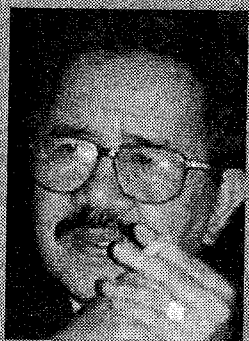


Sequestration, an excuse to loot

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'No law shall be enforced against anyone before it is enacted.'



THE haste that attended the search for ill-gotten wealth of Ferdinand Marcos and his alleged cronies violated the Constitutional provision against ex post facto law: No law shall be enforced against anyone before it is enacted.

If the rules of the Presidential Commission on Good Government may be considered law, the notice of sequestration on Philippine Overseas Telecommunications and its operating arm, Philippine Communications Satellite Corp and its holding arm, Philcomsat Holdings, is patently against the Charter.

Worst of all the notice of sequestration demonstrates the arrogance of officials of the PCGG who acted in ways worse than Marcos.

Then PCGG chairman, Ramon Diaz, signed the notice himself justifying his action by saying the basis for his decision was the authority given him under Executive Orders No. 1 and 2 President Aquino issued to create the good government body.

On April 11, 1986, Jovito R. Salonga who replaced Diaz as PCGG chairman crafted the rules and regulations implementing EO 1 and 2. One of the salient provisions of the rules states "a writ of sequestration or hold order may be issued by the Commission upon the authority of at least two Commissioners based on the affirmation or complaint of an interested party or motu proprio when the Commission has reasonable grounds to believe that the issuance thereof is warranted."

On March 14, 1986, Diaz sent the notice of sequestration to POTC and Philcomsat as well as to Eastern Telecommunications, PLDT and Domestic Satellite even before the PCGG could formulate the rules which became effective on April 11, 1986.

Diaz issued the order before the implementing rules took effect. He put the cart before the horse.

The notice was not based on any implementing rules and regulations as there were none yet as of March 14, 1986. That means, as shown by documents in my possession, he applied rules before they could be formulated. Therefore the sequestration of POTC and Philcomsat was patently illegal.

Smart lawyers would go as far as saying there is no necessity to lift the order since no such order was ever issued. The order was void ab initio. It did not exist.

But then the law also requires a court to declare nullity of an illegal act. Thus, the officers of the three companies filed a petition with the Supreme Court to lift the non-existent sequestration. Impressing the public that they were doing a patriotic duty, the Office of the Solicitor General and understandably the PCGG vehemently objected to the lifting of the sequestration order not taking notice it was issued without basis since the implementing rules and regulations had not been adopted.

The Sandigan denied POTC's petition to lift the order. Sensibly the three companies elevated the case to the Supreme Court. The company filed at least three urgent motions for early resolution. The Court seems to be sitting on these petitions.

What reason could the Sandigan have in upholding the objection of the Solicitor General and the PCGG? What reason could the Supreme Court have in sitting on the motion for urgent resolution of the petition to lift the sequestration order that, in law, did not exist? We find none.

The PCGG believes there is. Philcomsat Holdings is 80 percent owned and 80 percent funded by the "sequestered" Philcomsat. Therefore, following the theory of cascade PHC is also sequestered.

What benefit does the state get from continued "sequestration" of POTC, Philcomsat and Philcomsat Holdings? None! Absolutely none! But the state and the PCGG nominees to the companies are not the same. The nominees have the duty to preserve the assets of sequestered firms. They dissipated the assets themselves and may have lined their pockets thick in doing so.

There is ample evidence the presence of the nominees particularly in PHC immensely benefitted the representatives of the state. The records of PHC show nearly all of its initial capital of P800 million provided by Philcomsat has been nearly completely dissipated by the nominees. They almost ran the company to the ground for their own personal benefit.

One clear proof is the issuance of checks at the behest of the nominees as advances to the affiliates — POTC and Philcomsat. There is nothing in the records of the two affiliates they ever got the "advances." Where did the money go?

In the files of PHC are cancelled checks paid to cash issued on the orders of the nominees. The beneficial stockholders of the company including those who bought the shares in open competition at in the stock market were never told where the money went.

There is an entry in the company's record that lawyer Luis K. Lokin was given P2 million for TRO in the Sandigan and a similar amount for the same purpose in the Supreme Court. Lokin made it appear temporary restraining orders from Sandigan and the High Court are for sale.

In effect, the Sandigan and the Supreme Court connived with the PCGG nominees in refusing to lift the sequestration. If it is lifted, the theory of cascade will cease to apply. PHC may no longer be considered sequestered if the order on the mother company is invalidated by the Courts.

The nominees of the PCGG will not be allowed to lord it over the three companies. The "looters" of PHC funds will be yanked out of the company. The case is that simple to me.

The illegal sequestration involves money. The government tolerates its "theft." It violates the President's "daang-matuwid" philosophy of governance.