for *certiorari* with prayer preliminary injunction and/or temporary restraining order, under the ambit of Rule 65 of the Rules of Court. Respondent Board of Directors of EPCIB argue that the failure of TMEE to file a motion for reconsideration with the Sandiganbayan precluded the immediate resort to the special civil action of *certiorari*. As a general rule, *certiorari* as a special civil action does not lie unless a motion for reconsideration is first filed before the respondent court. However, this rule does not apply when special circumstances warrant immediate or more direct action.

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It is well-settled that the availability of appeal does not foreclose recourse to the extraordinary remedies of *certiorari* or prohibition where appeal is not adequate, or equally beneficial, speedy and sufficient. Where the exigencies of the case are such that the ordinary methods of appeal may not prove adequate — either in point of promptness or completeness, so that a partial if not a total failure of justice could result— a writ of *certiorari* may still be issued. It cannot evade notice that the assailed Sandiganbayan Resolution was promulgated one (1) day before the scheduled stockholders meeting of EPCIB. Evidently, TMEE could no longer have relied on the Sandiganbayan to reverse itself literally overnight, in time for the meeting. The filing of a motion for reconsideration would not have been an adequate or speedy remedy for TMEE. Hence, resort to the special civil action of *certiorari* without filing a motion for reconsideration is justified under the circumstances.

2. **ID.; ID.; ID.; PETITION IN CASE AT BAR IS ONE FOR *CERTIORARI* WITH INJUNCTION SOUGHT ONLY AS AN ANCILLARY RELIEF; NATURE OF AN ACTION, AS WELL AS WHICH COURT HAS JURISDICTION OVER IT, IS DETERMINED BASED ON THE MATERIAL ALLEGATIONS CONTAINED IN THE PETITION; CASE AT BAR.** — More fundamentally, it is evident from the allegations in the petition, replete with imputations of grave abuse of discretion on the part of the Sandiganbayan when it promulgated its resolution, that the nature of the petition is one for *certiorari*, with injunction sought only as an ancillary relief. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the material allegations contained in the petition. Any doubts as to whether TMEE seeks the annulment of the Sandiganbayan resolution are cleared by the Supplemental Petition, which expressly seeks such relief. The Court is also inclined to view this defect with liberality, considering that TMEE had only one (1) calendar day to prepare the petition, which sought to vindicate the exercise of its voting rights in the EPCIB stockholders meeting, which was enjoined by the Sandiganbayan resolution promulgated just the day before such election. The forced haste under which the petition was prepared cannot be attributed to the fault of TMEE, and any resulting errors in the petition that are of the non-fatal variety can be overlooked.

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3. ID.; PROVISIONAL REMEDIES; INJUNCTION; ORIGINAL ACTION THEREFOR; BEYOND THE JURISDICTION OF THE SUPREME COURT; EXCEPTION; PRESENT IN CASE AT BAR. — The more consequential procedural objection lies in the failure of TMEE in its petition to pray for the annulment of the 22 May 2006 Sandiganbayan Resolution despite the denomination of the petition as one for *certiorari*, and the arguments therein that the Sandiganbayan acted with grave abuse of discretion in rendering the Resolution. On this failure, the respondents in their respective comments argue that the petition, which was accompanied by a prayer for writ of preliminary injunction and/or TRO, is effectively an original action for injunction beyond the jurisdiction of this Court. TMEE, in its Supplemental Petition filed seven (7) days after the filing of the petition, did subsequently pray for the nullification of the Sandiganbayan resolution on the ground of grave abuse of discretion. TMEE deserves some blame for failing to include such prayer in its original petition, yet given the attendant circumstances, it would be an act of triviality to dismiss the petition on that ground alone. For one, even assuming that the petition is indeed an original action for injunction, it was ruled in *Del Mar v. Pagcor* that "this Court has the discretionary power to take cognizance of the petition at bar if compelling reasons, or the nature and importance of the issues raised, warrant the immediate exercise of its jurisdiction." Indeed, such compelling reasons, as adverted to before, are present in this case.

4. ID; PROVISIONAL REMEDIES; INJUNCTION; SEQUESTRATION, A FORM OF PROVISIONAL REMEDY. — The relevant antecedent facts actually point to three successive recourses to injunctive relief which were availed of in this case. The first was the 1986 order of sequestration, sequestration being in itself a form of a provisional remedy, an extraordinary measure intended to prevent the destruction, concealment or dissipation of sequestered properties and, thereby, to conserve and preserve them, pending the judicial determination in the appropriate proceeding of whether the property was in truth ill-gotten.

5. ID.; ID.; ID.; ABSENT A CLEAR LEGAL RIGHT, THE ISSUANCE THEREOF CONSTITUTES GRAVE ABUSE OF DISCRETION. — For injunctive relief to avail to the PCGG, it must be able to demonstrate the existence of a clear legal right to be entitled

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to such relief. In the absence of a clear legal right, the issuance of the injunctive relief constitutes grave abuse of discretion. There could only be two putative sources of such legal right of the PCGG — the 1986 sequestration order and the 1995 Decision of this Court which affirmed the 1992 TRO issued by the Supreme Court. Yet closer scrutiny of either reveals no foundational recognition of a clear legal right of the PCGG.

6. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT AGENCIES; PCGG; SEQUESTRATION; REGISTERED OWNER OF SEQUESTERED SHARES MAY NOT BE DEPRIVED OF VOTING RIGHTS; EXCEPTIONS; CASE AT BAR. — It is settled that as a general rule, the registered owner of the shares of a corporation, even if they are sequestered by the government through the PCGG, exercises the right and the privilege of voting on them. The PCGG as a mere conservator cannot, as a rule, exercise acts of dominion by voting these shares. The registered owner of sequestered shares may only be deprived of these voting rights, and the PCGG authorized to exercise the same, if it is able to establish that (1) there is *prima facie* evidence showing that the said shares are ill-gotten and thus belong to the State; and (2) there is an imminent danger of dissipation, thus necessitating the continued sequestration of the shares and authority to vote thereupon by the PCGG while the main issue is pending before the Sandiganbayan. Clearly, the existence of the writ of sequestration alone would not legally justify barring TMEE from voting its shares. Such preclusion may only occur if there is *prima facie* evidence showing that the said shares are ill-gotten and there is an imminent danger of dissipation. The Sandiganbayan or any other court has yet to pronounce any findings to those effects. In fact, the Sandiganbayan, in its 1998 Resolution, instead declared that TMEE possessed "a *prima facie* right" as owner of the registered owner of the sequestered shares, and that there appeared to be "no strong grounds for apprehension of dissipation or loss of assets of TMEE." Concerns over dissipation have likewise been assuaged that the shares have been deposited in escrow with the Land Bank of the Philippines on the initiative of TMEE itself. In any event, the nullification in 2003 of the very writ of sequestration by the Sandiganbayan further militates against any recognition that the sequestration order established a clear legal right that entitled the PCGG to injunctive relief.

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7. ID.; ID.; ID.; ID.; ID.; WRIT OF SEQUESTRATION MUST BEAR THE SIGNATURES OF TWO COMMISSIONERS. — The 2003 Resolution nullifying the sequestration order over TMEE's shares was based on the fact, of which there appears to be no serious contest, that the said order, dated 15 April 1986, was signed by only one PCGG commissioner in violation of the PCGG Rules and Regulations promulgated on 11 April 1986. The 2003 Resolution particularly cited the Court's 1998 Decision in *Republic v. Sandiganbayan,* penned by Chief Justice Panganiban, which categorically ruled that "the writ [of sequestration] must bear the signatures of two commissioners, because their signatures are the best evidence of their approval thereof." The Court also noted that the PCGG Rules took effect on 11 April 1986, and that "the signing of sequestration orders by two commissioners had already been encouraged after April 11, 1986." The binding effect of the same provision of the PCGG Rules on the PCGG after 11 April 1986 was also affirmed in the 1996 ruling in *Republic v. Sandiganbayan*, also penned by Chief Justice Panganiban. Quoting the same provision requiring that the writ of sequestration may be issued upon the authority of at least two commissioners, the Court said that the provision was "couched in clear and simple language [and] leaves no room for interpretation."

