Supreme Court E-Library

EN BANC

[G.R. No. 83831. January 9, 1992]

VICTOR AFRICA, *petitioner, vs.* **PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, JOSE LAURETA, MELQUIADES GUTIERREZ, EDUARDO M. VILLANUEVA, EDUARDO DE LOS ANGELES, and ROMAN MABANTA, JR.,** *respondents.*

[G.R. No. 85594. January 9, 1992]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT and PCGG-Nominees/Designees: MELQUIADES GUTIERREZ, EDUARDO M. VILLANUEVA, RAMON DESUASIDO, ALMARIO P. VELASCO, RANULFO P. PAYOS, and JOSE P. ROXAS, *petitioners, vs.* **THE HONORABLE SANDIGANBAYAN (THIRD DIVISION), JOSE L. AFRICA, MANUEL H. NIETO, JR., RAFAEL VALDEZ, and VICTOR AFRICA,** *respondents.*

[G.R. No. 85597. January 9, 1992]

REPUBLIC OF THE PHILIPPINES (PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT), *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN (THIRD DIVISION), JOSE L. AFRICA, MANUEL H. NIETO, and RAFAEL VALDEZ,** *respondents.*

[G.R. No. 85621. January 9, 1992]

EDUARDO M. VILLANUEVA, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN, JOSE L. AFRICA, MANUEL NIETO, RAFAEL C. VALDEZ, and PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,*** *respondents.*

---

* PCGG was impleaded as a respondent by reason of its being an unwilling co-petitioner.

Supreme Court E-Library

SYLLABUS

1. REMEDIAL LAW; SANDIGANBAYAN; JURISDICTION; ALREADY SETTLED IN *PCGG v. HON. PEÑA* (159 SCRA 556) AND OTHER CASES. — The law and jurisprudence on the jurisdiction of the Sandiganbayan over cases for the recovery of "ill-gotten wealth" are now settled. In *PCGG vs. Hon. Emmanuel G. Peña, etc., et al.*, this Court held: "xxx Under Section 2 of the President's Executive Order No. 14 issued on May 7, 1986, all cases of the Commission regarding 'the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees' whether civil or criminal, are lodged within the 'exclusive and original jurisdiction of the Sandiganbayan' and all incidents arising from, incidental to, or related to, such cases necessarily fall likewise under the Sandiganbayan's exclusive and original jurisdiction, subject to review on *certiorari* exclusively by the Supreme Court." The aforequoted ruling was reiterated in *PCGG vs. Hon. Aquino, Jr., etc., et al.*, and *Marcelo Fiberglass Corporation vs. PCGG*, which were jointly decided by the Court on June 30, 1988. In six (6) subsequent cases likewise jointly decided on August 10, 1988, the Court pointed out that: "xxx (the) exclusive jurisdiction conferred on the Sandiganbayan would evidently extend not only to the principal causes of action, *i.e.*, the recovery of alleged ill-gotten wealth, but also to 'all incidents arising from, incidental to, or related to, such cases,' such as the dispute over the sale of shares, the propriety of the issuance of ancillary writs or provisional remedies relative thereto, the sequestration thereof, which may not be made the subject of separate actions or proceedings in another forum."

2. ID.; ID.; ID.; SANDIGANBAYAN'S JURISDICTION OVER ORIGINAL SPECIAL CIVIL ACTIONS INVOLVING POWERS AND FUNCTIONS OF THE PCGG, RESOLVED BY THIS COURT. — The issue of jurisdiction of the Sandiganbayan over original special civil actions involving the powers and functions of the PCGG has been raised in and resolved by this Court. In the consolidated cases of *PCGG vs. Hon. Aquino, Jr., etc., et al.* and *Marcelo Fiberglass Corporation*

Supreme Court E-Library

vs. PCGG, *supra*, therein private respondent Marcelo Fiberglass Corporation contested the jurisdiction of the *Sandiganbayan* over special civil actions claiming that Section 2 of Executive Order No. 14 vested the Sandiganbayan with jurisdiction over civil and criminal cases filed by the PCGG but not over special civil actions filed by private parties; that Section 2 did not limit the filing of special civil actions by private persons exclusively with the Sandiganbayan; and that Presidential Decree No. 1606 which created the Sandiganbayan did not vest such court with jurisdiction over special civil actions such as those involved therein and as enumerated in Section 4 of Presidential Decree No. 1606. The Court rejected such contention, declaring that the attempt to remove special civil actions from the Sandiganbayan's exclusive jurisdiction is of no avail if they similarly involve the powers and functions of the PCGG. The Court reiterated the pronouncement in *PCGG vs. Peña, etc., et al., supra*, that the Sandiganbayan has exclusive and original jurisdiction in civil or criminal cases involving ill-gotten wealth under Executive Order No. 14, as well as incidents arising from, incidental or related to such cases, subject to review on *certiorari* exclusively by the Supreme Court. Since the injunctive suits filed by Jose L. Africa, et al. before the Sandiganbayan stemmed from incidents arising from, incidental and related to the partial sequestration of ETPI, the directive enunciated in the Peña case that "those who wish to question or challenge the Commission's acts or orders in such cases must seek recourse in the same court, the Sandiganbayan, which is vested with exclusive and original jurisdiction," applies to the instant case.

