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[G. R. No. 107789, April 30, 2003]

REPUBLIC OF THE PHILIPPINES (PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT), PETITIONER, VS. THE HONORABLE SANDIGANBAYAN (THIRD DIVISION) AND VICTOR AFRICA, RESPONDENTS.

AEROCOM INVESTORS AND MANAGERS, INC., BENITO NIETO, CARLOS NIETO, MANUEL NIETO III, RAMON NIETO, ROSARIO ARELLANO, VICTORIA LEGARDA, ANGELA LOBREGAT, MA. RITA DE LOS REYES, CARMEN TUAZON AND RAFAEL VALDEZ, INTERVENORS.

[G. R. NO. 147214]

VICTOR AFRICA, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN AND THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, RESPONDENTS.

R E S O L U T I O N

CARPIO MORALES, J.:

These consolidated cases, the first for Certiorari, Mandamus and Prohibition, and the second "for Review on Certiorari" although it is actually one for Certiorari, stem from a Resolution of November 13, 1992 issued by the Sandiganbayan in Civil Case No. 0130,^[1] on motion of Victor Africa (Africa) who prayed that said court order the "calling and holding of the Eastern Telecommunications, Philippines, Inc. (ETPI) annual stockholders meeting for 1992 under the [c]ourt's control and supervision and prescribed guidelines."

It is gathered that on August 7, 1991, the Presidential Commission on Good Government (PCGG) conducted an ETPI stockholders meeting during which a PCGG controlled board of directors was elected. A special stockholders meeting was later convened by the registered ETPI stockholders wherein another set of board of directors was elected, as a result of which two sets of such board and officers were elected.

Africa, a stockholder of ETPI, alleging that the PCGG had since January 29, 1988 been "illegally 'exercising' the rights of stockholders of ETPI,"^[2] especially in the election of the members of the board of directors, filed the above-said motion before the Sandiganbayan.

The PCGG did not object to Africa's motion provided that:

1. An Order be issued upholding the right of PCGG to vote all the Class "A" shares of ETPI.
2. In the alternative, in the remote event that PCGG's right to vote the sequestered shares be not upheld, an Order be issued:
 - a. Disregarding the Stock and Transfer Book and Booklet of Stock Certificates of ETPI in determining who can vote the shares in an Annual Stockholders Meeting of ETPI,
 - b. Allowing PCGG to vote twenty-three and 90/100 percent (23.9%) of the total subscription in ETPI, and
 - c. Directing the amendment of the Articles of Incorporation and By-laws of ETPI providing for the minimum safeguards for the conservation of assets x x x prior to the calling of a stockholders meeting.^[3]

By the assailed Resolution of November 13, 1992,^[4] the Sandiganbayan resolved Africa's motion, the dispositive portion of which reads:

WHEREFORE, it is ordered that an annual stockholders meeting of the Eastern Telecommunications, Philippines, Inc. (ETPI), for 1992 be held on Friday, November 27, 1992, at 2:00 o'clock in the afternoon, at the ETPI Board Room, Telecoms Plaza, 7th Floor, 316 Gil J. Puyat Avenue, Makati, Metro Manila. The Executive Clerk of Court of this Division shall issue the call and notice of annual stockholders meeting of ETPI addressed to all the duly registered/recorded stockholders of ETPI. The stockholders meeting shall be conducted under the supervision and control of this Court, through Mr. Justice Sabino R. de Leon, Jr. In accordance with the Supreme Court ruling in Cojuangco et al vs. Azcuna, et al., supra, only the registered owners, their duly authorized representatives or their proxies may vote their corresponding shares.

The following minimum safeguards must be set in place and carefully maintained until final judicial resolution of the question of whether or not the sequestered shares of stock (or in a proper case the underlying assets of the corporation concerned) constitute ill-gotten wealth:

- "a. An independent comptroller must be appointed by the Board of Directors upon nomination of the PCGG as conservator. The comptroller shall not be removable (nor shall his position be abolished or his compensation changed) without the consent of the conservator. The comptroller shall, in addition to his other functions as such, have charge of internal audit.
- b. The corporate secretary must be acceptable to the conservator. If the corporate secretary ceases to be acceptable to the conservator, a new one must be appointed by the Board of Directors upon nomination of the conservator.
- c. The external auditors of the corporation must be independent

and must be acceptable to the conservator. The independent external auditors shall not be changed without the consent of the conservator.

- d. The conservator must be represented in the Board of Directors and in the Executive (or equivalent) and Audit Committees of the corporation involved and of its majority-owned subsidiaries or affiliates. The representative of the conservator must be a full director (not merely an honorary or ex-officio director) with the right to vote and all other rights and duties of a member of the Board of Directors under the Corporation Code. The conservator's representative shall not be removed from the Board of Directors (or the mentioned Committees) without the consent of the conservator. The conservator shall, however, have the right to remove and change its representative at any time, and the new representative shall be promptly elected to the Board and its mentioned Committees.
- e. All transactions involving the disbursement of corporate funds in excess of P5 million must have the prior approval of the director representing the conservator, in order to be valid and effective.
- f. The incurring of debt by the corporation, whether in the form of bonds, debentures, commercial paper or any other form, in excess of P5 million, must have the prior approval of the director representing the conservator, in order to be valid and effective.
- g. The disposition of a substantial part of assets of the corporation (substantial meaning in excess of P5 million) shall require the prior approval of the director representing the conservator, in order to be valid and effective.
- h. The above safeguards must be written into the articles of incorporation and by-laws of the company involved. In other words, the articles of incorporation and by-laws of the company must be amended so as to incorporate the above safeguards.
- i. Any amendment of the articles of incorporation or by-laws of the company that will modify in any way any of the above safeguards, shall need the prior approval of the director representing the conservator."

SO ORDERED.^[5] (Underscoring supplied)

Assailing the foregoing resolution, the PCGG filed before this Court the herein first petition, docketed as **G. R. No. 107789**, anchored upon the following grounds:

RESPONDENT SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION IN RULING THAT THE REGISTERED STOCKHOLDERS OF ETPI HAD THE RIGHT TO VOTE IN SPITE OF (A) THE RULING OF THIS HONORABLE COURT IN PCGG V. SEC AND AFRICA (G. R. NO. 82188) AND (B) A CLEAR SHOWING THAT ETPI'S STOCK AND TRANSFER BOOK WAS ALTERED AND CANNOT BE USED AS THE BASIS TO DETERMINE WHO CAN VOTE IN A STOCKHOLDERS' MEETING.

II

RESPONDENT SANDIGANBAYAN GRAVELY ABUSED ITS DISCRETION AND EXCEEDED ITS JURISDICTION WHEN IT HELD THAT PCGG CANNOT VOTE AT LEAST 23.9% OF THE OUTSTANDING CAPITAL STOCK OF ETPI.

III

WITHOUT DUE CARE AND IN RECKLESS DISREGARD OF THE INTERESTS OF THE REPUBLIC, RESPONDENT SANDIGANBAYAN GRAVELY ABUSED ITS DISCRETION IN ORDERING THE HOLDING OF A STOCKHOLDERS' MEETING IN ETPI WITHOUT FIRST SETTING IN PLACE - BY AMENDING THE ARTICLES AND BY-LAWS OF ETPI TO INCORPORATE - THE SAFEGUARDS PRESCRIBED BY THIS HONORABLE COURT IN COJUANGCO V. ROXAS.

IV

THE SANDIGANBAYAN ACTED IN EXCESS OF ITS AUTHORITY AND/OR WITH GRAVE ABUSE OF DISCRETION IN APPOINTING (A) ITS OWN DIVISION CLERK OF COURT TO PERFORM THE DUTIES OF A CORPORATE SECRETARY, AND (B) ITS OWN JUSTICE SABINO DE LEON, JR. TO CONTROL AND SUPERVISE THE STOCKHOLDERS' MEETING.^[6]
(Underscoring in the original)

By Resolution of November 26, 1992, this Court enjoined the Sandiganbayan from (a) implementing its Resolution of November 13, 1992, and (b) holding the stockholders' meeting of ETPI scheduled on November 27, 1992, at 2:00 p.m.

