

## THIRD DIVISION

[ G.R. No. 131715, December 08, 1999 ]

**PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,  
PETITIONER, VS. ERNESTO PABION AND LOUELLA RAMIRO,  
RESPONDENTS.**

### DECISION

**PANGANIBAN, J.:**

The Securities and Exchange Commission (SEC) has jurisdiction over corporations organized pursuant to the Corporation Code, even if the majority or controlling shares are owned by the government. Hence, it can competently order the holding of a shareholders' meeting for the purpose of electing the corporate board of directors. While the SEC may not have authority over government corporations with original charters or those created by special law, it does have jurisdiction over "acquired asset corporations" as defined in AO 59. Specifically, the Philippine National Construction Company (PNCC) may be ordered by SEC to hold a shareholders' meeting to elect its board of directors in accordance with its Articles of Incorporation and By-Laws as well as with the Corporation Code. The chairman and the members of the PNCC Board of Directors hold office by virtue of their election by the shareholders, not by their appointment thereto by the President of the Republic.

#### The Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision of the Court of Appeals<sup>[1]</sup> (CA) promulgated on October 23, 1997, as well as its subsequent Resolution<sup>[2]</sup> dated December 2, 1997, denying petitioner's Motion for Reconsideration.

The CA effectively affirmed<sup>[3]</sup> the October 2, 1996 Order issued by the Securities and Exchange Commission,<sup>[4]</sup> which disposed as follows:

"WHEREFORE, premises considered, this Petition is hereby GRANTED. The President or the Chairman of the PNCC is hereby ordered to call a special stockholder's meeting within thirty (30) days from receipt of this order for the purpose of electing the members of the Board to hold office up to March, 1997 or until the next stockholders' meeting will be held. Accordingly, the Corporate Secretary of PNCC is hereby directed to issue required notices to the stockholders."<sup>[5]</sup>

In a subsequent Resolution dated April 11, 1997,<sup>[6]</sup> SEC denied reconsideration, clarification and annulment of said Order.

#### The Facts

The Court of Appeals adequately narrates the facts in this wise:

"On September 16, 1994, private respondents **Ernesto Pabion** and **Louella Ramiro**, claiming to be stockholders of the **PNCC**, filed with the SEC a verified petition, therein alleging that since 1982 or for a period of twelve (12) years, there has been no stockholders' meeting of the PNCC to elect the corporation's board of directors, thus enabling the incumbent directors to hold on to their position beyond their 1-year term, in violation of PNCC's By-Laws and the Corporation Code. **Pabion** and **Ramiro**, therefore, prayed the **SEC** to issue an order `ordering the officers of PNCC or, in the alternative, authorizing petitioners, to call and hold a meeting of the stockholders x x x for the purpose of electing new directors x x x'. Docketed as SEC Case No. 09-94-4876, the verified petition was assigned to SEC Hearing Officer Manuel Perea.

"In due time, **PNCC** filed its answer. Therein, **PNCC** claimed that it is a government-owned corporation whose `organizational and functional management, administration, and supervision' are governed by Administrative Order (AO) No. 59, issued by then President Corazon Aquino on February 16, 1988. **PNCC** asserts that its board of directors does not hold office by virtue of a stockholder's election but by appointment of the President of the Philippines, relying on Article IV, Section 16 <sup>[1]</sup>, of AO No. 59, which reads:

*`(1) **Governing Boards.** - GOCC (government-owned and/or controlled corporation) shall be governed by a Board of Directors or equivalent body composed of an appropriate number of members to be appointed by the President of the Philippines upon the recommendation of the Secretary of whose Department the GOCC is attached. The Chairman of the board shall likewise be appointed by the President upon the recommendation of the Secretary'*

In the same answer, **PNCC** expressed the fear that if granted, the prayer in the verified petition would amount to a contravention of AO No. 59 and an interference with the President's power of control and appointment over government-owned and/or controlled corporations (GOCCs). PNCC added that under Executive Order No. 399, series of 1951, a GOCC is not required to hold a general meeting of stockholders but, instead, the general manager thereof is merely required to submit an annual report to the President of the Philippines.