3. ID.; PROVISIONAL REMEDIES; INJUNCTION; INCORPORATION OF MONETARY CLAIM IN THE PROVISIONAL REMEDY FOR INJUNCTION FOR DAMAGES WHICH WOULD REQUIRE THE APPLICATION OF THE PRINCIPLE OF IMMUNITY OF STATE FROM SUIT.— Neither would the principle of immunity of the State from suit invoked by the PCGG divest the Sandiganbayan of its jurisdiction over the complaints for injunction in both Civil Cases Nos. 0048 and 0050. While there were claims for damages alleged in the complaints in both cases, the same are, however, directed against the individual defendants in their personal capacities for having allegedly acted without legal authority and in a manner adverse to the interests of ETPI. Incorporating a monetary claim in the

Supreme Court E-Library

complaint will not convert the special civil action for injunction into a mere claim for damages which would otherwise call for the application of the rule on non-suability of the State. The complaints for injunction do not seek money judgments from nor do they demand any affirmative performance by the State in its political capacity which would call for immunity from suit. The doctrine of state immunity from suit applies only in actions resulting in adverse consequences on the public treasury, whether in the disbursement of funds or loss of property.

4. ID.; ID.; ID.; THE SEC HAS NO JURISDICTION OVER A CASE INVOLVING THE PCGG, THE LATTER BEING A CO-EQUAL ENTITY.— Although the challenge against the temporary restraining order issued by the Securities and Exchange Commission in SEC Case No. 3297 became moot and academic by virtue of the expiration of its 20-day effectivity period, the Court nevertheless ruled that the issuance of the same was tainted with grave abuse of discretion considering that the SEC Hearing Panel should have then realized that there existed an element in the case which effectively removed it from the jurisdiction of the SEC, to wit, the presence of the PCGG which, as another quasijudicial body, is a co-equal entity over whose actions the SEC has no power of control.

5. COMMERCIAL LAW; CORPORATIONS; EXECUTIVE ORDERS NOS. 1, 2 AND 14 DO NOT MODIFY THE STOCKHOLDER'S RIGHT OF INSPECTION UNDER SEC. 74 OF THE CORPORATION CODE. — In upholding therein the right of a stockholder of a sequestered company to inspect and/or examine the records of a corporation pursuant to Section 74 of the Corporation Code, the Court found nothing in Executive Orders Nos. 1, 2 and 14, as well as in BASECO, to indicate an implied amendment of the Corporation Code, much less an implied modification of a stockholder's right of inspection as guaranteed by Section 74 thereof. The only express limitation on the right of inspection, according to the Court, is that (1) the right of inspection should be exercised at reasonable hours on business days; (2) the person demanding the right to examine and copy excerpts from the corporate records and minutes has not improperly used any information secured through any previous examination of the records of such corporation, and (3) the demand is made in good faith or for a legitimate purpose.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Victor Africa for petitioner in G.R. No. 83831.

Jose L. Africa and Manuel H. Nieto for respondents in G.R. Nos. 85594 and 85597.

Francisco D. Rillozora, Jr. for petitioner in 83831 and private respondents in G.R. Nos. 85594, 85597 and 85621.

Arthur D. Lim Law Office for petitioner in G.R. No. 85621.

Romulo, Mabanta, Buenaventura, Sayoc & De los Angeles for respondents Mabanta & de los Angeles in 83831 & 85594.

D E C I S I O N

REGALADO, *J.*:

These four cases separately filed before this Court were consolidated pursuant to our resolution of November 22, 1988[1] since they involve issues arising from, incidental or related to the sequestration of Eastern Telecommunications Philippines, Inc. (ETPI) by the Presidential Commission on Good Government (PCGG) on March 14, 1986 and the consequent filing by the PCGG on July 22, 1987 of an action for reconveyance, reversion, accounting and restitution of the alleged ill-gotten ETPI shares and damages, docketed as Civil Case No. 0009 in the Sandiganbayan.

Shortly after the PCGG sequestered ETPI on March 14, 1986, the sequestration order was partially lifted in May, 1986 when 40% of the shares of stock (Class "B") owned by Cable and Wireless, Ltd. were freed from the effects of sequestration. The remaining 60% of the shares (Class "A"), however, remained under sequestration. Thereafter, on July 22, 1987, the PCGG filed with the Sandiganbayan the aforesaid Civil Case No. 0009.

Subsequently, during the annual stockholders meeting convened on January 29, 1988 pursuant to a PCGG Resolution dated January 28, 1988 which called for the resumption of the

[1] *Rollo*, G.R. No. 85597, 98.

Supreme Court E-Library

stockholders meeting originally scheduled on January 4, 1988, Eduardo M. Villanueva, as PCGG nominee, Roman Mabanta, Jr. and Eduardo de los Angeles as nominees of the foreign investors, Cable and Wireless Ltd., and Jose L. Africa (who was absent) were elected as members of the board of directors.

An organizational meeting was later held where Eduardo Villanueva was elected as president and general manager, while Ramon Desuasido, Almario Velasco and Ranulfo Payos were elected as acting corporate secretary, acting treasurer, and acting assistant corporate secretary, respectively.

The nomination and election of PCGG nominees/designees to the ETPI Board of Directors, as well as the election of its new officers, triggered a chain of contentious proceedings before the Sandiganbayan and this Court between the members of the ETPI Board and its stockholders, on the one hand, and the PCGG's nominees/designees elected to the ETPI Board, on the other hand, in the cases hereinunder discussed.

G.R. No. 83831

Victor Africa, who claims to be an employee of ETPI holding the positions of vice-president, general counsel (on official leave without pay), corporate secretary and special assistant to the chairman (and president), filed directly with this Court on June 30, 1988 a petition for injunction docketed as G.R. No. 83831, seeking to enjoin the PCGG and its nominees/designees to the board of directors and the newly-installed officers of ETPI from implementing their alleged illegal, invalid and immoral act of ousting him from his offices and positions at the ETPI pending the determination of whether they have validly, legally and morally assumed their supposed positions and offices as "directors" and/or "officers" of ETPI.