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; SANDIGANBAYAN'S ORDERS RECOGNIZING PETITIONER'S RIGHT TO VOTE ITS SHARES AND NULLIFYING THE WRIT OF SEQUESTRATION CAN ONLY BE ASSAILED THROUGH A SPECIAL CIVIL ACTION FOR *CERTIORARI*, THE FILING OF WHICH DOES NOT *IPSO FACTO* INHIBIT THE EFFECTIVITY OF THE ASSAILED ORDER UNLESS SPECIFICALLY ENJOINED. — There is an admitted convenience in simply pronouncing, as the Sandiganbayan did, that since the motions for reconsideration to the 1998 and 2003 Resolutions had not been resolved, the efficacy of those resolutions cannot yet be recognized. It cannot be denied though that the two resolutions are properly characterized as interlocutory orders, as they do not finally dispose of Civil Case No. 0035. In *Valarao v. Pascual,* the Court contended with the question of whether respondents therein were bound to respect the authority of a special administrator on the ground that the interlocutory order appointing such administrator was not yet final and executory

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because of a pending motion for reconsideration. The Court held: [R]espondents cannot disobey the reasonable exercise of the authority of a special administrator on the dubious ground that the order appointing petitioner Valarao as special administratrix had not in the meantime become final and executory because of a pending motion for reconsideration filed by them. *The fallacy of this reasoning is apparent, for an interlocutory order is not instantly appealable and therefore there is no period nor action to suspend or interrupt by a motion for reconsideration; it is even well settled that a special civil action for certiorari does not suspend the immediate enforceability of an interlocutory order absent a temporary restraining order or an injunction. In the same manner, the appointment of a special administrator being an interlocutory order is not interrupted by a motion for reconsideration.* and thus must be obeyed as the proceedings in the probate court progress. The same characteristics of the interlocutory order in *Valarao* apply in this case. Since the orders recognizing TMEE to vote its shares and nullifying the writ of sequestration are both unappealable, they can only be assailed through a special civil action for *certiorari*, the filing of which however does not *ipso facto* inhibit the effectivity of the assailed order unless specifically enjoined. For this reason, it cannot be said that the 1998 and 2003 Resolutions, interlocutory as they are in character, are not yet susceptible to enforcement during the motions for reconsideration therefor.

9. ID.; COURTS; SANDIGANBAYAN; POWERS; UNTIL AND UNLESS IT RECONSIDERS THE 1998 AND 2003 RESOLUTIONS, THE SANDIGANBAYAN IS BOUND TO RESPECT THEM AND IS PRECLUDED FROM PERFORMING ANY ACT OR PROMULGATE ANY ISSUANCE INCONSISTENT WITH THE LETTER, TENOR AND DISPOSITION THEREIN. — For all intents and purposes, the 1998 and 2003 Resolutions had been respected prior to the current year by the Sandiganbayan and the parties. Given the pending motions for reconsideration, theoretically it is still within the power of the Sandiganbayan to reverse or modify the 1998 and 2003 resolutions. Yet if the Sandiganbayan were so minded to modify or reverse the two earlier resolutions, it should do so directly and explicitly, not only tangentially or by implication as it actually did, and at that based on premises which contradict the predicates on which its 1998 and 2003

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Resolutions are anchored. In other words, it may reverse its earlier rulings only on the evidentiary foundations prescribed by this Court in its 1995 Decision which have to pertain to the existence of a valid basis for sequestration or the danger of dissipation of the sequestered shares. Until and unless it reconsiders the 1998 and 2003 Resolutions in that fashion and on that basis, the Sandiganbayan is bound to respect them, moreso because they are its own rulings. It is thus precluded from performing any act or promulgate any issuance inconsistent with the letter, tenor and disposition of those previous rulings which remain extant. It cannot re-enforce the TRO against TMEE or recognizing the continued legal effects of the nullified sequestration order, as it did through the challenged resolutions. It can only do so by reconsidering the 1998 and 2003 resolutions.

10. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY 22, 2006 RESOLUTION OF THE SANDIGANBAYAN WAS ISSUED WITH GRAVE ABUSE OF DISCRETION AND MUST BE ANNULLED. — Thus, it can be appreciated why the Sandiganbayan in the challenged Resolution merely opted to declare the TRO confirmed in this Court's 1995 Decision is "is still existing and in full force and effect," desisting as it did from ordering the execution of the 1995 Decision. Such declaration, however, is not wholly correct as it is incomplete. It did not include the fact that the TRO had already been modified by the 1998 and 2003 Resolutions of the Sandiganbayan. Moreover, it failed to consider the well-established doctrine that the registered owner of sequestered shares is generally entitled to vote the shares. The Court thus rules, with considerable ease, that the 22 May 2006 Resolution of the Sandiganbayan was issued with grave abuse of discretion, and must be annulled.

11. ID.; ID.; ID.; DEPRIVING THE PETITIONER THE RIGHT TO VOTE ITS SHARES NOTWITHSTANDING TWO SANDIGANBAYAN RULINGS RECOGNIZING SUCH RIGHT ARE TANTAMOUNT TO ABUSE OF JUDICIAL PROCESS. — The Court finds the actions of the PCGG in this case distressing. Its actions and resort to unconventional modes of relief towards the end of depriving TMEE the right to vote its shares, notwithstanding two Sandiganbayan rulings recognizing such right are tantamount to abuse of the judicial process.

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12. ID.; CIVIL PROCEDURE; JUDGMENTS; EXECUTION OF; ACTION TO EXECUTE OR ENFORCE THE 1995 DECISION OF THE SUPREME COURT ALREADY BARRED BY PRESCRIPTION. — For one, concerning the Motion for Execution of Judgment it had filed on 2 May 2006, it appears highly suspect that the PCGG would await more than ten years before it would move to execute or enforce the 1995 Decision of the Supreme Court. Entry of Judgment on that Decision was dated 2 April 1996. Under Article 1144 of the Civil Code, an action based upon a judgment must be brought within ten years from the time the right of action accrues, or within ten years counted from the time the judgment became final. Under Section 2, Rule 37, the date of finality of the judgment or final order shall be deemed to be the date of its entry. Notably, nothing in the rules of procedure provides that the entry of judgment be served on the parties, or reckons the date of finality of the judgment from the moment the entry of judgment is received by the parties. Hence, the fact that PCGG allegedly was served the Entry of Judgment only on 2 March 2006 does not detract from the fact that any action to execute or enforce the 1995 Decision of the Supreme Court was barred by prescription after 2 April 2006. The filing of the two motions by the PCGG before the Sandiganbayan was made only in May of 2006.

13. POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT; SEQUESTRATION; NO BASIS FOR THE CLAIM THAT THE SEQUESTERED SHARES IN CASE AT BAR WERE IN DANGER OF DISSIPATION AND DIMINUTION. — In its motion to reinforce/reissue TRO before the Sandiganbayan, the PCGG adverted to reports that the sequestered shares were in danger of dissipation and diminution as the Romualdezes "were bent on disposing their shares in Equitable-PCI Bank." The shares of EPCIB, including the interests earned thereon, are deposited in escrow with the Land Bank of the Philippines, on order of the Sandiganbayan in its 2003 Resolution, at the instance of no less than TMEE. Unless otherwise ordered by the Sandiganbayan, these shares would remain in escrow until Civil Case No. 0035 is finally resolved by the Sandiganbayan. As such, these shares have been apparently insulated from dissipation and diminution. They cannot be simply be disposed of, conveyed or encumbered by TMEE, even if the sequestration order were voided or the TRO lifted. This being the situation,

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the only way by which these shares under escrow may be diminished or dissipated would be through radical corporate changes within EPCIB, such as through the increase of capital stock, or even through the dissolution or merger of the bank itself. However, it remains highly dubious that TMEE could, by exercising its right to vote the shares, effect such changes that would diminish or dissipate those stocks that it could not dispose of. The shares of TMEE comprise only 7.13% of the outstanding capital stock of EPCIB, and would entitle TMEE to only one (1) seat in the 15-person Board of Directors. TMEE is very much a minority stockholder in Equitable-PCI Bank, and on its own, incapable of imposing its will on the bank.

14. **ID.; ID.; ID.; ID.; PETITIONER IN CASE AT BAR IS ENTITLED TO ONE SEAT ON THE BOARD OF DIRECTORS OF EPCIB.** — Finally, we consider the consequences of the annulment of the assailed Resolution on the subsequently held stockholders' meeting and election of the Board of Directors of EPCIB. It appears that there is no serious dispute that TMEE would have been entitled to one seat on the Board had it been able to vote its shares. TMEE asserts that it has 51,827,640 EPCIB shares, equivalent to 7.13% of the outstanding capital stock of the bank. Respondent Board of Directors admits that the shares of TMEE constitute 7.13% of the outstanding capital stock of the bank. Since Section 24 of the Corporation Code allows a stockholder such as TMEE to cumulate all of his shares in the voting for directors, a 7.13 % stock interest in the outstanding capital stock is sufficient to elect one seat in the 15-seat EPCIB Board of Directors. However, relying on the null and void Resolution of the Sandiganbayan, respondents Board of Directors and Corporate Secretary prevented TMEE from voting its shares and electing its nominee or representative to the Board of Directors. Clearly, TMEE is entitled to one seat on the Board of Directors of EPCIB. There is the option of annulling the entire election, but such step would be too drastic in light of the fact that only one of the 15 seats should be necessarily affected upon the seating of TMEE's nominee to the Board of Directors. The more prudent step on the part of the Court is to declare that one nominee or representative of TMEE is entitled to be seated immediately on the Board of Directors, and to direct the respondents EPCIB Board and Board Corporate Secretary to admit and recognize said nominee or representative of TMEE to the Board of Directors in place of the person who was elected

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to the Board at the 23 May 2006 annual stockholders' meeting had TMEE not been disallowed to vote its shares.

15. ID.; ID.; ID.; ADMONISHED TO SPEEDILY PROCEED WITH THE HEARINGS AND RESOLUTIONS OF THE MAIN CASES FOR RECOVERY AND RECONVEYANCE OF ALLEGED ILL-GOTTEN WEALTH. — The Court, as far back as 1998, already admonished the PCGG and the Sandiganbayan to speedily proceed with the hearings and resolutions of the main cases for recovery and reconveyance of alleged ill-gotten wealth. In ordinary times, what the Court should be resolving right now in the exercise of judicial review should be the final decisions of the Sandiganbayan on the recovery of sequestered assets, and not preliminary matters like those now before us. It is this unconscionable delay that has precisely allowed this unwanted circus to march into this Court. The protracted delay serves no end except to foster mockery of the judicial system.

APPEARANCES OF COUNSEL

Andrea Rigonan-Dela Cueva and *Otilia Dimayuga-Molo* for petitioner.

The Solicitor General for public respondents.

Angara Abello Concepcion Regala & Cruz for EPCIB Board.

D E C I S I O N

TINGA, *J.*

The integrity of the judicial system is founded on the soundness and rationality of the judgments emanating from it. Decisions which are blatantly erroneous or founded on oblique reasoning inevitably foment doubt within the dispirited public as to the impartiality and judiciousness of the magistrates concerned. A critical eye must especially be cast on rulings which are not only wrong, haphazardly grounded and obtusely one-sided, but fortuitously timed to engender the most advantage to the victor and damage to the loser.

This Petition for *Certiorari* was filed by petitioner Trans Middle East (Phil.) Equities Inc. (TMEE), the registered owners

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of erstwhile sequestered shares in Equitable-PCI Bank (EPCIB) assailing a Resolution [1] promulgated by the Sandiganbayan on 22 May 2006. The Resolution declared that a Temporary Restraining Order (TRO) initially issued 14 years ago by this Court in cases that were closed and terminated ten years ago, remained in effect, thus disqualifying TMEE from voting on its shares. The annual stockholders meeting of EPCIB was scheduled on 23 May 2006, or the day after the Resolution was promulgated, leaving questions as to the timing of the promulgation. In any event, the Resolution is rooted in dubious and erroneous legal premises. The writ of *certiorari* lies.

A narration of the relevant antecedents ensues.

TMEE is the registered owner of 6,119,067 common shares of stock in the then PCI Bank, now Equitable-PCI Bank. On 15 April 1986, these shares were sequestered by the Presidential Commission on Good Government (PCGG) on the theory that as they actually belong to Benjamin Romualdez they constitute illegally acquired wealth. Thereafter, a complaint, docketed as Civil Case No. 0035, was filed against Romualdez by the PCGG before the Sandiganbayan for the recovery of these shares. Upon motion, TMEE was allowed to intervene by the Sandiganbayan, and it sought to enjoin the PCGG from voting these shares.

In 1991, the Sandiganbayan, upon motion of TMEE, issued resolutions that enjoined the PCGG from voting the shares of TMEE and authorized TMEE in exercising its voting rights. These resolutions were challenged before the Supreme Court, through petitions docketed as G.R. Nos. 105808 and 105809. The Court then issued a TRO enjoining the implementation of the Sandiganbayan resolutions. Subsequently, G.R. Nos. 105808 and 105809 were consolidated with several other cases, which were collectively resolved the Court in a 23 January 1995 consolidated decision entitled *Republic v. Sandiganbayan*.[2] The

[1] *Rollo, pp. 24-29.* Penned by Associate Justice C. Cortez-Estrada of the Sandiganbayan Fifth Division; concurred in by Associate Justices R. Jurado and T. Diaz-Baldos.

[2] 310 Phil. 401 (1995).

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Court resolved to maintain the TRO it issued enjoining the implementation of the 1991 orders of the Sandiganbayan, decreeing as follows:

> WHEREFORE, judgment is hereby rendered:
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> x x x x x x x x x
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> B. CONFIRMING AND MAINTAINING the temporary restraining orders issued in G.R. Nos. 104883, 105170, 105206, 105808, 105809, 107233, and 107908, which shall continue in force and effect during the continuation of the proceedings in the corresponding civil actions in the Sandiganbayan, *subject to the latter's power to modify or terminate the same in the exercise of its sound discretion in light of such evidence as may subsequently be adduced.*[3] (Italics supplied)

In a subsequent Resolution dated 22 July 1997, concerning pending motions for contempt against PCI Bank and TMEE, the Court found it necessary to render the following rulings:

> WHEREFORE, the Court Resolved:
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> x x x x x x x x x
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> II. To DIRECT the Sandiganbayan, in reiteration of this Court's prior directives, promptly to adjudicate after due trial and proper proceedings the ultimate factual issue of whether or not the movant's are the legitimate, *bona fide* owners of the sequestered shares of stock (or the same constitute ill-gotten wealth which should revert to and be forefeited in favor of the Republic, represented by the PCGG); and pending such adjudication, resolve, with all deliberate dispatch but not later than sixty (60) days from notice of this Resolution, the preliminary questions of whether there is *prima facie* factual foundation for the sequestration of said stock, and for reasonable ground for apprehension of dissipation, loss or wastage of assets if the holders of the sequestered stock are permitted to vote them;
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> III. To COMMAND TMEE and the PCGG forthwith to formally request the Sandiganbayan to set Civil Case No. 0035 for hearing so that the issues set out in the immediately preceding

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[3] *Republic v. Sandiganbayan*, 310 Phil. 401, 518 (1995).

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paragraph hereof may be determined with all deliberate dispatch; and

IV. To PROHIBIT from this date and until completion by the Sandiganbayan of its determination of the preliminary questions set out in paragraph II hereof, the exercise of the right to vote pertaining to the sequestered PCIB shares of stock in question by either the PCGG or TMEE at any meeting of the PCIB.[4]

Meanwhile, in January and February of 1997, TMEE filed two motions before the Sandiganbayan, both urging the nullification or lifting of the writ of sequestration. It contended that no valid writ of sequestration was ever issued, the sequestration having been effected through a letter dated 15 April 1986 addressed to EPCIB signed by only one PCGG commissioner, in violation of the PCGG Rules and Regulations promulgated on 11 April 1986 that required writs of sequestration to be issued by at least two commissioners. While TMEE argued that it was entitled to the actual custody and control of the shares, it nonetheless manifested that it was willing to deposit these shares in escrow to allay any fear of dissipation, loss or wastage of the subject shares, as well as on all future cash and stock dividends to be declared on the said shares.

In April of 1998, PCGG filed with the Sandiganbayan a Motion for Issuance of Restraining Order, seeking to enjoin the holding of the EPCIB stockholders meeting on 30 April 1998, on the ground that since the 1997 Supreme Court Resolution enjoined both the PCGG and TMEE from voting the sequestered stocks, these shares stood to be diluted considering a proposal in the agenda to increase the authorized capital stock of EPCIB, among others.

In a Resolution dated 29 April 1998, the Sandiganbayan dismissed these fears of the PCGG as unfounded. Moreover, in the same Resolution the Sandiganbayan acknowledged that this Court had granted it the power to modify or terminate this Court's temporary restraining order in the exercise of its sound

[4] See *rollo*, pp. 336-337.

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discretion in the light of subsequent evidence. Accordingly, the Sandiganbayan proceeded to recognize the right of TMEE to vote the shares of stock registered in its name, and to allow it to vote at the stockholders meeting of 30 April 1998. The Sandiganbayan justified such recognition based on the following premises: (a) that the PCGG which bore the burden of proof to show *prima facie* foundation for the sequestration of TMEE shares had failed to timely do so; (b) that no damage or dissipation of the sequestered shares would result should TMEE be allowed to vote them; and (c) that on its face, the writ of sequestration was issued only by one PCGG Commissioner, in violation of the PCGG's rules and regulations promulgated on 11 April 1986. Thus, the Sandiganbayan ruled:

> UNDER THE PREMISES:
>
> (2) Philippine Commercial and Industrial Bank's (PCIB) Chairman of the meeting and the secretary thereof are directed *to acknowledge the right of intervenor Trans Middle East (Phil.) Equities, Inc. (TMEE) to vote the shares of stocks registered in its name and allow it to vote at the Stockholders' Meeting scheduled on April 30, 1998* at 9:00 o'clock in the morning or at any other time to which said stockholders' meeting may be continued or reset. TMEE shall post a bond of ONE HUNDRED FIFTY THOUSAND (₱150,000.00) PESOS to answer for any undue damage that the plaintiff PCGG or the PCIB shall suffer by reason of the sequestered shares of stock having been voted by and for said intervenor.[5]

The pending motion for nullification of the writ of sequestration was left unresolved then. On 10 January 2003, the Sandiganbayan issued a Resolution on the motions filed by TMEE in 1997 assailing the sequestration order. The Sandiganbayan granted the motion to nullify the writ of sequestration of TMEE shares, ruling that the sequestration order null and void as it was issued only by one PCGG Commissioner. It cited the decision of this Court in *Republic v. Sandiganbayan*[6] wherein it was ruled

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[5] *Rollo*, pp. 34-35.

[6] Cited as 293 SCRA 40. See *id.* at 47.

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that a writ of sequestration signed by only one PCGG commissioner was an obvious transgression of the PCGG rules.[7] At the same time, based on TMEE's manifestation that it was willing to deposit the subject shares in escrow to allay any fear of dissipation, loss or wastage of the subject shares, the Sandiganbayan ordered that the shares be deposited in escrow with the Land Bank of the Philippines.

The Resolution decreed:

> WHEREFORE, in view of the foregoing:
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> 1) The "URGENT MOTION TO NULLIFY WRIT OF SEQUESTRATION" dated January 28, 1997 filed by movant Trans Middle East (Phils.) Equities, Inc., is hereby GRANTED. *Accordingly, Sequestration Order No. 86-0056 dated April 15, 1986 is hereby declared null and void for having been issued by one PCGG Commissioner only in direct contravention of Section 3 of the PCGG's own Rules and Regulations.* Conformably, however, with the manifestation of the movant Trans Middle East (Phils.) Equities, Inc. itself, the Court will not order the return of its shares of stocks sequestered per Sequestration Order No. 86-0056 dated April 15, 1986, but orders that the same, including the interests earned thereon, to be *deposited with the Land Bank of the Philippines in escrow for the persons, natural or judicial, who shall eventually be adjudged lawfully entitled thereto.*[8] (italics supplied)

PCGG filed motions for the reconsideration of both the 1998 and 2003 resolutions of the Sandiganbayan. These motions have not yet been resolved to date. In the meantime, TMEE alleged that it has voted the subject shares from 1998 up to 2005.[9]

On 2 May 2006, the PCGG filed a Motion for Execution of this Court's Decision in G.R. Nos. 105808 and 105809, which was promulgated on 23 January 1995, or more than ten (10)

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[7] *Id.* at 47.

[8] *Id.* at 53. Italics supplied.

[9] *Id.* at 11.

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years earlier. It was argued therein that the 1995 Decision became final and executory by virtue of an entry of judgment dated 2 April 1996 which was allegedly received by the PCGG only on 2 March 2006.[10] The purported receipt then only of the entry of judgment came one (1) day after the EPCIB's proxy validation deadline with closure of the Record Book of EPCIB. Desiring to "exercise its voting rights as upheld by the Supreme Court," the PCGG prayed of the Sandiganbayan to issue the appropriate order permitting it to vote the sequestered shares or, in the alternative, to order "re-enforced and/or reissued" the TRO affirmed by the Supreme Court in the 1995 Decision, which enjoined TMEE from voting the sequestered shares.

The Motion for Execution was heard on 5 May 2006, with TMEE making no appearance therein. The Sandiganbayan ordered TMEE to comment on the said motion within ten (10) days.

Then on May 9, 2006, the PCGG filed an Urgent *Ex-Parte* Motion to Reinforce/Re-issue TRO, praying that the Sandiganbayan issue an order re-enforcing and/or re-issuing the TRO issued by this Court in G.R. Nos. 105808 and 105809 and to execute the TRO under the Decision of the Supreme Court dated January 13, 1995. The PCGG argued that due to the fact that the stockholders meeting of EPCIB was scheduled on 23 May 2006, there was an urgent need for the re-enforcement or reissuance of the TRO affirmed by the Supreme Court in its 1995 Decision. The PCGG also alleged that they had received reports that "the Romualdezes are bent on disposing of their shares in EPCIB," and that should they "gain control of the bank of (*sic*) electing themselves and/or their dummies/nominees to the helm of the bank, there is a danger that the sequestered Equitable-PCI Bank shares might dissipate or be disposed of."[11]

On 22 May 2006, the Sandiganbayan issued the Resolution now assailed before the Court. The Sandiganbayan acknowledged that the 1998 and 2003 Resolutions it earlier issued had indeed

[10] *Id.* at 107.

[11] *Id.* at 93.

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modified the TRO issued by this Court, and that it had the authority, as granted by the Court, to modify or terminate such TRO. Nevertheless, the Sandiganbayan ruled that both resolutions had not yet attained finality since it itself still had to resolve the motions for reconsideration respectively related thereto filed by the PCGG in 1998 and 2003. The Sandiganbayan opined that it could not re-issue the TRO since it was this Court which issued the same. Still, the Sandiganbayan ruled that it could state that the two resolutions modifying this Court's TRO "have not attained finality as the motions for reconsiderations thereto have not been resolved by [the Sandiganbayan]." The dispositive portion of the Resolution read:

> WHEREFORE, pertinent to the instant motion, this Court hereby declares that considering that two resolutions modifying the Supreme Court's TRO have not attained finality as the motions for reconsiderations filed thereto have not been resolved by this Court, the TRO, which was issued by the Supreme Court disqualifying both the PCGG nominees, TMEE, PAH and PAR, from voting the sequestered shares in the Equitable PCI Bank and Benguet Corporation, respectively is still existing and in full force and effect.[12]

On the following day, 23 May 2003, TMEE filed the instant petition with this Court, with a prayer for the issuance of a Temporary Restraining Order or a Writ of Preliminary Injunction "to preserve and maintain the status quo wherein TMEE [was] allowed to vote the shares registered in its name and restraining the respondents from enforcing the [22 May 2003 Sandiganbayan]

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[12] *Id.* at 28-29. Notably, the motions of the PCGG were likewise filed against Palm Avenue Realty, the registered owner of shares of stock in Benguet Corporation which were also sequestered on the premise that these shares also belonged to Benjamin Romualdez. The 1992 TRO, as affirmed by the 1995 Decision, also similarly enjoined Palm Avenue Realty from exercising voting rights over its shares in Benguet Corporation. The assailed Resolution of the Sandiganbayan was also thus directed at Palm Avenue Realty with respect to its shares in Benguet Corporation. However, Palm Avenue Realty is not a party to this case and the circumstances of TMEE appear to be not the same as those of Palm Avenue Realty's. Hence, it should be understood that our review of the assailed Resolution only goes so far as it affects the rights and interests of TMEE.

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Resolution granting the motion to re-enforce/re-issue TRO, until the final resolution" of this Court.

In the absence of an injunctive order restraining the holding of the stockholders' meeting on 23 May 2006, the meeting was held. Over the objections of TMEE, the election of a new Board of Directors of EPCIB was held. Since TMEE was not allowed to vote its shares, it was unable to elect any representative to the Board of Directors despite the fact that it maintained enough shares to be entitled to at least one board seat. Thus, in its Supplemental Petition attached to a Motion for Leave of Court to File Supplemental Petition, TMEE prayed for the issuance of a resolution directing the maintenance of the status quo prior to the disputed election of directors; restraining the new Board and the officers elected by them from further performing their functions; and directing the Chairman and Corporate Secretary to recognize and allow the old Board and officers to serve in a hold-over capacity until further orders from this Court.[13]

In the course of deliberating the matter of provisional relief sought by TMEE, the self-evident nature of the correct resolution on the points of law emerged, and a consensus developed within the Court that the petition be resolved immediately. The challenged Resolution is ostensibly grounded on an earlier decision of this Court, yet is ultimately oblivious to the full import of that decision and other juridical precedents as well. The Sandiganbayan in its Resolution likewise *sub silencio* contradicts earlier rulings it had previously rendered in *connection with the same issues*, yet takes refuge from its inconsistency on its very own inaction on two still pending motions for reconsideration filed eight and three years ago, respectively.

Considering that all the respondents have duly filed their respective comments, there is no impediment to the immediate resolution of the case on the merits. We are compelled to act promptly in light of the highly disturbing circumstances attending this case. This Court cannot countenance unabashed trifling with the judicial process, turn a blind eye on a patent simulacrum

[13] *Rollo*, p. 355.

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of judicial adjudication and allow a glaring travesty of justice to go unchecked in time.

The assailed Resolution in this case, promulgated by the Sandiganbayan on 22 May 2006, has been used to maximum benefit by the respondents, all connected with EPCIB, in an obvious corporate squabble which saw its apotheosis in the long scheduled annual stockholders meeting on 23 May 2006 wherein TMEE was deprived of its right to vote its shares despite the fact that it would have been able to elect at least one (1) seat on the Board of Directors. The Court is also impelled by the recognition that the annulment of the Sandiganbayan resolution would have a pronounced consequent effect on the financial community, if not the banking public at large. Hence, the need to resolve this matter promptly.

We now accordingly adjudicate.

The Court first dispenses with procedural issues raised that are ultimately minor. The petition is denominated as one for *certiorari* with prayer preliminary injunction and/or temporary restraining order, under the ambit of Rule 65 of the Rules of Court. Respondent Board of Directors of EPCIB argue that the failure of TMEE to file a motion for reconsideration with the Sandiganbayan precluded the immediate resort to the special civil action of *certiorari*. As a general rule, *certiorari* as a special civil action does not lie unless a motion for reconsideration is first filed before the respondent court. However, this rule does not apply when special circumstances warrant immediate or more direct action.[14] It is well-settled that the availability of appeal does not foreclose recourse to the extraordinary remedies of *certiorari* or prohibition where appeal is not adequate, or equally beneficial, speedy and sufficient.[15] Where

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[14] See *People v. Dacudao,* G.R. No. 81389, 21 February 1989, 170 SCRA 489, 496.

[15] See *Philippine National Bank v. Hon. Sayo, Jr.*, 354 Phil. 211, 241 (1998); citing *Gavieres v. Falcis*, 193 SCRA 649, 657-658 (1991); *Echauz v. Court of Appeals*, 199 SCRA 381, 386-387 (1991); *Hualam Construction and Development Corp. v. Court of Appeals*, 214 SCRA 612, 628 (1992);

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the exigencies of the case are such that the ordinary methods of appeal may not prove adequate — either in point of promptness or completeness, so that a partial if not a total failure of justice could result — a writ of *certiorari* may still be issued.[16]

It cannot evade notice that the assailed Sandiganbayan Resolution was promulgated one (1) day before the scheduled stockholders meeting of EPCIB. Evidently, TMEE could no longer have relied on the Sandiganbayan to reverse itself literally overnight, in time for the meeting. The filing of a motion for reconsideration would not have been an adequate or speedy remedy for TMEE. Hence, resort to the special civil action of *certiorari* without filing a motion for reconsideration is justified under the circumstances.

The more consequential procedural objection lies in the failure of TMEE in its petition to pray for the annulment of the 22 May 2006 Sandiganbayan Resolution despite the denomination of the petition as one for *certiorari*, and the arguments therein that the Sandiganbayan acted with grave abuse of discretion in rendering the Resolution. On this failure, the respondents in their respective comments argue that the petition, which was accompanied by a prayer for writ of preliminary injunction and/or TRO, is effectively an original action for injunction beyond the jurisdiction of this Court.

TMEE, in its Supplemental Petition filed seven (7) days after the filing of the petition, did subsequently pray for the nullification of the Sandiganbayan resolution on the ground of grave abuse of discretion. TMEE deserves some blame for failing to include such prayer in its original petition, yet given the attendant circumstances, it would be an act of triviality to dismiss the petition on that ground alone. For one, even assuming that the petition is indeed an original action for injunction, it was ruled

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Ruiz v. Court of Appeals, 220 SCRA 490, 500 (1993); *Rodriguez v. Court of Appeals*, 245 SCRA 150, 152 (1995). See also *SMI Dev. Corp. v. Republic of the Phils.*, 380 Phil. 832, 839 (2000).

[16] *Land Bank of the Phils. v. Court of Appeals*, 456 Phil. 755, 786 (2003); citing *State v. Guinotte,* 57 S.W. 281 (1900).

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in *Del Mar v. Pagcor*[17] that "this Court has the discretionary power to take cognizance of the petition at bar if compelling reasons, or the nature and importance of the issues raised, warrant the immediate exercise of its jurisdiction."[18] Indeed, such compelling reasons, as adverted to before, are present in this case.

More fundamentally, it is evident from the allegations in the petition, replete with imputations of grave abuse of discretion on the part of the Sandiganbayan when it promulgated its resolution, that the nature of the petition is one for *certiorari*, with injunction sought only as an ancillary relief. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the material allegations contained in the petition.[19] Any doubts as to whether TMEE seeks the annulment of the Sandiganbayan resolution are cleared by the Supplemental Petition, which expressly seeks such relief.

The Court is also inclined to view this defect with liberality, considering that TMEE had only one (1) calendar day to prepare the petition, which sought to vindicate the exercise of its voting rights in the EPCIB stockholders meeting, which was enjoined by the Sandiganbayan resolution promulgated just the day before such election. The forced haste under which the petition was prepared cannot be attributed to the fault of TMEE, and any resulting errors in the petition that are of the non-fatal variety can be overlooked.

Respondents, particularly the EPCIB Board of Directors, ascribe a few other procedural errors on the part of the petitioner, but these are so minor that they do not merit the attention of the Court. Suffice it to say, they do not adduce a compulsory rule that would mandate the dismissal of the petition contrary to the discretion of the Court to do otherwise.

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[17] G.R. No. 138298, 29 November 2000, 346 SCRA 485.

[18] *Id.* at 501.

[19] See *e.g., Guiang v. Co,* G.R. No. 146996, 30 July 2004, 435 SCRA 556, 561-562; *Intestate Estate of Alexander Ty v. Court of Appeals*, G.R. Nos. 112872 & 114672, 19 April 2001, 356 SCRA 661, 666.

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We now turn to the merits of the case.

The assailed Sandiganbayan resolution was occasioned by an "Urgent *Ex-Parte* Motion to Reinforce/Re-issue TRO" filed by the PCGG, which prayed for the issuance of an order re-enforcing and/or re-issuing the TRO issued by this Court in G.R. Nos. 105808 and 105809. The sort of relief sought is unconventional to say the least. No such remedy is provided for under the rules of procedure, although it is not expressly barred. The uniqueness of the relief sought should nonetheless be cause for skepticism on the part of the court hearing the claim. Procedural rules exist to provide a methodical system that would facilitate the judicious disposition of cases. A recourse that finds no authorization or support under the rules could in fact be aimed to subvert orderly procedure, an end that runs contrary to the interest of justice.

The judicial duty, when confronted with such a pleading as the "motion for the reinforcement/reissuance" of the PCGG, is to look beyond the verbiage and ascertain the real nature of the action on which the prayer is founded. In this case, it is ineluctable that what the PCGG sought through its motion was injunctive relief that would refrain TMEE from exercising its voting rights in the 2004 EPCIB stockholders' meeting, or other meetings for that matter. While the legal basis for such prayer is suggested on the continued recognition of a provisional remedy granted a long time ago, the ultimate goal of the motion is to secure injunctive relief. As such, the rules on injunction must apply.

The relevant antecedent facts actually point to three successive recourses to injunctive relief which were availed of in this case. The first was the 1986 order of sequestration, sequestration being in itself a form of a provisional remedy, an extraordinary measure intended to prevent the destruction, concealment or dissipation of sequestered properties and, thereby, to conserve and preserve them, pending the judicial determination in the appropriate proceeding of whether the property was in truth ill-gotten.[20]

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[20] See *e.g.*, *Republic v. Sandiganbayan*, 355 Phil. 191, 207-208 (1998).