In the ensuing pre-trial conference conducted by Hearing Officer Perea, the parties defined the issues, as follows:

*`(a) Whether or not PNCC is a GOCC subject to and governed by LOI 1295 (1983), AO No. 59 (1988) and Executive Order No. 399 (1951), or by its articles-of-incorporation and by-laws only.*

*(b) Whether or not PNCC is required to call a regular annual stockholder's meetings'*

on the basis of which the parties agreed to submit the case for resolution after they shall have filed their respective memoranda, which they did.

"It appears, however, that in a motion dated September 4, 1995, **Pabion** and **Ramiro** prayed for the re-opening of the pre-trial conference on the ground that the 'common assumption' on the 75% ownership by several government financial institutions (GFIs) in the PNCC was proved false by their discovery that the GFI[s] are merely a minority among the owners of PNCC. They, therefore, moved that a trial be conducted to determine the extent of ownership by the government in the PNCC.

"Acting on the aforementioned motion, SEC Hearing Officer Perea issued, on January 30, 1996, the following order:

*'In view of the necessity of a prior determination of whether or not respondent Philippine National Construction Corporation (PNCC) is a government owned or controlled corporation before resolving the instant incident, either or both of the parties are hereby directed to secure a ruling/opinion from competent authority as to whether or not the PNCC is a government corporation or not, as the matter does not fall within the competence of the Commission to determine.*

*Unless said ruling/opinion is obtained by either or both parties, further proceedings should be held in abeyance.*

*SO ORDERED'*

"Their motion for reconsideration of the aforequoted order having been denied by the same Hearing Officer in his subsequent order of April 10, 1996, **Pabion** and **Ramiro** then went to the Commission *en banc* via a petition for certiorari. Thus came about **SEC-EB No. 495** wherein therein petitioners **Pabion** and **Ramiro** sought the nullification of Hearing Officer Perea's twin orders of January 30, 1996 and April 10, 1996 for having been allegedly issued with grave abuse of discretion amounting to lack or in excess of jurisdiction. In the same recourse, the two likewise asked the SEC *en banc* to direct Perea to proceed with the trial on the merits of SEC Case No. 09-94-4876.

"In its first assailed **order of October 2, 1996**, the SEC *en banc* declared Hearing Officer Perea to have acted with grave abuse of discretion in issuing his two (2) questioned orders. The Commission ruled that Perea should have conducted a trial on the merits to resolve the factual issue of whether PNCC is majority or only minority-owned by the government. Explains the Commission *en banc* in its challenged order:

*'Sec. 5 [b] of P.D. # 902-A confers on SEC original and exclusive jurisdiction to hear and decide intra-corporate controversies. The main issue in the petition is clearly an intra-corporate dispute as it is a*

*controversy between the petitioners as stockholders of PNCC and respondent corporation PNCC regarding the holding of regular stockholder's meeting. This matter, therefore, falls within the scope of the jurisdiction of the SEC. In resolving the main issue of whether PNCC should hold regular stockholder's meetings, the hearing officer has jurisdiction to resolve the incidental issue of whether PNCC is a GOCC or not. Having validly acquired original and exclusive jurisdiction over the instant petition, the public respondent is mandated to hear and decide all the issues involved in the dispute.'*

"In the same order, the Commission *en banc*, instead of remanding the case to the Hearing Officer to resolve the question of whether PNCC is government-owned or controlled, itself resolved the issue by holding that PNCC, ***'being incorporated under the Corporation Code, is, therefore, subject to Section 50 of the Corporation Code which requires the holding of regular stockholders' meeting for the purpose of selecting PNCC's Board of Directors'***, citing, as basis therefor the ruling in PNOC-EDC vs. NLRC, 20 SCRA 487, to the effect that the determination as to what law governs a corporation is the manner of its creation, adding that PNCC is an ***'acquired asset corporation'*** which, by express provision of Section 2 of AO No. 59, ***'is not considered as a GOCC'***. And taking judicial notice of PNCC's by-laws thereunder the corporation's directors ***'shall be elected at the annual meeting of the stockholders'***, the Commission *en banc* concluded that PNCC ***'is, therefore, required to conduct a regular stockholder's meeting for the purpose of electing its Board of Directors, considering that the Corporation Code and its own By-Laws require the holding of such meeting'***.