He contends that the reasons advanced by the PCGG-sponsored board of directors for ousting him from his offices (redundancy, need to conserve company funds and loss of confidence) are flimsy, whimsical and arbitrary, evidencing not only the PCGG-sponsored board's discriminatory and oppressive attitude towards him but, more importantly, its clear intent to harass him into

Supreme Court E-Library

refraining from questioning before several tribunals all the invalid, illegal and immoral acts of said PCGG-sponsored board which have caused and are still causing ETPI damages because they constitute dissipation of assets.

Further claiming that the acts of respondents will work injustice unfairness and inequity to him as they will invalidly, illegally and immorally deprive him of his principal means of livelihood to the detriment of his spouse and three children, petitioner sought the issuance of a writ of preliminary injunction or a temporary restraining order to enjoin the PCGG from ousting him from his positions and offices effective June 30, 1988.

On July 8, 1988, petitioner informed the Court that while a verbal agreement to maintain the status quo was reached between petitioner's lawyers, Attys. Juan de Ocampo and Antonio Africa, and Messrs. Orlando Romero and Serafin Rivera of the PCGG, respondent Eduardo M. Villanueva circulated on July 5, 1988 an inter-office memorandum easing out the legitimate members of the board from their rooms in the executive offices for the benefit of the newly-installed members of the questioned PCGG board; and that Ildefonso Reynoso, vice-president for administration, issued a memorandum to the Nival Security and Protective Agency informing them that they were being relieved of their duty to provide security services at the 7th Floor of Telecoms Plaza where the executive offices are located, which services would then be handled by the FCA Security Agency.[2]

On July 15, 1988, petitioner was allegedly forcibly taken out of his office on the basis of a PCGG order which petitioner claimed was addressed not to then PCGG Commissioner Laureta but to three other PCGG officials, namely, Esteban B. Conejos, Jr., Serafin P. Rivera and Orlando Z. Romero. As a consequence, petitioner Africa sought to have then Commissioner Laureta declared in contempt of court for having committed "improper conduct tending directly or indirectly, to impede, obstruct or degrade the administration of justice."[3] He likewise sought the

[2] See Second *Ex Parte* Very Urgent Motion for Immediate Issuance of a Temporary Restraining Order, *Rollo*, G.R. No. 83831, 31.

[3] *Rollo*, G.R. No. 83831, 61-69.

Supreme Court E-Library

issuance of a writ of preliminary mandatory injunction ordering respondents to open his office and allow him access to and use of the same.

G.R. Nos. 85597 and 85621

Jose L. Africa, Manuel Nieto and Rafael Valdez, allegedly the registered stockholders of ETPI, instituted on September 6, 1988 before the Sandiganbayan Civil Case No. 0048,[4] a complaint for injunction and damages with prayer for a temporary restraining order seeking to enjoin Eduardo M. Villanueva from acting as "Director, President and/or General Manager" of ETPI and from exercising the powers and functions of said positions, as well as to stop the PCGG from directly or indirectly interfering with the management of ETPI. They contend that the assumption of Villanueva to said positions was effected without due process of law through the PCGG using and voting the sequestered shares without legal justification.

Eduardo M. Villanueva filed a motion to dismiss/opposition to the issuance of a restraining order on the grounds of lack of jurisdiction, because the complaint partakes of the nature of a suit against the State without its consent; that plaintiffs are not the real parties in interest in the action, which is actually *a quo warranto* proceeding; that the complaint is premature for failure to exhaust administrative remedies; and that the issues raised have already been passed upon by the Supreme Court in G.R. No. 82188, a recourse against the Securities and Exchange Commission (SEC), entitled "*PCGG, et al. vs. SEC, et al.*"[5]

The PCGG, on the other hand, opposed the issuance of a writ of preliminary injunction, contending that the issues raised in Civil Case No. 0048 have already been passed upon by the Supreme Court in its aforesaid decision in G.R. No. 82188 promulgated on June 30, 1988.[6]

---

[4] Civil Case No. 0048 is actually a revival of Civil Case No. 0045 filed by Jose L. Africa, Manuel Nieto and Rafael Valdez sometime in August, 1988 but later withdrawn on September 5, 1988.

[5] Annexes "C" and "C-1", Petition, G.R. No. 85621; *Rollo*, 32-47.

[6] Annex "C", Petition, G.R. No. 85597; *Rollo*, 72-91.

Supreme Court E-Library

In the proceedings on September 13, 1988, the PCGG, through Solicitor Ramolete, moved to defer the hearing until after the motion to dismiss of Villanueva and the objection raised by PCGG shall have been resolved. However, the Sandiganbayan resolved to hear the evidence on the application for preliminary injunction with the understanding that the incident shall not be resolved earlier than the resolution of the motion to dismiss and the issue raised by Solicitor Ramolete.[7]

At the scheduled hearing on October 12, 1988, Villanueva objected to further proceedings without his motion to dismiss being first resolved, contending that since the action is for injunction and damages, the reception of evidence on the application for preliminary injunction was tantamount to a hearing on the merits. In open court, he was overruled and his motion to have the proceedings suspended pending resolution of his motion to dismiss was denied.