On December 7, 1992, Aerocom Investors and Managers, Inc. (AEROCOM), Benito Nieto, Carlos Nieto, Manuel Nieto III, Ramon Nieto, Rosario Arellano, Victoria Legarda, Angela Lobregat, Ma. Rita de los Reyes, Carmen Tuazon and Rafael Valdez, all stockholders of record of ETPI, filed a motion to intervene in G. R. No. 107789. Their motion was granted by this Court by Resolution of January 14, 1993.

After the parties submitted their respective memoranda, the PCGG, in early 1995, filed a "VERY URGENT PETITION FOR AUTHORITY TO HOLD SPECIAL STOCKHOLDERS' MEETING FOR [THE] SOLE PURPOSE OF INCREASING [ETPI's] AUTHORIZED CAPITAL STOCK," it claiming that the increase in authorized capital stock was necessary in light of the requirements laid down by Executive Order No. 109^[7] and Republic Act No. 7975.^[8]

By Resolution of May 7, 1996,^[9] this Court resolved to refer the PCGG's very urgent petition to hold the special stockholders' meeting to the Sandiganbayan for reception of evidence and resolution.

In compliance therewith, the Sandiganbayan issued a Resolution of December 13, 1996,^[10] which is being assailed in the herein second petition, granting the PCGG "authority to cause the holding of a special stockholders' meeting of ETPI for the sole purpose of increasing ETPI's authorized capital stock and to vote therein the sequestered Class 'A' shares of stock. . . ." In said Resolution, the Sandiganbayan held that there was an urgent necessity to increase ETPI's authorized capital stock; there existed a *prima facie* factual foundation for the issuance of the writ of sequestration covering the Class "A" shares of stock; and the PCGG was entitled to vote the sequestered shares of stock.

The PCGG-controlled ETPI board of directors thus authorized the ETPI Chair and Corporate Secretary to call the special stockholders meeting. Notices were sent to those entitled to vote for a meeting on March 17, 1997. The meeting was held as scheduled and the increase in ETPI's authorized capital stock from P250 Million to P2.6 Billion was "unanimously approved."^[11]

On April 1, 1997, Africa filed before this Court a motion to cite the PCGG "and its accomplices" in contempt and "to nullify the 'stockholders meeting' called/conducted by PCGG and its accomplices," he contending that only this Court, and not the Sandiganbayan, has the power to authorize the PCGG to call a stockholders meeting and vote the sequestered shares. Africa went on to contend that, assuming that the Sandiganbayan had such power, its Resolution of December 13, 1996 authorizing the PCGG to hold the stockholders meeting had not yet become final because the motions for reconsideration of said resolution were still pending. Further, Africa alleged that he was not given notice of the meeting, and the PCGG had no right to vote the sequestered Class "A" shares.

A motion for leave to intervene relative to Africa's "Motion to Cite the PCGG and its Accomplices in Contempt" was filed by ETPI. This Court granted the motion for leave but ETPI never filed any pleading relative to Africa's motion to cite the PCGG in contempt.

By Resolution of February 16, 2001, the Sandiganbayan finally resolved to deny the motions for reconsideration of its Resolution of December 13, 1996, prompting Africa to file on April 6, 2001 before this Court the herein second petition,^[12] docketed as **G. R. No. 147214**, challenging the Sandiganbayan Resolutions of December 13, 1996 (authorizing the holding of a stockholders meeting to increase ETPI's authorized capital stock and to vote therein the sequestered Class "A" shares of stock) and February 16, 2001 (denying reconsideration of the December 13, 1996 Resolution).

In his petition in G. R. No. 147214, Africa alleged that the Sandiganbayan committed "grave abuse of discretion" when, by the assailed Resolutions,

- a. IT DID NOT ACKNOWLEDGE THE NON-SEQUESTERED STATUS OF THE SHARES [OF "SMALL STOCHHOLDERS" OF WHICH HE IS ONE AND AEROCOM AND POLYGON] AND/OR OWNERS THEREOF[;]