

THIRD DIVISION

[G.R. No. 152500, September 14, 2011]

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,
PETITIONER, VS. SANDIGANBAYAN (SECOND DIVISION),
TOURIST DUTY FREE SHOPS, INC., BANK OF AMERICA AND
RIZAL COMMERCIAL BANKING CORPORATION, RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

Assailed in this Petition for *Certiorari* and Prohibition with Urgent Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction^[1] under Rule 65 of the Rules of Court filed by the Presidential Commission on Good Government (PCGG) are the following Orders of the Sandiganbayan: (1) Resolution^[2] dated July 26, 2001 granting Tourist Duty Free Shops, Inc.'s (TDFSI's) motion for the issuance of a writ of preliminary mandatory and prohibitory injunction against the implementation of the Sequestration Order dated March 11, 1986 upon the posting of a bond in the amount of P100,000.00; (2) The Writ of Preliminary Mandatory Injunction and Preliminary Injunction^[3] dated August 3, 2001;^[4] (3) Resolution^[5] dated October 5, 2001 holding in abeyance the resolution of PCGG's motion for reconsideration and suspending the implementation of the writ of preliminary mandatory and prohibitory injunction; (4) Resolution^[6] dated January 23, 2002 denying PCGG's motion for reconsideration and omnibus motion and increasing the amount of the injunction bond to P1million; (5) Order^[7] dated January 23, 2002 setting the pre-trial and trial of the case; and (6) Order dated January 24, 2002 resetting the trial.^[8]

The facts of the case are as follows:

By virtue of Presidential Decree (P.D.) No. 1193,^[9] as amended by P.D. No. 1394,^[10] then President Ferdinand E. Marcos authorized TDFSI to establish, operate and maintain duty and tax free stores at all international airports and seaports, as well as at selected hotels, tourist resorts, and commercial or trading centers throughout the country.

On March 11, 1986, the PCGG issued to TDFSI a Sequestration Order^[11] signed by then Commissioner Mary Concepcion Bautista which reads as follows:

March 11, 1986

The Manager
Tourist Duty Free Shops, Inc.

Food Terminal, Inc. Compound
Taguig, Metro Manila

Sir:

The Presidential Commission on Good Government, by authority of the President of the Philippines, has decided to sequester the facilities, assets and funds of Tourist Duty Free Shops, Inc. in order to prevent any dispositions thereof to the prejudice of the people. You are hereby ordered to refrain from:

1. entering into new contracts or transactions;
2. making any disbursements of funds of the corporation, except in the ordinary course of business and for the payment of salaries of legitimate employees which are due; and
3. withdrawing funds from the accounts of the corporation, or its branches or subsidiaries.

Please preserve all the records of the corporation, and do not remove or allow the removal of any documents or other records.

Very truly yours,

(SGD.) MARY CONCEPCION BAUTISTA
Commissioner

On March 11, 1986, the PCGG issued a Freeze Order^[12] directing the Manager of Rizal Commercial Banking Corporation (RCBC) to freeze any withdrawals, transfers or remittances from the funds of TDFSI in the said bank.

On May 2, 1986, TDFSI filed before the Court a Petition for *Certiorari*, Prohibition and Injunction with Preliminary Injunction and/or Restraining Order^[13] to annul and stop the enforcement of the Sequestration Order. The case was docketed as G.R. No. 74302.

On May 27, 1986, the Court issued a Resolution^[14] in favor of PCGG and against TDFSI, the dispositive portion of which reads:

Accordingly, the Court Resolved as follows:

- (1) The sequestration order of all the assets of petitioner stands and, therefore, no temporary restraining order will issue against the same;
- (2) The respondent Commission's order authorizing the Philippine Tourism Authority to conduct an audit and inventory of petitioner's goods

likewise stands and no temporary restraining order will issue against the same, provided that petitioner Company will be entitled to a sufficient number of representatives as it may designate to be present to protect its interest in the taking of such audit and inventory;