From the denial of PCGG's motion to defer hearing and Villanueva's motion to suspend proceedings in Civil Case No. 0048, the PCGG filed on November 12, 1988 a petition for prohibition with prayer for a writ of preliminary injunction and/or restraining order with this Court, docketed as G.R. No. 85597, while Villanueva fled on November 16, 1988 a separate petition for prohibition with preliminary injunction and/or restraining order docketed as G.R. No. 85621. Both petitions assail the orders issued by the Sandiganbayan, dated September 13, 1988 and October 12, 1988, as having been issued with grave abuse of discretion amounting to lack of jurisdiction.

On November 15, 1988, the Court issued a temporary restraining order[8] in G.R. No. 85597 directing the Sandiganbayan to cease and desist from proceeding with its hearing in Civil Case No. 0048 scheduled on November 18, 1988 at 2:00 P.M. In the resolution of November 22, 1988, the case was ordered consolidated with the other ETPI cases (G.R. Nos. 83831, 85594 and 85621).

---

[7] Annex "D," *id*.; *ibid*., 93-94.

[8] *Rollo* G.R. No. 85597, 95-96.

Supreme Court E-Library

G.R. No. 85594

The same plaintiffs in Civil Case No. 0048, now in their capacity as erstwhile members of the Board of Directors of ETPI, instituted before the Sandiganbayan on September 23, 1988 Civil Case No. 0050, another action for injunction and damages with prayer for a writ of preliminary injunction and/or temporary restraining order.

In their complaint, plaintiffs questioned the acts and orders of the PCGG leading to the election of therein defendants Melquiades Gutierrez, Mark Javier, Ranulfo P. Payos, Jose P. Roxas and Almario Velasco, and Cable and Wireless representatives Roman Mabanta, Jr. and Eduardo de los Angeles to the ETPI Board of Directors. Claiming to be the duly elected members of the ETPI Board of Directors during the January 4, 1988 special stockholders meeting, plaintiffs prayed that defendants be removed from their ETPI positions, and that an injunction be issued perpetually restraining the PCGG from electing, designating and supporting the defendants in their ETPI roles.[9]

The PCGG,[10] and its nominees/designees to the ETPI Board,[11] Roman Mabanta, Jr. and Eduardo de los Angeles[12] separately filed their respective motions to dismiss and opposed the issuance of a writ of preliminary injunction/restraining order invoking substantially the same grounds proffered in Civil Case No. 0048, as follows: (1) the court lacks jurisdiction because plaintiffs may not sue the State without its consent; (2) the filing of the complaint is improper because the cause(s) of action alleged and the reliefs sought therein constitute an action for *quo warranto*, hence plaintiffs are not the proper and real parties in interest to oust or unseat defendants; and (3) the filing of the complaint is barred by *lis pendens*, as plaintiffs should have contested PCGG's acts in Civil Case No. 0009 (*Republic vs.*

[9] Annex "A", Petition, G.R. No. 85594; *Rollo*, 26-39.

[10] Annex "B-1", Urgent Supplemental Petition. G.R. No. 85594; *Rollo*, 275-281.

[11] Annex "B", *id.*; *ibid.*; 268-274.

[12] Annex "B-2", *id.*; *ibid.*; 281-288.

Supreme Court E-Library

Jose L. Africa, et al.). Roman Mabanta, Jr. and Eduardo de los Angeles further maintained that respondent court has no jurisdiction over the nature and subject matter of the complaint insofar as they are concerned, they being Class B Directors; and that the complaint is barred by the decision of the Supreme Court in G.R. No. 82188.

On October 21, 1988, or while the motions to dismiss remained pending and prior to the hearing set on November 3, 1988 for the issuance of a writ of preliminary injunction/temporary restraining order, the Clerk of Court of the Sandiganbayan issued, upon request of the counsel for Jose L. Africa, *et al*. dated October 18, 1988, a subpoena *duces tecum and ad testificandum* ordering the PCGG or its representatives to appear and testify before the Sandiganbayan during the hearing on November 3, 1988 at 2:00 P.M. and to produce the stock and transfer book and all stubs of the outstanding stock certificates of ETPI.

Three days thereafter, or on October 24, 1988, another subpoena *duces tecum* was issued upon an amended request for subpoena by the same counsel, ordering Assistant Solicitor General Ramon Desuasido or his representative to appear before the Sandiganbayan at the 2:00 P.M. hearing on November 3, 1988 and to produce the "minutes of all meetings of the Board of Directors and Stockholders of ETPI held from January 29, 1988 to date."

The PCGG and its nominee/designee, Ramon Desuasido, moved to quash both subpoena, but the motion was denied by the Sandiganbayan in an order[13] dated November 3, 1988. The hearing was reset to November 15, 1988 at 2:00 o'clock in the afternoon.

On November 15, 1988, an urgent petition for *certiorari*, docketed as G.R. No. 85594, was filed by the PCGG and its nominees/designees before this Court, assailing as having been issued with grave abuse of discretion the incidental orders dated October 24, 1988 and November 3, 1988 on the principal

[13] Annex "F-1," Urgent Supplemental Petition, G.R. No. 85594, *Rollo*, 67-68.

Supreme Court E-Library

contention that the Sandiganbayan has no jurisdiction over the main action for damages since Civil Case No. 0050 is in truth a suit against the State without its consent. The PCGG also prayed for the issuance of a temporary restraining order to enjoin the respondents from enforcing and or executing the subpoena dated October 21, 1988 and October 24, 1988. On the same date, or on November 15, 1988, the Court issued a temporary restraining order.[14]

The Sandiganbayan, in the meantime, proceeded with the main case and, thereafter, on December 13, 1988 promulgated a resolution[15] denying the motions to dismiss separately filed by he PCGG and the individual defendants.