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The second injunctive relief involved in this case came in the form of the TRO issued by this Court in 1992 in G.R. Nos. 105808 and 105809, restraining the implementation of the 1992 Sandiganbayan order allowing TMEE to vote its shares. The right to the TRO is grounded on the subsistence of the sequestration order. The same TRO issued in G.R. Nos. 105808 and 105809 was reaffirmed in the 1995 Supreme Court Decision in *Republic v. Sandiganbayan*, an unusual step in itself considering that normally, a provisional injunctive order survives only as long as the case wherein it was issued. But since the said TRO related to pending incidents in Civil Case No. 0035 before the Sandiganbayan, the Court ceded control over the TRO to the anti-graft court, with a specific grant of authority on the latter to "*to modify or terminate the same in the exercise of its sound discretion in light of such evidence as may subsequently be adduced.*" The Sandiganbayan did just that through its 1998 and 2003 Resolutions which respectively recognized TMEE's rights to vote the shares and nullified the writ of sequestration.

The third mode of injunctive relief involved herein was the PCGG's motion for the "re-enforcement or reissuance" of the earlier Supreme Court TRO. Palpably, this motion prayed for the reaffirmation of the TRO granted by the Supreme Court in G.R. Nos. 105808 & 105809, cases which were closed and terminated nearly 10 years ago; but at the same time effectively sought to enjoin the 1998 and 2003 Sandiganbayan Resolutions, praying as the PCGG did that TMEE be denied the right to vote its shares notwithstanding the two Sandiganbayan resolutions.

For injunctive relief to avail to the PCGG, it must be able to demonstrate the existence of a clear legal right to be entitled to such relief.[21] In the absence of a clear legal right, the issuance

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[21] See *e.g., Crystal v. Cebu International School*, G.R. No. 135433, April 4, 2001, 356 SCRA 297; *Prosperity Credit Resources, Inc. v. Court of Appeals*, 361 Phil. 30 (1999); *Medina v. City Sheriff, Manila*, 342 Phil. 90 (1997); *Del Rosario v. Court of Appeals*, 325 Phil. 424 (1996); *Sps. Arcega v. Court of Appeals*, 341 Phil. 166 (1997).

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of the injunctive relief constitutes grave abuse of discretion.[22] There could only be two putative sources of such legal right of the PCGG — the 1986 sequestration order and the 1995 Decision of this Court which affirmed the 1992 TRO issued by the Supreme Court. Yet closer scrutiny of either reveals no foundational recognition of a clear legal right of the PCGG.

It is settled that as a general rule, the registered owner of the shares of a corporation, even if they are sequestered by the government through the PCGG, exercises the right and the privilege of voting on them.[23] The PCGG as a mere conservator cannot, as a rule, exercise acts of dominion by voting these shares.[24] The registered owner of sequestered shares may only be deprived of these voting rights, and the PCGG authorized to exercise the same, only if it is able to establish that (1) there is *prima facie* evidence showing that the said shares are ill-gotten and thus belong to the State; and (2) there is an imminent danger of dissipation, thus necessitating the continued sequestration of the shares and authority to vote thereupon by the PCGG while the main issue is pending before the Sandiganbayan.[25]

Clearly, the existence of the writ of sequestration alone would not legally justify barring TMEE from voting its shares. Such preclusion may only occur if there is *prima facie* evidence showing that the said shares are ill-gotten and there is an imminent danger of dissipation. The Sandiganbayan or any other court

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[22] See *Heirs of Asuncion v. Gervacio,* 363 Phil. 666 (1999); *Suico Industrial Corporation v. Court of Appeals*, 361 Phil. 360 (1999); *MIAA v. Court of Appeals*, 445 Phil. 369 (2003); *Tayag v. Lacson*, G.R. No. 134971, March 25, 2004, 426 SCRA 282.

[23] See *Cojuangco, Jr. v. Roxas,* G.R. Nos. 91925 & 93005, 16 April 1991, 195 SCRA 797, 812, citing Section 24 of the Corporation Code. See also *PCGG v. Cojuangco, Jr.*, G.R. No. 133197, 27 January 1999, 302 SCRA 217, 224.

[24] *Ibid.*

[25] *PCGG v. Cojuangco, Jr.*, G.R. No. 133197, 27 January 1999, 302 SCRA 217, 224; citing the Resolution dated 10 June 1993 in *Cojuangco v. Calpo*, G.R. No. 115352.

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has yet to pronounce any findings to those effects. In fact, the Sandiganbayan, in its 1998 Resolution, instead declared that TMEE possessed "a *prima facie* right" as owner of the registered owner of the sequestered shares, and that there appeared to be "no strong grounds for apprehension of dissipation or loss of assets of TMEE."[26] Concerns over dissipation have likewise been assuaged that the shares have been deposited in escrow with the Land Bank of the Philippines on the initiative of TMEE itself. In any event, the nullification in 2003 of the very writ of sequestration by the Sandiganbayan further militates against any recognition that the sequestration order established a clear legal right that entitled the PCGG to injunctive relief.

We now examine whether the legal consequences of the 1995 Decision of the Court provide a clear legal right to injunctive relief to the PCGG.

An examination of the dispositive portion of the 1995 Decision insofar as it pertains to TMEE puts in doubt whether its "execution" should have resulted in barring TMEE from voting its shares in the 2006 stockholders meeting. While the 1995 Decision maintained the earlier TRO barring TMEE from voting its shares, it also authorized the Sandiganbayan "*to modify or terminate the same in the exercise of its sound discretion in light of such evidence as may subsequently be adduced.*"

In that sense, the 1995 Decision consisted of two (2) phases. The first phase consists of the affirmation of the TRO, a stance that subsisted as a matter of default. The second phase, however, consists of either the modification or termination of the TRO by the Sandiganbayan in light of the evidence subsequently adduced. Should the condition set in the second phase — modification or termination by the Sandiganbayan — then the first phase is ended, and the affirmation of the TRO can no longer be acknowledged as the default action.

There is no question that the Sandiganbayan did modify the TRO by virtue of its 1998 and 2003 Resolutions. The 1998 Resolution "*acknowledge[d] the right of intervenor Trans*

[26] *Rollo*, pp. 33-34.

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Middle East (Phil.) Equities, Inc. (TMEE) to vote the shares of stocks registered in its name." The 2003 Resolution went even further in declaring null and void the 1986 sequestration order. Both resolutions thoroughly explained the reasons for granting favorable reliefs to TMEE.[27] The 1998 Resolution even specifically invoked the 1995 Decision of this Court that categorically declared that the Sandiganbayan had the power to modify or terminate the restraining order in the exercise of its sound discretion in the light of such evidence as may be subsequently adduced.[28]

Respondent Board of Directors contest the argument that the 1998 Resolution either lifted or terminated the 1992 TRO, alleging that the dispositive portion therein[29] merely allowed TMEE to votes it shares for the stockholders meeting on 30 April 1998, and not at other stockholders' meetings held in previous years. This claim is belied by a close look at the dispositive portion of the 1998 Resolution, which directed the then PCI Bank to "xxx acknowledge the right of [TMEE] to vote the shares of stocks registered in its name *and* allow it to vote at the Stockholders' Meeting scheduled on April 30, 1998."[30]

As evidenced by the use of the conjunctive "and," there were two directives contained in that order, namely: that the right of TMEE to vote the shares of stocks registered in its name; *and* to allow TMEE to vote at the 1998 stockholders' meeting. The first directive, mandating the recognition of TMEE's right to vote its shares, is not subjected to any limitation as to time or particular circumstance. Neither did the Sandiganbayan's discussion in the body of the 1998 Resolution support the view that the right of TMEE to vote the shares was limited to the 1998 stockholders meeting.

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[27] See *rollo*, pp. 33-34; 47-48.

[28] See *rollo*, p. 33.

[29] *Supra* note 5.

[30] *Id.* Italics supplied.

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Respondents are generally silent as to the effect of the 2003 Resolution nullifying the writ of sequestration. Yet the import of that ruling is equally important to this case.

The 2003 Resolution nullifying the sequestration order over TMEE's shares was based on the fact, of which there appears to be no serious contest, that the said order, dated 15 April 1986, was signed by only one PCGG commissioner in violation of the PCGG Rules and Regulations promulgated on 11 April 1986.[31] The 2003 Resolution particularly cited the Court's 1998 Decision in *Republic v. Sandiganbayan,*[32] penned by Chief Justice Panganiban, which categorically ruled that "the writ [of sequestration] must bear the signatures of two commissioners, because their signatures are the best evidence of their approval thereof."[33] The Court also noted that the PCGG Rules took effect on 11 April 1986, and that "the signing of sequestration orders by two commissioners had already been encouraged after April 11, 1986."[34]

The binding effect of the same provision of the PCGG Rules on the PCGG after 11 April 1986 was also affirmed in the 1996 ruling in *Republic v. Sandiganbayan,*[35] also penned by Chief Justice Panganiban. Quoting the same provision requiring that the writ of sequestration may be issued upon the authority of at least two commissioners, the Court said that the provision was "couched in clear and simple language [and] leaves no room for interpretation."