(3) After the completion of such audit and inventory by the Philippine Tourism Authority within the period of five (5) days from notice hereof, petitioner TDFSI shall be permitted to undertake the following activities under the supervision of respondent Commission's authorized representatives: (a) to dispose and sell all its existing stocks in the ordinary course of business at such reasonable number of outlets as may be determined by respondent Commission. All proceeds of such sales shall at the end of the day be turned over to the respondent Commission's duly- authorized representatives. The respondent Commission in turn shall hold the same in trust and deposit such proceeds in special trust account so designated; and (b) to pay by means of checks issued by and countersigned by the respondent Commission's fiscal agent, or comptroller or duly-authorized representatives so designated, ordinary operational expenses such as payrolls, rentals, utilities, etc.

It is understood that no new contracts or transactions may be entered into by petitioner, nor shall any payment for accounts of, suppliers be made, except with the approval of the Commission.

Finally, the Court directs the Clerk of Court to deliver the three (3) keys deposited with the Court to respondent Commission's duly-authorized representative x x x^[15]

Upon the issuance of Executive Order No. 14^[16] and on petition^[17] of TDFSI, the Court issued a Resolution^[18] dated October 8, 1991 dismissing the petition in G.R. No. 74302 without prejudice to the filing of a case before the Sandiganbayan. The resolution had become final and executory on October 16, 1991 and was recorded in the Book of Entries of Judgments.^[19]

Meanwhile, on July 21, 1987, the Republic of the Philippines, represented by the PCGG, filed a Complaint for Reconveyance, Reversion, Accounting, Restitution and Damages^[20] against Bienvenido Tantoco, Bienvenido R. Tantoco, Jr., Gliceria R. Tantoco, Maria Lourdes Tantoco-Pineda, Dominador Santiago, Ferdinand E. Marcos and Imelda R. Marcos. The case was docketed as Civil Case No. 0008.

On December 18, 1991, following the dismissal of G.R. No. 74302, TDFSI filed a Complaint for Injunction and Specific Performance with Prayer for Issuance of Restraining Order and/or Preliminary Mandatory and Prohibitory Injunction^[21] against the PCGG, Bank of America (BA) and RCBC before the Sandiganbayan. The case was docketed as Civil Case No. 0142.^[22]

In its Complaint, TDFSI assailed the Sequestration Order, having been signed by only one of the five PCGG Commissioners and having been issued without the requisite investigation. Considering that no action had been filed for the recovery of

TDFSI's assets, funds and properties, and no list of the sequestered assets had been made, TDFSI claimed that the Sequestration Order was deemed automatically lifted. [23] It also questioned PCGG's act of preventing RCBC and BA from allowing TDFSI to withdraw from its accounts without the approval of the PCGG. In support of the prayer for the issuance of a restraining order and/or a writ of preliminary mandatory and prohibitory injunction, TDFSI claimed that the continued refusal of RCBC and BA to allow withdrawal of its funds without PCGG's approval has prevented TDFSI from investing its own funds in money-making ventures and, unless remedied upon, stands to suffer irreparable damage in the form of lost opportunities. [24]

On June 15, 1992, the Sandiganbayan issued a Resolution [25] dismissing Civil Case No. 0142 without prejudice to the re-filing of the proper motions in Civil Case No. 0008. Civil Case No. 0142 was dismissed allegedly because the issues are intimately related with those raised in Civil Case No. 0008 such that the resolution of the issues raised in the former might render inutile or nugatory any future determination and resolution of the merits of the causes of action in the latter case. TDFSI's motion for reconsideration was likewise denied on September 23, 1992. [26]

When elevated to the Court in G.R. No. 107395, we reversed and set aside the above resolutions on January 26, 2000. [27] The Court held that the elements of *litis pendentia* were absent. It explained that there is no identity of parties and causes of action. It also concluded that any decision that may be rendered in any of the two cases cannot constitute *res judicata* on the other.