On February 23, 1989, the Sandiganbayan denied the motion for reconsideration filed by the representatives of Cable and Wireless, Ltd.[16] The PCGG and its nominees opted not to file a motion for reconsideration apparently in the belief that the same would be merely repetitive, if not futile.

From the denial of the motion to dismiss, the PCGG and its nominees/designees filed on March 27, 1989 an Urgent Supplemental Petition in G.R. No. 85594[17] assailing the denial by the Sandiganbayan of their motions to dismiss on the grounds that the core subject matter and issue are *res judicata* by virtue of the decision in G.R. No. 82188; that the respondent court lacks jurisdiction over the case; that private respondents have no legal capacity to sue and institute a separate action; and that they are not the real parties in interest.

Recapping, therefore, from the foregoing narration it appears that the injunction suits filed and docketed as Civil Cases Nos. 0048 and 0050 in the Sandiganbayan and the petition for injunction filed directly with this Court as G.R. No. 83831 are substantially identical in the reliefs sought therein, that is, to

---

[14] *Rollo*, G.R. No. 85594, 70-71.

[15] Annex "G-1", Urgent Supplemental Petition, G.R. No. 85594; *Rollo*, 312-334.

[16] Annex "G-2", *id*.; *ibid*., 335-340.

[17] *Rollo*, G.R. No. 85594, 217-252.

Supreme Court E-Library

nullify the acts and orders of the PCGG which led to the nomination and election of the new members of the board of directors and officers of the ETPI and to enjoin said directors and officers from exercising the powers and functions of said positions.

Civil Cases Nos. 0048 and 0050 were elevated to this Court on some incidental matters relating to the propriety of hearing the cases on the merits without the motions to dismiss filed therein having been first resolved; and in Civil Case No. 0050, on the additional issue of the legality of the subpoena *duces tecum* and *ad testificandum* issued by the Sandiganbayan ordering the PCGG or its representatives to testify and produce the stock and transfer book, all stubs of the outstanding stock certificates of ETPI and the minutes of all meetings of the board of directors and stockholders held from January 29, 1988.

The issue in Civil Case No. 0050 as to the propriety of hearing the main action for injunction before resolving the motions to dismiss has been mooted when the Sandiganbayan denied said motions to dismiss on December 13, 1988. We are, however, constrained to go deeper into the issue since the denial of said motions was the subject matter of a supplemental petition in G.R. No. 85594.

With respect to G.R. Nos. 85597 and 85621, we find that the deferment of the resolution of the motions to dismiss Civil Case No. 0048 was tainted with grave abuse of discretion. It is well-settled that while the court has the discretion to defer the hearing and determination of a motion to dismiss if the ground therefor is not indubitable,[18] such deferment is in excess of jurisdiction if the ground for the motion to dismiss is lack of jurisdiction or lack of cause of action, since the allegations of the complaint are deemed admitted and the motion to dismiss can be resolved without waiting for trial on the merits.[19] Clearly,

---

[18] Section 3, Rule 16, Rules of Court.

[19] *Foster Parents Plan International/Bicol, et al. vs. Hon. Demetriou, et al.*, 142 SCRA 505 (1986); *Edward J. Nell Co. vs. Cubacub, et al.*, 14 SCRA 419 (1965); *Abo vs. Philame (KG) Employees, et al.*, 13 SCRA 120 (1965); *Campos Rueda Corporation vs. Hon. Bautista, et al.*, 6 SCRA 240 (1962).

Supreme Court E-Library

on the face of the complaint, the issue of lack of jurisdiction invoked in the motion to dismiss can be resolved without waiting for trial on the merits as will be shown hereunder. Thus, petitioner Villanueva is correct in his assertion that his motion to dismiss must first be resolved before trial on the merits may be had.

Be that as it may, this finding merely constitutes a technical victory for said petitioner as it will be rendered moot and academic by the following ruling on the merits of the grounds raised in his motion to dismiss.

In G.R. No. 85621, petitioner Villanueva imputes grave abuse of discretion to the Sandiganbayan in proceeding with the hearing of Civil Case No. 0048. To his mind, the injunction suit filed by Africa, Nieto and Valdez is in effect a suit against the State and, since there is no waiver of immunity by the State, respondent court cannot acquire jurisdiction over the same.

Along the same vein, the PCGG elevated to this Court in G.R. No. 85594 the denial of its motion to dismiss Civil Case No . 0050 contending that the Sandiganbayan has no jurisdiction to entertain an independent suit against the Republic of the Philippines (PCGG) not only because it is only the Republic, without consenting to be sued or countersued, that is allowed to file civil or criminal cases with said court pursuant to Executive Order No. 14, but also because the cause of action, if any, or the subject matter or nature of the complaint for injunction are not within the limited or special jurisdiction of the Sandiganbayan as defined by Section 4, Presidential Decree No. 1606, as amended by Presidential Decree No. 1891, even as such jurisdiction has been enlarged by Executive Order No. 14.

The law and jurisprudence on the jurisdiction of the Sandiganbayan over cases for the recovery of "ill-gotten wealth" are now settled. In *PCGG vs. Hon. Emmanuel G. Peña, etc., et al.*,[20] this Court held:

"xxx Under Section 2 of the President's Executive Order No. 14 issued on May 7, 1986, all cases of the Commission regarding 'the

[20] 159 SCRA 556 (1986).

Supreme Court E-Library

Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees' whether civil or criminal, are lodged within the 'exclusive and original jurisdiction of the Sandiganbayan' and all incidents arising from, incidental to, or related to, such cases necessarily fall likewise under the Sandiganbayan's exclusive and original jurisdiction, subject to review on *certiorari* exclusively by the Supreme Court."