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"A timely motion for reconsideration was filed by the PNCC but the same was denied by the Commission *en banc* in its assailed **Resolution of April 11, 1997.**"<sup>[7]</sup> (citations omitted but bold types and italics found in original)

### **Ruling of the Court of Appeals**

Upholding SEC, the Court of Appeals declared that PNCC, though majority-owned by government financial institutions (GFIs), retained its character as a private corporation. As such, PNCC was required under the Corporation Code to hold regular shareholders' meetings to elect its board of directors. The CA ruled:

"The petition lacks merit.

"Although the case reached the SEC *en banc* through a petition for certiorari, the said body is not helpless to resolve the controversy on its substantive merits. There are indications that PNCC is not a GOCC which the SEC *en banc* cannot ignore. A trial for the purpose of determining the status of PNCC is unnecessary since the issue can be resolved on the basis of records. A remand will only delay the resolution of the case and frustrate the ends of justice.

"It may be so, as pointed out by petitioner PNCC, that the rule which allows the SEC *en banc* to correct instances of grave abuse of discretion is patterned after Rule 65 of the 1997 Rules of Civil Procedure, and therefore, it is only proper that the SEC *en banc* adhere to the pronouncements of the Supreme Court on the proper treatment of petitions for review on certiorari under Rule 65. It is equally true, however, that the rule enunciated in several cases to the effect that the inquiry in a petition for certiorari is limited only to searching for traces of grave abuse [of] discretion is not cast in stone. For sure, the Supreme Court no less has resolved factual issues in certiorari cases on the basis of the records before it. If the Supreme Court can relax the restriction on the disposition of certiorari cases, We see no reason why a mere quasi-administrative body unsaddled by the stringent rules of procedure, like the SEC *en banc*, cannot follow the High Court's example, more so when, as rationalized by the same Court in **Gokongwei, Jr. vs. Securities and Exchange Commission, et. al.**, 89 SCRA 336, 360, the underlying justification for the relaxation of the rule applies to the instant case as well. Says the High Court in that case:

*'It is an accepted rule of procedure that the Supreme court should always strive to settle the entire controversy in a single proceeding, leaving no root or branch to bear the seeds of future litigation. Thus, in **Francisco v. City of Davao** (12 SCRA 682), this Court resolved to decide the case on the merits instead of remanding it to the trial court for further proceedings since the ends of justice would not be subserved by the remand of the case. In **Republic v. Security Credit and Acceptance Corporation, et. al.** (19 SCRA 58), this Court, finding that the main issue is one of law, resolved to decide the case on the merits 'because public interest demands an early disposition of the case', and in **Republic v. Central Surety and Insurance Company**, (25 SCRA 641), this Court denied remand of the third-party complaint to the trial court for further proceedings, citing precedents where this Court, in similar situations, resolved to decide the cases on the merits, instead of remanding them to the trial court where (a) the ends of justice would not be subserved by the remand of the case; or (b) where public interest demand an early disposition of the case; or (c) where the trial court ha[s] already received all the evidence presented by both parties and the Supreme Court is now in a position, based upon said evidence, to decide the case on the merits. xxx'*

"Moreover, it cannot be denied that the parties herein are embroiled in an intra-corporate controversy and the question on the identity of PNCC is only an incident of that controversy. **Pabion** and **Ramiro** are among the stockholders of PNCC, a circumstance which classifies the dispute as an intra-corporate controversy. The authority of the Commission to determine whether or not PNCC can be compelled to hold a stockholders' meeting is unquestioned as even PNCC itself concedes that the 'issues of the propriety of calling a stockholders' meeting is within the competence