Consequently, Civil Case No. 0142 was remanded for further proceedings. On July 26, 2001, the Sandiganbayan issued the first assailed Resolution [28] granting TDFSI's motion for the issuance of a writ of preliminary mandatory and prohibitory injunction. The dispositive portion of the resolution is quoted below for easy reference:

ACCORDINGLY, and finding merit, the Motion of plaintiff for the issuance of a writ of preliminary mandatory injunction and preliminary injunction is hereby granted upon posting of a bond in the amount of One Hundred Thousand (P100,000.00), Pesos. Defendant-PCGG is enjoined from further implementing the writ of sequestration or the letter dated March 11, 1986 until further orders from this Court.

As regard to the defendant-banks, considering that it has no reason to prevent plaintiff from withdrawing funds with them or transacting business with them and there exist a contract separate and distinct from the issue/s under consideration, they are likewise enjoined, until further orders from this Court, from requiring prior approval from defendant-PCGG before it allows plaintiff to withdraw funds or monies and/or transact business with them, and said defendant-banks are likewise ordered to accept whatever checks plaintiff has issued.

SO ORDERED. [29]

While recognizing the PCGG's authority to issue the Sequestration Order to carry out its vital task of recovering justly and expeditiously ill-gotten wealth, the Sandiganbayan found that the continued implementation of said Order would greatly cause irreparable damage to TDFSI. The court held that in issuing the Sequestration

Order against TDFSI, PCGG did not observe the Rules and Regulations implementing Executive Order Nos. 1^[30] and 2.^[31] It explained that no investigation was conducted, no notice nor opportunity to adduce evidence was given to TDFSI, and no public hearing was conducted. More importantly, the court observed that the Sequestration Order was signed by only one of the PCGG Commissioners, which is violative of its own Rules and Regulations dated April 11, 1986.

On August 3, 2001, the assailed Writ of Preliminary Mandatory Injunction and Preliminary Injunction^[32] was issued, the pertinent portion of which reads:

NOW THEREFORE, you (defendant Presidential Commission on Good Government), your officers, agents, representatives and/or persons acting upon your orders or, in your place or stead, are hereby **ENJOINED** from further implementing the writ of sequestration or the letter dated March 11, 1986 until further orders from this Court **and** as regards the defendant-banks (Bank of America and Rizal Commercial Banking Corp.) your officers, agents, representatives, and/or persons acting upon your orders or, in your place or stead, are **likewise ENJOINED** until further orders from this Court from requiring prior approval from defendant-PCGG before it allows plaintiff to withdraw funds or monies and/or transact business with them, and defendant-banks are likewise ordered to accept whatever checks plaintiff has issued.^[33] (Emphasis supplied.)

Aggrieved, PCGG filed an Urgent Motion to Recall Writ of Preliminary Mandatory Injunction and Preliminary Injunction,^[34] Motion for Reconsideration,^[35] and Supplemental Motion for Reconsideration.^[36]

On October 5, 2001, the Sandiganbayan issued the third assailed Resolution^[37] holding in abeyance the resolution of the three motions named in the preceding paragraph and other related incidents. In the same resolution, the court suspended the implementation of the writ of preliminary mandatory and prohibitory injunction in order to avoid "judicial apostacy."

On January 23, 2002, the Sandiganbayan issued the fourth assailed Resolution^[38] denying PCGG's motion for reconsideration. The court held that the Sequestration Order is void for failure to comply with Executive Order No. 1 which requires the PCGG as a body to issue the order. It also explained that in G.R. No. 74302, the Court did not decide with finality the issue of whether or not the assets and funds in question are ill-gotten wealth of the Marcoses.

On even date, the Sandiganbayan issued the fifth assailed Order^[39] setting the case for pre-trial. The sixth assailed Order^[40] was issued on January 24, 2002, resetting the trial of the case.

For failure to obtain a favorable decision, PCGG comes before the Court in this Petition for *Certiorari* and Prohibition with Temporary Restraining Order and/or Writ of Preliminary Injunction based on the following grounds:

WHETHER RESPONDENT COURT ACTED ARBITRARILY AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF