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SC finally lifts sequestration of POTC and unit Philcomsat

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THE Supreme Court (SC) has lifted the sequestration order that the Presidential Commission on Good Government (PCGG) had issued against the Philippine Overseas Telecommunications Corp. (POTC) and its wholly owned subsidiary Philippine Communications Satellite Corp. (Philcomsat), formerly controlled by the Marcos family and their "cronies." In a 17-page decision penned by Associate Justice Jose Portugal Perez, the High Court's Third Division reversed the ruling issued by the Sandiganbayan in October 2005, which upheld the sequestration of POTC and Philcomsat, and denied their claim that their sequestration was invalid and should immediately be lifted.

SHE "SC" A2

“As the sequestered property has already been disposed [of], the ultimate purpose of sequestration has already been attained; the evil sought to be prevented is no longer present.”—SC

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Named defendants in the case were Jose Africa, Manuel Nieto Jr., Ferdinand Marcos, Imelda Marcos, Ferdinand Marcos Jr., Roberto Benedicto, Juan Ponce Enrile and Potenciano Ilusorio. The SC gave credence to POTC and Philcomsat's argument that the Sandiganbayan committed grave abuse of discretion when it affirmed their continued sequestration and disregarded the anti-graft's final and executory decision issued in June 2005 in the case of *Republic of the Philippines v. Sandiganbayan*, which already ruled on the ownership of the 35 percent shares of stock of the corporations.

In the said case, the Court upheld the compromise agreement between the government and Ilusorio, resulting in the conveyance of 34.9 percent of the shares of stock of the sequestered corporations to the government. Philcomsat and POTC argued that pursuant to the said final and executory decision, there's no longer any need for their continued sequestration based on the SC's earlier pronouncement that "the writ of sequestration is merely provisional and temporary in character," and that the final ruling of the Court which finally disposed [of] the sequestered shares, rendered the writ unnecessary."

The SC noted that the PCGG failed to properly plead POTC and Philcomsat as defendants in the sequestration case, which proved to be fatal to the case. It explained that the failure to properly plead POTC and Philcomsat violated their right to due process.

"[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. As already settled, a suit against individual stockholders is not a suit against the corporation," the Court added.

Since, POTC and Philcomsat were not impleaded, the SC said there is no longer any existing sequestration on POTC and Philcomsat.

The court also pointed out that the sequestration order over the said corporations was automatically lifted six months after the ratification of the 1987 Constitution for failure to implead them as respondents in the sequestration case.

It noted that Section 26, Article XVIII of the Constitution states that "if no judicial action has been filed within six months after the ratification of the 1987 Constitution, the writ of sequestration shall automatically be lifted."

Furthermore, the Court explained that 34.9 percent of the ownership of the sequestered property has been finally turned over to the government. Thus, the Court said, the ultimate purpose of sequestration was already accomplished.

Furthermore, the SC said, the said shares in the ownership of the sequestered properties have reverted to the government.

The government now owns 4,727 shares, or 34.9 percent, of the sequestered corporations. "As the sequestered property has already been disposed [of], the ultimate purpose of sequestration has already been attained; the evil sought to be prevented is no longer present. Evidently, the sequestered property which was already returned to the government cannot anymore be dissipated or concealed," the SC ruled.