The finding of the Sandiganbayan that the writ of sequestration was null and void was material to the determination whether

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[31] Section 3 of the Rules reads: "Sec. 3. Who may issue. A writ of sequestration or a freeze or hold order may be issued by the Commission *upon the authority of at least two Commissioners,* based on the affirmation or complaint of an interested party or *motu proprio* when the Commission has reasonable grounds to believe that the issuance thereof is warranted."

[32] 355 Phil. 181 (1998).

[33] *Id.* at 194.

[34] *Id.* at 197.

[35] 328 Phil. 210 (1996).

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the PCGG had the right to the injunctive relief it sought. This point is especially relevant, since if the sequestration order against TMEE is declared null and void, the earlier TRO will become *functus officio*. The TRO cannot continue to exist if the sequestration order is null and void from the beginning. Based on the 2003 Sandiganbayan Resolution, the sequestration order against TMEE is deemed void as of 15 April 1986, or more than 20 years ago. Not only the clarity, but the very existence of the legal right on which the PCGG grounds its right to relief became controverted as a result of the 2003 Resolution.

These twin resolutions of the Sandiganbayan pose a critical impediment to a determination that the PCGG had a clear legal right to protect that would justify injunctive relief in its favor. At the very least, these resolutions, issued within the bounds of authority granted by this Court to the Sandiganbayan, becloud the continued efficacy to this day of the 1992 TRO; at most, they confirm that the 1992 TRO no longer subsists. The Court is inclined towards the latter view. Clearly, it would be proper to assert that the 1998 and 2003 Resolutions of the Sandiganbayan were issued not only in compliance with but in execution and implementation of the 1995 Decision of the Court. Considering that the Sandiganbayan had already modified or terminated the restraining order, pursuant to the authority granted it by this Court, it may be very well be that there is nothing left in the 1995 Decision to execute. *At bare minimum, considering the accomplished modification and virtual termination of the restraining order as of 2003, execution of the 1995 Decision in 2006 cannot possibly contemplate the revival of the TRO.*

Obviously, the Sandiganbayan failed to consider these points when it rendered the assailed Resolution. It does not even appear that the Sandiganbayan evaluated the PCGG's motion within the frame of mind that a clear legal right must exist to entitle the PCGG's prayer. Instead, it engaged in a mechanical application of technicalities in a manner that failed to consider the more crucial issues at hand.

There is an admitted convenience in simply pronouncing, as the Sandiganbayan did, that since the motions for reconsideration

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to the 1998 and 2003 Resolutions had not been resolved, the efficacy of those resolutions cannot yet be recognized. It cannot be denied though that the two resolutions are properly characterized as interlocutory orders, as they do not finally dispose of Civil Case No. 0035. In *Valarao v. Pascual,*[36] the Court contended with the question of whether respondents therein were bound to respect the authority of a special administrator on the ground that the interlocutory order appointing such administrator was not yet final and executory because of a pending motion for reconsideration. The Court held:

> [R]espondents cannot disobey the reasonable exercise of the authority of a special administrator on the dubious ground that the order appointing petitioner Valarao as special administratrix had not in the meantime become final and executory because of a pending motion for reconsideration filed by them. *The fallacy of this reasoning is apparent, for an interlocutory order is not instantly appealable and therefore there is no period nor action to suspend or interrupt by a motion for reconsideration; it is even well settled that a special civil action for certiorari does not suspend the immediate enforceability of an interlocutory order absent a temporary restraining order or an injunction. In the same manner, the appointment of a special administrator being an interlocutory order is not interrupted by a motion for reconsideration* and thus must be obeyed as the proceedings in the probate court progress.[37]

The same characteristics of the interlocutory order in *Valarao* apply in this case. Since the orders recognizing TMEE to vote its shares and nullifying the writ of sequestration are both unappealable, they can only be assailed through a special civil action for *certiorari*, the filing of which however does not *ipso facto* inhibit the effectivity of the assailed order unless specifically enjoined. For this reason, it cannot be said that the 1998 and 2003 Resolutions, interlocutory as they are in character, are not yet susceptible to enforcement during the motions for reconsideration therefor.

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[36] 441 Phil. 226 (2002).

[37] *Id.*, at 237-238; citing *Rubio v. Municipal Trial Court in Cities*, G.R. No. 87110, 24 January 1996, 252 SCRA 172 and I F.D. REGALADO, *REMEDIAL LAW COMPENDIUM* (1997), p. 705.

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It also bears notice that from the time the 1998 Resolution recognized the right of TMEE to vote its shares until eight (8) years later, no serious challenges were posed against the right of TMEE to vote those shares by reason of the pending motion for reconsideration. There is some dispute as to whether during the last eight years of EPCIB stockholder meetings, TMEE was actually able to formally vote its shares[38] or merely consented to a common slate of nominees previously agreed upon to negate the need to conduct an actual meeting.[39] Yet whatever the fact may be, these stockholders meetings and election of the Board of Directors were conducted to the satisfaction of TMEE, which was able to successfully elect at least one nominee to the Board. Those circumstances do not bear the mark of TMEE being deprived of the right to vote its shares in the stockholders meetings from 1998 to 2005, when the contrary should have resulted if the position of the respondents were to be believed.

For all intents and purposes, the 1998 and 2003 Resolutions had been respected prior to the current year by the Sandiganbayan and the parties. Given the pending motions for reconsideration, theoretically it is still within the power of the Sandiganbayan to reverse or modify the 1998 and 2003 resolutions. Yet if the Sandiganbayan were so minded to modify or reverse the two earlier resolutions, it should do so directly and explicitly, not only tangentially or by implication as it actually did, and at that based on premises which contradict the predicates on which its 1998 and 2003 Resolutions are anchored. In other words, it may reverse its earlier rulings only on the evidentiary foundations prescribed by this Court in its 1995 Decision which have to pertain to the existence of a valid basis for sequestration or the danger of dissipation of the sequestered shares.

Until and unless it reconsiders the 1998 and 2003 Resolutions in that fashion and on that basis, the Sandiganbayan is bound to respect them, moreso because they are its own rulings. It is thus precluded from performing any act or promulgate any

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[38] As alleged by TMEE. See *rollo*, p. 15.

[39] As alleged by EPCIB Board of Directors. See *rollo*, p. 229.

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issuance inconsistent with the letter, tenor and disposition of those previous rulings which remain extant. It cannot re-enforce the TRO against TMEE or recognizing the continued legal effects of the nullified sequestration order, as it did through the challenged resolutions. It can only do so by reconsidering the 1998 and 2003 resolutions.

Thus, it can be appreciated why the Sandiganbayan in the challenged Resolution merely opted to declare the TRO confirmed in this Court's 1995 Decision is "is still existing and in full force and effect," desisting as it did from ordering the execution of the 1995 Decision. Such declaration, however, is not wholly correct as it is incomplete. It did not include the fact that the TRO had already been modified by the 1998 and 2003 Resolutions of the Sandiganbayan. Moreover, it failed to consider the well-established doctrine that the registered owner of sequestered shares is generally entitled to vote the shares.[40]

The Court thus rules, with considerable ease, that the 22 May 2006 Resolution of the Sandiganbayan was issued with grave abuse of discretion, and must be annulled.

The Court finds the actions of the PCGG in this case distressing. Its actions and resort to unconventional modes of relief towards the end of depriving TMEE the right to vote its shares, notwithstanding two Sandiganbayan rulings recognizing such right are tantamount to abuse of the judicial process.

For one, concerning the Motion for Execution of Judgment it had filed on 2 May 2006, it appears highly suspect that the PCGG would await more than ten years before it would move to execute or enforce the 1995 Decision of the Supreme Court. Entry of Judgment on that Decision was dated 2 April 1996. Under Article 1144 of the Civil Code, an action based upon a judgment must be brought within ten years from the time the right of action accrues, or within ten years counted from the time the judgment became final.[41] Under Section 2, Rule 37,

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[40] *Supra* notes 23, 24 & 25.

[41] See *Heirs of Soriano v. Court of Appeals*, G.R. No. 93401, 26 June 1991, 198 SCRA 549, 555; citing *PNB v. Deloso*, L-28301, March 30, 1970;

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the date of finality of the judgment or final order shall be deemed to be the date of its entry.

Notably, nothing in the rules of procedure provides that the entry of judgment be served on the parties, or reckons the date of finality of the judgment from the moment the entry of judgment is received by the parties. Hence, the fact that PCGG allegedly was served the Entry of Judgment only on 2 March 2006 does not detract from the fact that any action to execute or enforce the 1995 Decision of the Supreme Court was barred by prescription after 2 April 2006. The filing of the two motions by the PCGG before the Sandiganbayan was made only in May of 2006.

In its motion to reinforce/reissue TRO before the Sandiganbayan, the PCGG adverted to reports that the sequestered shares were in danger of dissipation and diminution as the Romualdezes "were bent on disposing their shares in Equitable-PCI Bank."[42] The shares of EPCIB, including the interests earned thereon, are deposited in escrow with the Land Bank of the Philippines, on order of the Sandiganbayan in its 2003 Resolution, at the instance of no less than TMEE. Unless otherwise ordered by the Sandiganbayan, these shares would remain in escrow until Civil Case No. 0035 is finally resolved by the Sandiganbayan. As such, these shares have been apparently insulated from dissipation and diminution. They cannot be simply be disposed of, conveyed or encumbered by TMEE, even if the sequestration order were voided or the TRO lifted.

This being the situation, the only way by which these shares under escrow may be diminished or dissipated would be through radical corporate changes within EPCIB, such as through the increase of capital stock, or even through the dissolution or merger of the bank itself. However, it remains highly dubious that TMEE could, by exercising its right to vote the shares, effect such changes that would diminish or dissipate those stocks

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Rosensons, Inc., et al. v. Hon. Jose Jimenez, et al., L-41225, November 11, 1975.

[42] *Rollo*, p. 91.

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that it could not dispose of. The shares of TMEE comprise only 7.13% of the outstanding capital stock of EPCIB,[43] and would entitle TMEE to only one (1) seat in the 15-person Board of Directors.[44] TMEE is very much a minority stockholder in Equitable-PCI Bank, and on its own, incapable of imposing its will on the bank.

It is not beyond the realm of possibility that these shares of TMEE in EPCIB, minimal as they may be, could somehow accord TMEE a significant degree of influence in the policies and decisions of the bank. At the same time, considering the limited number of shares TMEE holds, this prospect should be considered, on its face, highly unlikely. Yet the PCGG staked its motion before the Sandiganbayan on the claim that the allowance of TMEE to vote its shares could somehow diminish or dissipate those shares deposited in escrow, a highly facile claim considering the circumstances. Still, the Sandiganbayan refused to subject such claim to any scrutiny at all, and worse, granted the relief sought on the dubious premises.

Our attention is also called to the letter dated 22 May 2006, written by PCGG Commissioner William Dichoso, and addressed to the Board of Directors of EPCIB.[45] The letter, captioned "TRO Issued by the Sandiganbayan in Civil Case No. 0035 (*Republic of the Philippines v. Benjamin Romualdez*)," bluntly states that the Sandiganbayan "has issued a Temporary Restraining Order restraining xxx [TMEE] from voting in the stockholders meeting of [EPCIB]," and advises that "Copy of the Temporary Restraining Order will follow."[46]

No such temporary restraining order was issued by the Sandiganbayan. Certainly, the challenged Resolution does not contain any directive for the issuance of a separate temporary

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[43] *Id.* at 347.

[44] *Id.*

[45] Attached as Annex "A" to the Comment filed by EPCIB Corporate Secretary Sabino E. Acut, Jr. See *rollo*, p. 212.

[46] *Id.*

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restraining order. All the challenged Resolution affirms is the supposed continuing force of the TRO as affirmed by 1995 Decision of the Court. But as earlier discussed, while the 1995 Decision affirmed the earlier TRO issued by the Court, it also affirmed the right of the Sandiganbayan to modify or terminate such TRO if the evidence so warranted. The Sandiganbayan has exercised such right and has chosen not to disavow such exercise. Neither has the modification or termination of the TRO been reversed or set aside by a higher court.

The impression left by the PCGG letter to EPCIB was that the bank had no choice outside of violating a judicial order but to disallow TMEE from voting its shares. Yet even with the assailed Resolution of the Sandiganbayan, such a conclusion is not so evident. At the very least, the PCGG letter conveyed the message that the Sandiganbayan had enjoined the voting of TMEE shares in the 23 May 2006 stockholders meeting when in fact the anti-graft court did not provide for an injunctive relief in such manner.

Still, ultimate blame must be foisted on the Sandiganbayan. Wittingly or unwittingly, it became complicit in the denial of justice to TMEE when it issued the assailed Resolution, despite the lack of ample basis to support it. Had it ruled judiciously on the motion, the resultant farce would not have been staged. More to the point, had it resolved the pending motions for reconsideration in a timely manner, this entire controversy could have been avoided.

Finally, we consider the consequences of the annulment of the assailed Resolution on the subsequently held stockholders' meeting and election of the Board of Directors of EPCIB. It appears that there is no serious dispute that TMEE would have been entitled to one seat on the Board had it been able to vote its shares. TMEE asserts that it has 51,827,640 EPCIB shares,[47] equivalent to 7.13% of the outstanding capital stock of the bank. Respondent Board of Directors admits that the shares of TMEE

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[47] *Rollo*, p. 347.

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constitute 7.13% of the outstanding capital stock of the bank.[48] Since Section 24 of the Corporation Code allows a stockholder such as TMEE to cumulate all of his shares in the voting for directors, a 7.13 % stock interest in the outstanding capital stock is sufficient to elect one seat in the 15-seat EPCIB Board of Directors.[49] However, relying on the null and void Resolution of the Sandiganbayan, respondents Board of Directors and Corporate Secretary prevented TMEE from voting its shares and electing its nominee or representative to the Board of Directors.

Clearly, TMEE is entitled to one seat on the Board of Directors of EPCIB. There is the option of annulling the entire election, but such step would be too drastic in light of the fact that only one of the 15 seats should be necessarily affected upon the seating of TMEE's nominee to the Board of Directors. The more prudent step on the part of the Court is to declare that one nominee or representative of TMEE is entitled to be seated immediately on the Board of Directors, and to direct the respondents EPCIB Board and Board Corporate Secretary to admit and recognize said nominee or representative of TMEE to the Board of Directors in place of the person who was elected to the Board at the 23 May 2006 annual stockholders' meeting had TMEE not been disallowed to vote its shares.

The Court, as far back as 1998, already admonished the PCGG and the Sandiganbayan to speedily proceed with the hearings and resolutions of the main cases for recovery and reconveyance of alleged ill-gotten wealth. [50] In ordinary times, what the Court should be resolving right now in the exercise of judicial review should be the final decisions of the Sandiganbayan on the recovery of sequestered assets, and not

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[48] *Id.* at 245.

[49] Considering that the EPCIB Board of Directors has fifteen (15) members, a stockholder in control of at least 6.67% (100/15) in the outstanding capital stock could cumulate his controlled shares to be able to elect one seat on the Board of Directors.

[50] See *Republic v. Sandiganbayan*, 355 Phil. 181, 210 (1998).

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preliminary matters like those now before us. It is this unconscionable delay that has precisely allowed this unwanted circus to march into this Court. The protracted delay serves no end except to foster mockery of the judicial system.

WHEREFORE, the PETITION is GRANTED. The Resolution of the Sandiganbayan dated 22 May 2006 is declared NULL and VOID.

The election at the 23 May 2006 annual stockholders' meeting of the person to the seat in the Equitable-PCI Bank Board of Directors to which petitioner Trans Middle East (Phils.), Inc. is entitled is likewise declared NULL and VOID.

PENDING FINALITY OF THIS DECISION AND IMMEDIATELY UPON RECEIPT HEREOF, respondents Board of Directors of Equitable-PCI Bank and Corporate Secretary Sabino E. Acut, Jr. are DIRECTED NOT TO RECOGNIZE said person whose election to the Board of Directors is set aside and nullified herein and TO RECOGNIZE the nominee or representative of TMEE as a duly elected member of the Board of Directors, with all the rights and privileges appertaining to the position.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Chico-Nazario, Garcia, and *Velasco, Jr., JJ.* concur.

Azcuna, J., no part, he was a director and legal counsel of petitioner.

Ynares-Santiago, J., on leave.