The aforequoted ruling was reiterated in *PCGG vs. Hon. Aquino, Jr., etc., et al.*, and *Marcelo Fiberglass Corporation vs. PCGG*,[21] which were jointly decided by the Court on June 30, 1988.

In six (6) subsequent cases[22] likewise jointly decided on August 10, 1988, the Court pointed out that:

"xxx (the) exclusive jurisdiction conferred on the Sandiganbayan would evidently extend not only to the principal causes of action, i.e., the recovery of alleged ill-gotten wealth, but also to 'all incidents arising from, incidental to, or related to, such cases,' such as the dispute over the sale of shares, the propriety of the issuance of ancillary writs or provisional remedies relative thereto, the sequestration thereof, which may not be made the subject of separate actions or proceedings in another forum."

A careful examination of the records of these cases reveals that the complaints instituted by Jose L. Africa, *et al.* in Civil Cases Nos. 0048 and 0050 before the Sandiganbayan are in the nature of special and original civil actions for injunction[23]

---

[21] G.R. Nos. 77916 and 78753, 163 SCRA 363 (1988).

[22] *Soriano III, et al. vs. Hon. Yuzon, et al.*, G.R. No. 74910; *Cojuangco, Jr., et al. vs. SEC, et al.*, G.R. No. 75075; *Ganay vs. PCGG*, G.R. No. 75094; *Board of Directors of San Miguel Corporation, et al. vs. SEC, et al.*, G.R. No. 76397; *Cojuangco, Jr., et al. vs. Hon. Laggui, etc., et al.*, G.R. No. 79459; *Neptunia Corporation, Ltd., et al. vs. PCGG, et al.*, G.R. No. 79520, 164 SCRA 226 (1988).

[23] See, for instance, Sec. 4, Rule 39, Rules of Court and Art. 26, Civil Code which contemplate and authorize original actions for injunction brought specifically to restrain or command the performance of an act.

Supreme Court E-Library

directed against the defendants therein and specially seeking to restrain them from representing and acting as officers and members of the Board of Directors of ETPI and to prevent the PCGG from exercising acts of ownership and or management over ETPI.

Moreover, in claiming as illegal the acts or orders of the PCGG issued in pursuance of the exercise of its powers and functions under Executive Orders Nos. 1, 2 and 14, which resulted in the installation of defendants to the Board of Directors of ETPI and to their corporate offices, plaintiffs Jose L. Africa, *et al*. merely sought to preserve the status quo, that is, the last actual, peaceable, uncontested status which preceded the pending controversy. The *status quo* to the plaintiffs was the fact of their election to the Board of Directors of ETPI during the special stockholders meeting on January 4, 1988 allegedly pursuant to a valid call, notice and assembly in accordance with law.

The issue of jurisdiction of the Sandiganbayan over original special civil actions involving the powers and functions of the PCGG has been raised in and resolved by this Court. In the consolidated cases of *PCGG vs. Hon. Aquino, Jr., etc., et al*. and *Marcelo Fiberglass Corporation vs. PCGG, supra*, therein private respondent Marcelo Fiberglass Corporation contested the jurisdiction of the Sandiganbayan over special civil actions claiming that Section 2 of Executive Order No. 14 vested the Sandiganbayan with jurisdiction over civil and criminal cases filed by the PCGG but not over special civil actions filed by private parties; that Section 2 did not limit the filing of special civil actions by private persons exclusively with the Sandiganbayan; and that Presidential Decree No. 1606 which created the Sandiganbayan did not vest such court with jurisdiction over special civil actions such as those involved therein and as enumerated in Section 4 of Presidential Decree No. 1606.

The Court rejected such contention, declaring that the attempt to remove special civil actions from the Sandiganbayan's exclusive jurisdiction is of no avail if they similarly involve the powers and functions of the PCGG. The Court reiterated the

Supreme Court E-Library

pronouncement in *PCGG vs. Peña, etc., et al., supra*, that the Sandiganbayan has exclusive and original jurisdiction in civil or criminal cases involving ill-gotten wealth under Executive Order No. 14, as well as incidents arising from, incidental or related to such cases, subject to review on *certiorari* exclusively by the Supreme Court.

Since the injunctive suits filed by Jose L. Africa, et al. before the Sandiganbayan stemmed from incidents arising from, incidental and related to the partial sequestration of ETPI, the directive enunciated in the Peña case that "those who wish to question or challenge the Commission's acts or orders in such cases must seek recourse in the same court, the Sandiganbayan, which is vested with exclusive and original jurisdiction," applies to the instant case.

Neither would the principle of immunity of the State from suit invoked by the PCGG divest the Sandiganbayan of its jurisdiction over the complaints for injunction in both Civil Cases Nos. 0048 and 0050. While there were claims for damages alleged in the complaints in both cases, the same are, however, directed against the individual defendants in their personal capacities for having allegedly acted without legal authority and in a manner adverse to the interests of ETPI.[24]

Incorporating a monetary claim in the complaint will not convert the special civil action for injunction into a mere claim for damages which would otherwise call for the application of the rule on non-suability of the State.[25] The complaints for injunction do not seek money judgments from nor do they demand any affirmative performance by the State in its political capacity which would call for immunity from suit. The doctrine of state immunity from suit applies only in actions resulting in adverse

---

[24] Pars. 11 to 19, Complaint in Civil Case No. 0048, *Rollo*, G.R. No. 85597, 49-55; Pars. 14 to 20, Complaint in Civil Case No. 0050, *Rollo*, G.R. No. 85594, 31-36.

