

EN BANC

[G.R. Nos. 147062-64, December 14, 2001]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG),
PETITIONER, VS. COCOFED ET AL. AND BALLARES ET AL.,^[1]
EDUARDO M. COJUANGCO JR. AND THE SANDIGANBAYAN (FIRST
DIVISION) RESPONDENTS.**

DECISION

PANGANIBAN, J.:

The right to vote sequestered shares of stock registered in the names of private individuals or entities *and* alleged to have been acquired with ill-gotten wealth shall, as a rule, be exercised by the registered owner. The PCGG may, however, be granted such voting right provided it can (1) show *prima facie* evidence that the wealth and/or the shares are indeed ill-gotten; and (2) demonstrate imminent danger of dissipation of the assets, thus necessitating their continued sequestration and voting by the government until a decision, ruling with finality on their ownership, is promulgated by the proper court.

However, the foregoing "two-tiered" test does not apply when the sequestered stocks are acquired with funds that are *prima facie* public in character or, at least, are affected with public interest. Inasmuch as the subject UCPB shares in the present case were undisputably acquired with coco levy funds which are public in character, then the right to vote them shall be exercised by the PCGG. In sum, the "public character" test, not the "two-tiered" one, applies in the instant controversy.

The Case

Before us is a Petition for Certiorari with a prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction under Rule 65 of the Rules of Court, seeking to set aside the February 28, 2001 Order^[2] of the First Division of the Sandiganbayan^[3] in Civil Case Nos. 0033-A, 0033-B and 0033-F. The pertinent portions of the assailed Order read as follows:

"In view hereof, the movants COCOFED, et al. and Ballares, et al. as well as Eduardo Cojuangco, et al., who were acknowledged to be registered stockholders of the UCPB are authorized, as are all other registered stockholders of the United Coconut Planters Bank, until further orders from this Court, to exercise their rights to vote their shares of stock and themselves to be voted upon in the United Coconut Planters Bank (UCPB) at the scheduled Stockholders' Meeting on March 6, 2001 or on any subsequent continuation or resetting thereof, and to perform such acts as will normally follow in the exercise of these rights as registered stockholders.

"Since by way of form, the pleadings herein had been labeled as praying for an injunction, the right of the movants to exercise their right as abovementioned will be subject to the posting of a nominal bond in the amount of FIFTY THOUSAND PESOS (P50,000.00) jointly for the defendants COCOFED, et al. and Ballares, et al., as well as all other registered stockholders of sequestered shares in that bank, and FIFTY THOUSAND PESOS (P50,000.00) for Eduardo Cojuangco, Jr., et al., to answer for any undue damage or injury to the United Coconut Planters Bank as may be attributed to their exercise of their rights as registered stockholders."^[4]

The Antecedents

The very roots of this case are anchored on the historic events that transpired during the change of government in 1986. Immediately after the 1986 EDSA Revolution, then President Corazon C. Aquino issued Executive Order (EO) Nos. 1,^[5] 2^[6] and 14.^[7]

"On the explicit premise that `vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad,' the Presidential Commission on Good Government (PCGG) was created by Executive Order No. 1 to assist the President in the recovery of the ill-gotten wealth thus accumulated whether located in the Philippines or abroad."^[8]

Executive Order No. 2 states that the ill-gotten assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominiums, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world.^[9]

Executive Order No. 14, on the other hand, empowered the PCGG, with the assistance of the Office of the Solicitor General and other government agencies, *inter alia*, to file and prosecute all cases investigated by it under EO Nos. 1 and 2.

Pursuant to these laws, the PCGG issued and implemented numerous sequestrations, freeze orders and provisional takeovers of allegedly ill-gotten companies, assets and properties, real or personal.^[10]

Among the properties sequestered by the Commission were shares of stock in the United Coconut Planters Bank (UCPB) registered in the names of the alleged "one million coconut farmers," the so-called Coconut Industry Investment Fund companies (CIIF companies) and Private Respondent Eduardo Cojuangco Jr. (hereinafter "Cojuangco").

In connection with the sequestration of the said UCPB shares, the PCGG, on July 31, 1987, instituted an action for reconveyance, reversion, accounting, restitution and damages docketed as Case No. 0033 in the Sandiganbayan.

On November 15, 1990, upon Motion^[11] of Private Respondent COCOFED, the

Sandiganbayan issued a Resolution^[12] lifting the sequestration of the subject UCPB shares on the ground that herein private respondents -- in particular, COCOFED and the so-called CIIF companies - had not been impleaded by the PCGG as parties-defendants in its July 31, 1987 Complaint for reconveyance, reversion, accounting, restitution and damages. The Sandiganbayan ruled that the Writ of Sequestration issued by the Commission was automatically lifted for PCGG's failure to commence the corresponding judicial action within the six-month period ending on August 2, 1987 provided under Section 26, Article XVIII of the 1987 Constitution. The anti-graft court noted that though these entities were listed in an annex appended to the Complaint, they had not been named as parties-respondents.

This Sandiganbayan Resolution was challenged by the PCGG in a Petition for Certiorari docketed as GR No. 96073 in this Court. Meanwhile, upon motion of Cojuangco, the anti-graft court ordered the holding of elections for the Board of Directors of UCPB. However, the PCGG applied for and was granted by this Court a Restraining Order enjoining the holding of the election. Subsequently, the Court lifted the Restraining Order and ordered the UCPB to proceed with the election of its board of directors. Furthermore, it allowed the sequestered shares to be voted by their registered owners.

The victory of the registered shareholders was fleeting because the Court, acting on the solicitor general's Motion for Clarification/Manifestation, issued a Resolution on February 16, 1993, declaring that "the right of petitioners [herein private respondents] to vote stock in their names at the meetings of the UCPB cannot be conceded at this time. That right still has to be established by them before the Sandiganbayan. Until that is done, they cannot be deemed legitimate owners of UCPB stock and cannot be accorded the right to vote them."^[13] The dispositive portion of the said Resolution reads as follows:

"IN VIEW OF THE FOREGOING, the Court recalls and sets aside the Resolution dated March 3, 1992 and, pending resolution on the merits of the action at bar, and until further orders, suspends the effectivity of the lifting of the sequestration decreed by the Sandiganbayan on November 15, 1990, and directs the restoration of the status quo ante, so as to allow the PCGG to continue voting the shares of stock under sequestration at the meetings of the United Coconut Planters Bank."^[14]

On January 23, 1995, the Court rendered its final Decision in GR No. 96073, nullifying and setting aside the November 15, 1990 Resolution of the Sandiganbayan which, as earlier stated, lifted the sequestration of the subject UCPB shares. The express impleading of herein Respondents COCOFED et al. was deemed unnecessary because "the judgment may simply be directed against the shares of stock shown to have been issued in consideration of ill-gotten wealth."^[15] Furthermore, the companies "are simply the *res* in the actions for the recovery of illegally acquired wealth, and there is, in principle, no cause of action against them and no ground to implead them as defendants in said case."^[16]

A month thereafter, the PCGG -- pursuant to an Order of the Sandiganbayan -- subdivided Case No. 0033 into eight Complaints and docketed them as Case Nos. 0033-A to 0033-H.

Six years later, on February 13, 2001, the Board of Directors of UCPB received from the ACCRA Law Office a letter written on behalf of the COCOFED and the alleged nameless one million coconut farmers, demanding the holding of a stockholders' meeting for the purpose of, among others, electing the board of directors. In response, the board approved a Resolution calling for a stockholders' meeting on March 6, 2001 at three o'clock in the afternoon.

On February 23, 2001, "COCOFED, et al. and Ballares, et al." filed the "Class Action Omnibus Motion"^[17] referred to earlier in Sandiganbayan Civil Case Nos. 0033-A, 0033-B and 0033-F, asking the court *a quo*:

"1. To enjoin the PCGG from voting the UCPB shares of stock registered in the respective names of the more than one million coconut farmers; and

"2. To enjoin the PCGG from voting the SMC shares registered in the names of the 14 CIIF holding companies including those registered in the name of the PCGG."^[18]

On February 28, 2001, respondent court, after hearing the parties on oral argument, issued the assailed Order.

Hence, this Petition by the Republic of the Philippines represented by the PCGG.^[19]

The case had initially been raffled to this Court's Third Division which, by a vote of 3-2,^[20] issued a Resolution^[21] requiring the parties to maintain the status quo existing before the issuance of the questioned Sandiganbayan Order dated February 28, 2001. On March 7, 2001, Respondent COCOFED et al. moved that the instant Petition be heard by the Court en banc.^[22] The Motion was unanimously granted by the Third Division.

On March 13, 2001, the Court en banc resolved to accept the Third Division's referral.^[23] It heard the case on Oral Argument in Baguio City on April 17, 2001. During the hearing, it admitted the intervention of a group of coconut farmers and farm worker organizations, the *Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa ng Niyugan* (PKSMMN). The coalition claims that its members have been excluded from the benefits of the coconut levy fund. *Inter alia*, it joined petitioner in praying for the exclusion of private respondents in voting the sequestered shares.

Issues

Petitioner submits the following issues for our consideration:^[24]

"A.

Despite the fact that the subject sequestered shares were purchased with coconut levy funds (which were declared public in character) and the continuing effectivity of Resolution dated February 16, 1993 in G.R. No. 96073 which allows the PCGG to vote said sequestered shares, Respondent Sandiganbayan, with grave abuse of discretion, issued its Order dated February 28, 2001 enjoining PCGG from voting the

sequestered shares of stock in UCPB.

"B.

The Respondent Sandiganbayan violated petitioner's right to due process by taking cognizance of the Class Action Omnibus Motion dated 23 February 2001 despite gross lack of sufficient notice and by issuing the writ of preliminary injunction despite the obvious fact that there was no actual pressing necessity or urgency to do so."

In its Resolution dated April 17, 2001, the Court defined the issue to be resolved in the instant case simply as follows:

"Did the Sandiganbayan commit grave abuse of discretion when it issued the disputed Order allowing respondents to vote UCPB shares of stock registered in the name of respondents?"

This Court's Ruling

The Petition is impressed with merit.

Main Issue:

Who May Vote the Sequestered Shares of Stock?

Simply stated, the gut substantive issue to be resolved in the present Petition is: "Who may vote the sequestered UCPB shares while the main case for their reversion to the State is pending in the Sandiganbayan?"

This Court holds that the government should be allowed to continue voting those shares inasmuch as they were purchased with coconut levy funds -- funds that are *prima facie* public in character or, at the very least, are "clearly affected with public interest."

General Rule:

Sequestered Shares Are Voted by the Registered Holder

At the outset, it is necessary to restate the general rule that the registered owner of the shares of a corporation exercises the right and the privilege of voting.^[25] This principle applies even to shares that are sequestered by the government, over which the PCGG as a mere conservator cannot, as a general rule, exercise acts of dominion.^[26] On the other hand, it is authorized to vote these sequestered shares registered in the names of private persons and acquired with allegedly ill-gotten wealth, if it is able to satisfy the *two-tiered test* devised by the Court in *Cojuangco v. Calpo*^[27] and *PCGG v. Cojuangco Jr.*,^[28] as follows:

(1) Is there *prima facie* evidence showing that the said shares are ill-gotten and thus belong to the State?

(2) Is there an imminent danger of dissipation, thus necessitating their continued sequestration and voting by the PCGG, while the main issue is pending with the Sandiganbayan?