

EN BANC

[G.R. Nos. 177857-58, February 11, 2010]

PHILIPPINE COCONUT PRODUCERS FEDERATION, INC. (COCOFED), MANUEL V. DEL ROSARIO, DOMINGO P. ESPINA, SALVADOR P. BALLARES, JOSELITO A. MORALEDA, PAZ M. YASON, VICENTE A. CADIZ, CESARIA DE LUNA TITULAR, AND RAYMUNDO C. DE VILLA, PETITIONERS, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

JOVITO R. SALONGA, WIGBERTO E. TAÑADA, OSCAR F. SANTOS, ANA THERESIA HONTIVEROS, AND TEOFISTO L. GUINGONA III, OPPOSITORS-INTERVENORS. WIGBERTO E. TAÑADA, OSCAR F. SANTOS, SURIGAO DEL SUR FEDERATION OF AGRICULTURAL COOPERATIVES (SUFAC) AND MORO FARMERS ASSOCIATION OF ZAMBOANGA DEL SUR (MOFAZS), REPRESENTED BY ROMEO C. ROYANDOYAN; AND PAMBANSANG KILUSAN NG MGA SAMAHAN NG MAGSASAKA (PAKISAMA), REPRESENTED BY VICENTE FABE, MOVANTS-INTERVENORS.

[G.R. NO. 178193]

DANILO B. URUSA, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

[G.R. NO. 180705]

EDUARDO M. COJUANGCO, JR., PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

R E S O L U T I O N

VELASCO JR., J.:

Before us is the motion for reconsideration^[1] of the Resolution of the Court dated September 17, 2009, interposed by oppositors-intervenors Jovito R. Salonga, Wigberto E. Tañada, Oscar F. Santos, Ana Theresa Hontiveros, and Teofisto L. Guingona III.

As may be recalled, the Court, in its resolution adverted to, approved, upon motion of petitioner Philippine Coconut Producers Federation, Inc. (COCOFED), the conversion of the sequestered 753,848,312 Class "A" and "B" common shares of San Miguel Corporation (SMC), registered in the name of Coconut Industry Investment Fund (CIIF) Holding Companies (hereunder referred to as SMC Common Shares), into 753,848,312 SMC Series 1 Preferred Shares.

Oppositors-intervenors Salonga, et al. anchor their plea for reconsideration on the

following submission or issues:

1

The conversion of the shares is patently disadvantageous to the government and the coconut farmers, given that SMC's option to redeem ensures that the shares will be bought at less than their market value.

2

The honorable court overlooks the value of the fact that the government, as opposed to the current administration, is the winning party in the case below and thus has no incentive to convert.^[2]

The Court is not inclined to reconsider.

The two (2) issues and the arguments and citations in support thereof are, for the most part and with slight variations, clearly replications of oppositors-intervenors' previous position presented in opposition to COCOFED's motion for approval of the conversion in question. They have been amply considered, discussed at length, and found to be bereft of merit.

Oppositors-intervenors harp on the perceived economic disadvantages and harm that the government would likely suffer by the approval of the proposed conversion. Pursuing this point, it is argued that the Court missed the fact that the current value of the shares in question is increasing and the "perceived advantages of pegging the issue price at PhP 75 are dwindling on a daily basis."^[3]

Oppositors-intervenors' concerns, encapsulated above, have been adequately addressed in some detail in the resolution subject of this motion. For reference we reproduce what we wrote:

Salonga, et al. also argue that the proposed redemption is a right to buy the preferred shares at less than the market value. **That the market value of the preferred shares may be higher than the issue price of PhP 75 per share at the time of redemption is possible. But then the opposite scenario is also possible.** Again, the Court need not delve into policy decisions of government agencies because of their expertise and special knowledge of these matters. Suffice it to say that all indications show that SMC will redeem said preferred shares in the third year and not later because the dividend rate of 8% it has to pay on said shares is higher than the interest it will pay to the banks in case it simply obtains a loan. When market prices of shares are low, it is possible that interest rate on loans will likewise be low. On the other hand, if SMC has available cash, it would be prudent for it to use such cash to redeem the shares than place it in a regular bank deposit which will earn lower interests. It is plainly expensive and costly for SMC to keep on paying the 8% dividend rate annually in the hope that the market value of the shares will go up before it redeems the shares.

Likewise, the conclusion that respondent Republic will suffer a loss corresponding to the difference between a high market value and the issue price does not take into account the dividends to be earned by the preferred shares for the three years prior to redemption. The guaranteed PhP 6 per share dividend multiplied by three years will amount to PhP 18. If one adds PhP 18 to the issue price of PhP 75, then the holders of the preferred shares will have actually attained a price of PhP 93 which hews closely to the speculative PhP 100 per share price indicated by movants-intervenors.^[4] (Emphasis added.)

Elaborating on how the value of the sequestered shares will be preserved and conserved, we said:

Moreover, the conversion may be viewed as a sound business strategy to preserve and conserve the value of the government's interests in CIIF SMC shares. Preservation is attained by fixing the value today at a significant premium over the market price and ensuring that such value is not going to decline despite negative market conditions. Conservation is realized thru an improvement in the earnings value via the 8% per annum dividends versus the uncertain and most likely lower dividends on common shares.

In this recourse, it would appear that oppositors-intervenors seem unable to accept, in particular, the soundness angle of the conversion. But as we have explained, the conversion of the shares along with the safeguards attached thereto will ensure that the value of the shares will be preserved. In effect, due to the nature of stocks in general and the prevailing business conditions, the government, through the Presidential Commission on Good Government (PCGG), chose not to speculate with the CIIF SMC shares, as *prima facie* public property, in the hope that there would be a brighter economy in the future, and that the value of the shares would increase. We must respect the decision of the executive department, absent a clear showing of grave abuse of discretion.