[25] *Republic vs. Sandiganbayan, et al.*, 184 SCRA 382 (1990); *Moreno, et al. vs. Hon. Macadaeg, et al.*, 7 SCRA 700 (1963); *Ruiz, et al. vs. Cabahug*, 102 Phil. 110 (1957).

Supreme Court E-Library

consequences on the public treasury, whether in the disbursement of funds or loss of property.[26]

Plaintiffs in both cases sought the intervention of the Sandiganbayan to obtain redress for what they perceived to be an arbitrary and illegal deprivation of their proprietary rights in the ETPI by the individual defendants resulting from the latter being installed as directors or officers of ETPI by virtue of the questioned acts or orders of the PCGG. Plaintiffs do not seek to impose pecuniary liabilities against the PCGG as a government entity. Verily, the PCGG cannot hide behind the aforestated doctrine of immunity of the State from suit to bar plaintiffs from going to the courts to seek affirmative reliefs in these actions.

Seeking further to divest the Sandiganbayan of its jurisdiction over the actions for injunction in Civil Cases Nos. 0048 and 0050, the PCGG argues that the said actions are barred by *res judicata* because of the prior judgment in *PCGG, et al. vs. SEC, et al.* and its companion case, *PCGG vs. Sandiganbayan, et al., supra*. It is the contention of the PCGG that the subject matter and issues in both Civil Cases Nos. 0048 and 0050 are the very same subject matter and issues raised by Africa, et al. in SEC Case No. 3297 and in their motion for injunction in Civil Case No. 0009, both of which were elevated by the PCGG to this Court in G.R. No. 82188.

The doctrine of *res judicata* or bar by prior judgment does not apply in the instant case. The two issues raised in G.R. No. 82188 related principally to the issue of jurisdiction, namely: (1) whether or not the Securities and Exchange Commission gravely abused its discretion and acted in excess of jurisdiction in SEC Case No. 3297 when it restrained the PCGG from holding the special stockholders meeting of the ETPI on March 4, 1988; and (2) whether or not the Sandiganbayan gravely abused its discretion and acted in excess of jurisdiction when it restrained the PCGG, its nominated directors and/or corporate officers,

---

[26] *Begosa vs. Chairman, Philippine Veterans Administration, et al.*, 32 SCRA 466 (1970); *Johnson vs. Turner*, 94 Phil. 807 (1954); *Marvel Building Corporation vs. Philippine War Damage Commission*, 85 Phil. 27 (1949).

Supreme Court E-Library

employees, nominees, agents and/or representatives at ETPI from calling and/or holding a stockholders meeting and voting the sequestered shares thereat for the purpose of amending the articles of incorporation or by-laws of ETPI, or otherwise effecting substantial changes in policy, programs or practices of said corporation.

In brief, what was obviously raised and resolved by the Court was the scope and extent of the authority of the Sandiganbayan to issue injunctive writs on matters involving the exercise and performance of the powers and functions of the PCGG as conservator in accordance with the ruling in *BASECO vs. PCGG, et al*.[27] to prevent the disposal and dissipation of the assets of sequestered companies or businesses.

Although the challenge against the temporary restraining order issued by the Securities and Exchange Commission in SEC Case No. 3297 became moot and academic by virtue of the expiration of its 20-day effectivity period, the Court nevertheless ruled that the issuance of the same was tainted with grave abuse of discretion considering that the SEC Hearing Panel should have then realized that there existed an element in the case which effectively removed it from the jurisdiction of the SEC, to wit, the presence of the PCGG which, as another quasijudicial body, is a co-equal entity over whose actions the SEC has no power of control.

The Court, on the other hand, upheld the temporary restraining order issued by the Sandiganbayan insofar as it restrained the stockholders meeting specifically called for the purpose of ratifying the proposed amendment to delete from ETPI's articles of incorporation and by-laws the "right of first refusal" clause. Recognizing that the exercise of the "right of first refusal" is an act of strict ownership, the Court ruled that while there may be instances when only through an act of strict ownership can the PCGG be able to prevent the dissipation of assets of a sequestered corporation or business, the situation then presented was nevertheless not one of such instances.

---

[27] 150 SCRA 181 (1987).

Supreme Court E-Library

Significantly, however, the Court found the general injunction imposed by the Sandiganbayan on the PCGG to desist and refrain from calling a stockholders meeting for the purpose of electing a new board of directors or effecting substantial changes in the policy, program or practice of the corporation to be too broad as to thereby taint said order with grave abuse of discretion.

On PCGG's insistence on the rule of bar by prior judgment, it is readily apparent that one fundamental requisite for the application of that doctrine of *res judicata* is absent in the instant case, that is, the prior judgment or order must be a judgment on the merits of the case. For a prior judgment to constitute a bar to a subsequent case, (1) it must be a final judgment or order, (2) the court rendering the same must have jurisdiction over the subject matter and over the parties, (3) it must be a judgment or order on the merits, and (4) there must be between the two cases identity of parties, subject matter, and causes of action.[28]

There is no dispute that, substantially, the acts or orders of the PCGG which led to the election of the members of the board of directors and officers of ETPI, as well as all acts done thereafter by the said board, are the incidents which gave rise to the causes of action involved in the injunction suit in SEC Case No. 3297 and the motion for injunction in Civil Case No. 0009, both of which gave rise to G.R. No. 82188.

There is, accordingly, identity of the incidents upon which the causes of action in Civil Cases Nos. 0048 and 0050 are based and those of the two cases which gave rise to G.R. No. 82188.

