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SECOND DIVISION

[G.R. No. 125788, June 05, 1998]

THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), PETITIONER, VS. HON. SANDIGANBAYAN AND AEROCOM INVESTORS & MANAGERS, INC., RESPONDENTS.

D E C I S I O N

MARTINEZ, J.:

In its continuing search for "ill-gotten wealth", herein petitioner Presidential Commission on Good Government (PCGG) filed in the Sandiganbayan on July 22, 1987 a case (Civil Case No. 0009) for reconveyance, reversion, accounting, restitution and damages against Manuel H. Nieto, Jose L. Africa, Roberto S. Benedicto, Potenciano Ilusorio, Juan Ponce Enrile and Ferdinand Marcos, Jr. alleging, in substance, that said defendants acted as "dummies" of the late strongman and devised "schemes" and "strategems" to monopolize the telecommunications industry. Annexed to the complaint is a listing of the assets of defendants Nieto and Africa, among which are their shares of stock in private respondent Aerocom Investors and Managers, Inc. (Aerocom).[1]

Almost a year later, the PCGG sought to sequester Aerocom under a writ of sequestration dated June 15, 1988,[2] which was served on and received "under protest" by Aerocom's president on August 3, 1988.[3]

Seven (7) days after receipt of the sequestration order, Aerocom on August 10, 1988 filed a complaint against the PCGG (docketed as Civil Case No. 0044)[4] urging the Sandiganbayan to nullify the same on the ground that it was served on Aerocom beyond the eighteen (18)-month period from the ratification of the 1987 Constitution as provided for in Section 26, Article XVIII thereof which reads:

> "**Sec. 26**. The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the Congress may extend said period.
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> "A sequestration or freeze order shall be issued only upon showing of a *prima facie case*. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.

> "The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided."

In its amended answer dated May 19, 1992,[5] the PCGG specifically alleged that Aerocom has no cause of action against it since the issuance of the writ of sequestration on June 15, 1988 was well-within the 18-month constitutional deadline counted from February 2, 1987, the date when the people, in a plebiscite, overwhelmingly ratified the 1987 Constitution.

During the pendency of Civil Case No. 0044, Aerocom filed on July 5, 1995 a Manifestation and Motion[6] praying that the Sandiganbayan direct the PCGG to release and distribute the dividends pertaining to the shares of Aerocom in all corporations where it owns shares of stock. Commenting thereon,[7] the PCGG opposed the release of the dividends on the argument that "the fact that plaintiff (Aerocom) is mentioned in Annex "A" of the complaint filed in Civil Case No. 0009 is a clear indication that the shares thereof are likewise sequestered."

The Sandiganbayan in its Resolution promulgated on January 31, 1996[8] acted favorably on Aerocom's Manifestation and Motion and thus ordered the PCGG to release the dividends pertaining to Aerocom except the dividends on the sequestered shares of stock registered in the names of Manuel Nieto and Jose Africa in POTC, ETPI and Aerocom, on the following findings:

> "A close scrutiny of Annex `A' of the complaint in Civil Case No. 0009, entitled `Republic of the Philippines vs. Jose L. Africa, Manuel H. Nieto, Jr., and Roberto S. Benedicto', does not show, that herein plaintiff Aerocom Investors & Managers, Inc., as a corporation, was itself sequestered. What was sequestered are the shares of stock of Manuel H. Nieto, Jr. and Jose L. Africa in Aerocom Investors & Managers, Inc.
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> "Defendant PCGG is under estoppel from denying that it has in fact recognized and confirmed the non-sequestration status of herein plaintiff, as a corporation, by releasing the cash dividends due to the plaintiff from Philippine Overseas Telecommunications Corporation (POTC for short) per its Resolutions dated June 29, 1993 and May 6, 1994. The said PCGG Resolution, dated June 29, 1993 (Annex "A", Manifestation and Motion, p. 330, record) refers to its approval to release the POTC cash dividends declared in 1989 and 1991 pertaining to the shares of herein plaintiff Aerocom Investors & Managers, Inc. in Philippine Overseas Telecommunications Corporation. On the other hand, PCGG Resolution No. 94-066 dated May 6, 1994 refers to its approval releasing the POTC cash dividends declared in 1993 and `accruing to the shares of stocks in POTC, registered under the name of Aerocom Investors & Managers, Inc., except cash dividends pertaining to the personal shares of Mr. Manuel H. Nieto, Jr. in POTC and likewise his shares of stocks in Aerocom Investors & Managers, Inc.' (Annex `B', Manifestation and Motion, p. 331, record).
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> "There is no dispute that herein plaintiff, as a corporation, has a juridical personality separate and distinct from its stockholders."

After a motion for reconsideration thereof was denied by the Sandiganbayan per Resolution promulgated on May 7, 1996,[9] the PCGG filed the present petition for certiorari on August 16, 1996 assailing the Sandiganbayan order for the release of

the dividends as having been issued with grave abuse of discretion. In compliance with the Resolution of this Court dated September 2, 1996[10] which also granted the temporary restraining order prayed for by the PCGG, Aerocom filed its comment on the petition on September 11, 1996[11] to which, the PCGG on November 21, 1996 filed a reply.[12]

The petition must fail.

There is merit in the initial point amplified by Aerocom in its comment that the instant certiorari proceedings brought by the PCGG is an improper remedy under the circumstances. From a reading of its January 31, 1996 Resolution granting Aerocom's Manifestation and Motion, (as heretofore quoted), as well as the May 7, 1996 Resolution denying the motion for reconsideration, the Sandiganbayan has virtually passed upon the pivotal issue involved in Aerocom's complaint for the declaration of nullity of the writ of sequestration (Civil Case No. 0044) - i.e., whether or not Aerocom's sequestration was in order. That court's finding to the effect that Aerocom was not validly sequestered, clearly, was a final adjudication on the merits which is reviewable by the appellate court only through an appeal under Rule 45 of the Rules of Court. The PCGG should have availed of the remedy of appeal filed within the statutory fifteen (15)-day period and not a petition for certiorari, as the arguments the PCGG propounds in support of its challenge on the Sandiganbayan Resolutions would amount to a digging into the merits and unearthing errors of judgment.[13] At this juncture, "*[i]t must emphatically be reiterated,*" to borrow the words of Mr. Justice Regalado in ***Purefoods Corp. vs. NLRC***,[14] "*since so often is it overlooked, that the special civil action for certiorari is a remedy designed for the correction of errors of jurisdiction and not errors of judgment. The reason for the rule is simple. When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correctable through the original civil action of certiorari.*"

Equally worth recalling is that certiorari is not and cannot be made a substitute for an appeal where the latter remedy is available[15] but was lost thru the fault or negligence of petitioner,[16] as in this case.

Even if we disregard such procedural flaw, the substantial contentions of the PCGG fail to invite judgment in its favor.

First. We cannot subscribe to the PCGG's theory that, as the first paragraph of Section 26, Article XVIII of the Constitution speaks only of "The authority to issue . . .", then there is faithful compliance with the 18-month constitutional deadline by the mere issuance of the writ of sequestration within that time-frame (June 15, 1988) even if service thereof on Aerocom was effected thereafter (August 3, 1988).

The obvious intendment behind the 18-month period, as well as the six (6)-month time-limit for the filing of the corresponding judicial action, is to ensure the protection of property rights and to serve as a necessary safeguard against an overzealous exercise by the State, acting as "bounty-hunters" so to speak, of its

power of sequestration which, as described by Justice Ameurfina Melencio-Herrera in her concurring opinion in **BASECO v. PCGG**,[17] is an "extra-ordinary, harsh and severe remedy." For this reason, "(I)t should be confined", J. Herrera continues, "to its lawful parameters and exercised, with due regard, in the words of its enabling laws, to the requirements of fairness, due process, and Justice." The probable evil of governmental abuse is best avoided and the dictates of "fairness", "due process" and "Justice" are truly heeded under an interpretation of Section 26, Article XVIII as requiring both the issuance of the writ and notification to, or more precisely, the acquisition of jurisdiction over the entity/entities to be sequestered via valid service thereof, to be effected within the 18-month period. A writ of sequestration, therefore, runs the risk of being struck down as invalid if and when the twin requirements of issuance and service are not satisfied within the deadline.

Such is the fate of the subject writ of sequestration, unfortunately. Whether the 18-month period expired on July 26, 1988 (as claimed by Aerocom, in line with the computation of time under Article 13 of the Civil Code and the ruling in "National Marketing Corp. v. Tecson," 29 SCRA 70) or on August 2, 1988 (the PCGG's position), the fact remains that service of the writ on Aerocom on August 3, 1988 was made beyond these dates. The PCGG's theory that the mere issuance of the writ within the 18-month deadline will suffice, is just too dangerous to accept. Imagine a scenario where the PCGG may have actually tarried in the issuance of the sequestration order to the prejudice of the would-be sequestered entity, and all that the PCGG has to do to cover its mistake is to conveniently ante-date the writ so as to feign timely compliance. That would, in effect, be allowing the PCGG to employ a subterfuge to validate what may in fact be a purely whimsical, unfounded and an "afterthought" takeover of corporate property. The Constitution does not and can never tolerate such a deceptive maneuver. Service of the writ of sequestration within the 18-month period, then, is an imperative measure to guard against this kind of mischief, for it will certainly give the assurance that the writ was genuinely issued within that constitutional deadline.

Second. The PCGG cannot justify its failure, as found by the Sandiganbayan,[18] to file the corresponding judicial action against Aerocom within the six (6)-month period as provided for under the same constitutional provision in focus (Section 26, Article XVIII, second paragraph) by the fact that Aerocom was mentioned in the complaint of the PCGG in Civil Case No. 0009 (the Nieto, Africa, et al. case) and in Annex "A" thereof notwithstanding that Aerocom was not impleaded as party-defendant, and on the argument that the filing of Civil Case No. 0009 against the "Nieto, Africa, et al. group" is enough compliance with the "judicial action" requirement. The case of **Republic v. Sandiganbayan, 240 SCRA 376, January 23, 1995**, relied upon by the PCGG, has no rightful application, inasmuch as this Court's pronouncements therein, in answer to this crucial question:

> "DOES INCLUSION IN THE COMPLAINTS FILED BY THE PCGG BEFORE THE SANDIGANBAYAN OF SPECIFIC ALLEGATIONS OF CORPORATIONS BEING `DUMMIES' OR UNDER THE CONTROL OF ONE OR ANOTHER OF THE DEFENDANTS NAMED THEREIN AND USED AS INSTRUMENTS FOR ACQUISITION, OR AS BEING DEPOSITARIES OR PRODUCTS, OF ILL-GOTTEN WEALTH; OR THE ANNEXING TO SAID COMPLAINTS OF A LIST OF SAID FIRMS, BUT WITHOUT ACTUALLY IMPLEADING THEM AS DEFENDANTS, SATISFY THE CONSTITUTIONAL REQUIREMENT THAT IN ORDER TO MAINTAIN A SEIZURE EFFECTED IN ACCORDANCE WITH

> EXECUTIVE ORDER NO. 1, s. 1986, THE CORRESPONDING `JUDICIAL ACTION OR PROCEEDING' SHOULD BE FILED WITHIN THE SIX-MONTH PERIOD PRESCRIBED IN SECTION 26, ARTICLE XVIII, OF THE (1987) CONSTITUTION?",

presuppose a valid and existing sequestration of the unimpleaded corporation/s concerned. Thus -

> "1) Section 26, Article XVIII of the Constitution does not, by its terms or any fair interpretation thereof, require that corporations or business enterprises alleged to be repositories of `ill-gotten wealth,' as the term is used in said provision, be actually and formally impleaded in the actions for the recovery thereof, in order to maintain in effect existing sequestrations thereof;
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> "2) complaints for the recovery of ill-gotten wealth which merely identify and/or allege said corporations or enterprises to be the instruments, repositories or the fruits of ill-gotten wealth, without more, come within the meaning of the phrase `corresponding judicial action or proceeding' contemplated by the constitutional provision referred to; the more so, that normally, said corporations, as distinguished from their stockholders or members, are not generally suable for the latter's illegal or criminal actuations in the acquisition of the assets invested by them in the former;
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> "3) even assuming the impleading of said corporations to be necessary and proper so that judgment may comprehensively and effectively be rendered in the actions, amendment of the complaints to implead them as defendants may, under existing rules of procedure, be done at any time during the pendency of the actions thereby initiated, and even during the pendency of an appeal to the Supreme Court - a procedure that, in any case, is not inconsistent with or proscribed by the constitutional time limits to the filing of the corresponding complaints *`for' - i.e., with regard or in relation to, in respect of, or in connection with, or concerning - orders of sequestration, freezing, or provisional takeover.'"* xxx xxx xxx (underscoring supplied)

There is no existing sequestration to talk about in this case, as the writ issued against Aerocom, to repeat, is invalid for reasons hereinbefore stated. Ergo, the suit in Civil Case No. 0009 against Mr. Nieto and Mr. Africa as shareholders in Aerocom is not and cannot ipso facto be a suit against the unimpleaded Aerocom itself without violating the fundamental principle that a corporation has a legal personality distinct and separate from its stockholders. Such is the ruling laid down in **PCGG v. Interco**[19] reiterated anew in a case of more recent vintage - **Republic v. Sandiganbayan, Sipalay Trading Corp. and Allied Banking Corp.**[20] where this Court, speaking through Mr. Justice Ricardo J. Francisco,[21] hewed to the lone dissent of Mr. Justice Teodoro R. Padilla[22] in the very same **Republic v. Sandiganbayan** case herein invoked by the PCGG, to wit:

> "x x x failure to implead these corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would in effect be disregarding their distinct and separate personality without a hearing.