Next, oppositors-intervenors argue that:

The very reason why the PCGG and the OSG [Office of Solicitor General] are before this Honorable Court is precisely because, on their own, they have no authority to alter the nature of the sequestered shares. This fact ought not to be novel to this Honorable Court because it is the Court itself that established such jurisprudence. Thus, the reference to separation of powers is rather gratuitous.^[5]

The Court to be sure agrees with the thesis that, under present state of things, the PCGG and the Office of the Solicitor General have no power, by themselves, to convert the sequestered shares of stock. That portion, however, about the reference to the separation of powers being gratuitous does not commend itself for concurrence. As may be noted, the reference to the separation of powers concept was made in the context that the ownership of the subject sequestered shares is the

subject of a case before this Court; hence, the need of the Court's approval for the desired conversion is effected.

Apropos the separation of powers doctrine and its relevance to this case, it may well be appropriate to again quote the following excerpts from our decision in *JG Summit Holdings, Inc. v. Court of Appeals*,^[6] to wit:

The role of the Courts is to ascertain whether a branch or instrumentality of the Government has transgressed its constitutional boundaries. But the Courts will not interfere with executive or legislative discretion exercised within those boundaries. Otherwise, it strays into the realm of policy decision-making.

and our complementary holding in *Ledesma v. Court of Appeals*,^[7] thus:

x x x [A] court is without power to directly decide matters over which full discretionary authority has been delegated to the legislative or executive branch of the government. It is not empowered to substitute its judgment for that of Congress or of the President. It may, however, look into the question of whether such exercise has been made in grave abuse of discretion.

The point, in fine, is: while it may, in appropriate cases, look into the question of whether or not the PCGG acted in grave abuse of discretion, the Court is not empowered to review and go into the wisdom of the policy decision or choices of PCGG and other executive agencies of the government. This is the limited mandate of this Court. And as we have determined in our Resolution, the PCGG thoroughly studied and considered the effects of conversion and, based upon such study, concluded that it would best serve the purpose of maintaining and preserving the value of the shares of stock to convert the same. It was proved that the PCGG had exercised proper diligence in reviewing the pros and cons of the conversion. The efforts PCGG have taken with respect to the desired stock conversion argue against the notion of grave abuse of discretion.

Anent the second issue that it is the government, as opposed to the current administration of President Gloria Macapagal-Arroyo, that is the winning party in the case below and has no incentive to convert, the Court finds that this argument has no merit.

The current administration, or any administration for that matter, cannot be detached from the government. In the final analysis, the seat of executive powers is located in the sitting President who heads the government and/or the "administration." Under the government established under the Constitution, it is the executive branch, either pursuant to the residual power of the President or by force of her enumerated powers under the laws, that has control over all matters pertaining to the disposition of government property or, in this case, sequestered assets under the administration of the PCGG. Surely, such control is neither legislative nor judicial. As the Court aptly held in *Springer v. Government of the*

Philippine Islands,^[8] resolving the issue as to which between the Governor-General, as head of the executive branch, and the Legislature may vote the shares of stock held by the government:

It is clear that they are not legislative in character, and still more clear that they are not judicial. The fact that they do not fall within the authority of either of these two constitutes legal ground for concluding that they do fall within that of the remaining one among which the powers of the government are divided.

The executive branch, through the PCGG, has given its assent to the conversion and such decision may be deemed to be the decision of the government. The notion suggested by oppositors-intervenors that the current administration, thru the PCGG, is without power to decide and act on the conversion on the theory that the head of the current administration is not government, cannot be sustained for lack of legal basis.

Likewise, before the Court is the **Motion to Admit Motion for Reconsideration with Motion for Reconsideration [Re: Conversion of SMC Shares]** dated October 16, 2009^[9] filed by movants-intervenors Wigberto E. Tañada; Oscar F. Santos; Surigao del Sur Federation of Agricultural Cooperatives (SUFAC) and Moro Farmers Association of Zamboanga del Sur (MOFAZS); and *Pambansang Kilusan ng mga Samahan ng Magsasaka* (PAKISAMA).

In filing their motion, movants-intervenors explain that:

Messrs. Tañada and Santos earlier joined an opposition filed by a group led by former Senate President Jovito R. Salonga, by way of solidarity and without desire or intent of trifling with judicial processes as, in fact, the instant Motion for Reconsideration is filed by herein movants-intervenors, through counsel, Atty. Tañada, and also **by way of supplement and support to the Opposition earlier filed by Salonga, et al.**, and the Opposition originally intended to be filed by herein Movants-intervenors.^[10] (Emphasis supplied.)

Movants-intervenors argue further that the Court allowed them to intervene in a Resolution in G.R. No. 180702, which also arose from Sandiganbayan Civil Case No. 0033-F and, thus, should similarly be allowed to intervene in the instant case.^[11]

This motion of Tañada, et al. must fail.

As it were, Atty. Tañada and Oscar Santos admit having joined oppositors-intervenors Salonga, et al. in the latter's October 7, 2009 motion for reconsideration. Accordingly, they should have voiced out all their arguments in the Salonga motion for reconsideration following the Omnibus Motion Rule. The filing of yet another motion for reconsideration by way of supplement to the Salonga motion for reconsideration is a clear deviation from the Omnibus Motion Rule and cannot be countenanced.