However, there is nothing, in the pronouncements of the Court in G.R. No. 82188 which finally resolved the merits of the factual issues raised therein by the opposing parties which included, among others, the alleged illegal manner by which the meeting

---

[28] *Pacific Banking Corp. vs. Mendoza, et al.*, 168 SCRA 709 (1988); *Republic vs. Hon. Sebastian, etc., et al.*, 166 SCRA 140 (1988); *Eternal Gardens Memorial Parks Corporation vs. Intermediate Appellate Court, et al.*, 165 SCRA 439 (1988).

Supreme Court E-Library

to elect the new board of directors was called and held on January 29, 1988; the qualification, experience and probity of those elected to the board contrary to the caveat in *BASECO vs. PCGG, et al., supra,* on the substitution of directors of the board of sequestered corporations; and the alleged mismanagement of the operations of ETPI by those elected to the board and the corporate offices by the PCGG.

A cursory reading of the decision would show that the Court merely ruled on the parameters of the jurisdiction of the Sandiganbayan to issue injunctive writs in cases involving the PCGG and PCGG-related matters. In fact, the Court stressed in G.R. No. 82188 that "the various motions filed by private respondents in this case involving matters which would require us to look into the facts of the case are better ventilated before the Sandiganbayan." Nothing final or definite was laid down by this Court in that case with respect to the legality or illegality of the questioned acts or orders of the PCGG leading to the election of its nominees/designees to the ETPI board of directors and corporate offices.

The denial, therefore, of the motion to dismiss in Civil Case No. 0050 was not sullied by grave abuse of discretion. With this pronouncement, the denial of the motion to dismiss Civil Case No. 0048 would likewise be proper and necessarily called for.

The issue raised in the original petition in G.R. No. 85594 relating to the validity of the issuance by the Sandiganbayan of the subpoena *duces tecum* and *ad testificandum* ordering the PCGG or its representative to testify and produce the stock and transfer book, all stubs of the outstanding stock certificates of ETPI and the minutes of all meetings of the board of directors and stockholders of ETPI held from January 29, 1988 to date was laid to rest by our joint resolution in two cases, both entitled *Republic vs. Sandiganbayan and Eduardo Cojuangco, Jr.*,[29] which applies squarely in the instant petitions.

---

[29] G.R. Nos. 88809 and 88858, July 10, 1991.

Supreme Court E-Library

In upholding therein the right of a stockholder of a sequestered company to inspect and/or examine the records of a corporation pursuant to Section 74 of the Corporation Code, the Court found nothing in Executive Orders Nos. 1, 2 and 14, as well as in *BASECO*, to indicate an implied amendment of the Corporation Code, much less an implied modification of a stockholder's right of inspection as guaranteed by Section 74 thereof. The only express limitation on the right of inspection, according to the Court, is that (1) the right of inspection should be exercised at reasonable hours on business days; (2) the person demanding the right to examine and copy excerpts from the corporate records and minutes has not improperly used any information secured through any previous examination of the records of such corporation, and (3) the demand is made in good faith or for a legitimate purpose.

The issues raised in G.R. No. 83831, an original petition filed by Victor Africa with this Court, including the motion for contempt filed by Eduardo M. Villanueva against Jose L. Africa, Manuel Nieto and Victor Africa for having made unwarranted comments to the news media on matters involved in the pending petitions, are factual in nature and are best ventilated before the Sandiganbayan - the proper forum where both parties can substantiate their respective claims. This Court is not a trier of facts.

Considering that Civil Cases Nos. 0048 and 0050 arose from the partial sequestration of ETPI and the incidents raised before this Court in G.R. Nos. 85594, 85597 and 85621 are related to said partial sequestration of ETPI, all the factual matters alleged in these cases are best threshed out in the main case, Civil Case No. 0009, as incidents therein, to save time and efforts in the presentation of evidence and in order to avoid multiplicity of suits.

IN VIEW OF THE FOREGOING, the petitions in G.R. Nos. 85594, 85597 and 85621 are hereby *DISMISSED* for lack of merit, and G.R. No. 83831 is *REFERRED* to the Sandiganbayan for appropriate proceedings. The Sandiganbayan is hereby ordered to consolidate G.R. No. 83831 and Civil Cases

Supreme Court E-Library

Nos. 0048 and 0050 with Civil Case No. 0009. The temporary restraining orders separately issued in G.R. No. 85594 and G.R. No. 85597 on November 15, 1988 are hereby *LIFTED* and *SET ASIDE*.

SO ORDERED.

Narvasa, C.J ., Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, and *Davide, Jr., JJ.,* concur.

Romero, J., no part. Related to a PCGG Commissioner.

Nocon, J., no part.

SECOND DIVISION

[G.R. Nos. 92981-83. January 9, 1992]

INTERNATIONAL PHARMACEUTICALS, INC., *petitioner, vs.* **HON. SECRETARY OF LABOR and ASSOCIATED LABOR UNION (ALU),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; DISTINGUISHED FROM EXERCISE OF JURISDICTION.— As early as 1913, this Court laid down in *Herrera vs. Baretto, et al.*, 25 Phil. 245 (1913), the fundamental normative rule that jurisdiction is the authority to hear and determine a cause — the right to act in a case. However, this should be distinguished from the exercise of jurisdiction. The authority to decide a case at all and not the decision rendered therein is what makes up jurisdiction. Where there is jurisdiction over the person and the subject matter, the decision of all other questions arising in the case is but an exercise of that jurisdiction.