The Public Character of Coconut Levy Funds in *Republic v. COCOFED*

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This Court holds that the government should be allowed to continue voting those shares inasmuch as they were purchased with coconut levy funds — funds that are prima facie public in character or, at the very least, are "clearly affected with public interest."

I. PREFATORY STATEMENTS

Republic of the Philippines v. COCOFED[1] is not an isolated case. It is, rather, a mere facet within the greater context of the sequestration of various assets

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formerly held by Ferdinand Marcos, his relatives, cronies, and close associates. The saga began after the successful People Power Revolution in 1986 that propelled Corazon Aquino to the presidency.

As one of her first acts in office, President Aquino issued three executive orders that prescribed and defined the remedies to be undertaken by the government to recover "ill-gotten wealth" amassed by the previous regime. This was the beginning of the crusade that would last for more than a decade.

To this end, the Presidential Commission on Good Government (PCGG) — the government agency authorized to pursue the declared national policy — carried out its specific mandate by means of sequestration, freeze orders, and provisional takeover. These special remedies were outlined in the initial executive issuance of President Aquino under the Revolutionary Government prior to the effectivity of the present Constitution.

Thereafter, PCGG had to investigate the numerous fraudulent transactions that spanned the era of dictatorship. It was tasked to pierce and unmask more than two decades of conspiracy to defraud the government. A colossal endeavor, no doubt. Former Chief Justice Andres Narvasa characterized it as an enterprise of "great pith and moment."

In this case, which is the primary subject of comment, the Supreme Court ruled on the issue of who may vote the sequestered shares of stock of the United Coconut Planters Bank (UCPB). This problem, however, was not untouched by other various matters in contention. Indeed, the sequestration of assets by PCGG gave birth to numerous, correlated judicial actions.[2]

At this point, it is imperative that the reader be acquainted with the context surrounding the duties and responsibilities of PCGG. Before the case in point is discussed, the historical circumstances shall be traced to give the reader a better understanding of the issues raised before the Court. Related holdings of the Court shall likewise be given ample treatment in order that the reader may understand the context within which this decision is situated.

1. Republic of the Philippines, represented by the Presidential Commission on Good Government v. COCOFED et al. Ballares et al. Eduardo M. Cojuangco, Jr. and the Sandiganbayan (First Division), G.R. Nos. 147062-64 (Dec. 14, 2001).

2. *See* Francis E. Garchitorena, *Sequestration: A Review*, 36 ATENEO L.J. 1 (1992).

II. Legal Framework relating to the Philippine Coconut Industry

This section shall canvass the various statutes, presidential decrees, and executive orders, which spanned a period of 17 years, beginning just months before the declaration of martial law by the former dictator until the revival of democracy after the People Power Revolution of 1986. This presentation shall likewise serve as an overview of the seemingly complex web of facts relating to the sequestration of various assets of the former president, his relatives, cronies, and close associates.

A. Republic Act No. 6260:[3] instituting a Coconut Investment Fund

Recognizing the great significance of the coconut industry in the Philippines, it was declared a national policy to "accelerate the development of the coconut industry through the provision of adequate medium and long-term financing for capital investment in the industry."[4] The Republic Act instituted a Coconut Investment Fund to be capitalized and administered by coconut farmers through a Coconut Investment Company, which, in turn, was tasked: (a) to fully tap the potential of the coconut planters in order to maximize their production and give them greater responsibility in directing and developing the coconut industry; (b) to accelerate the growth of the coconut industry and other related coconut products from the raw material stage to the semi-finished and finally, the finished product stage; (c) to improve, develop and expand the marketing system; and, (d) to ensure stable and better incomes for coconut farmers.[5]

A levy of PhPo.55 was imposed on each coconut farmer from the first domestic sale of every 100 kilograms of copra or its equivalent coconut product.[6] The farmer should then be issued a receipt that should thereafter

3. An Act Instituting a Coconut Investment Fund and Creating a Coconut Investment Company for the Administration Thereof, Republic Act No. 6260 (1971).

4. *Id.* § 2.

5. *Id.* § 4.

6. *Id.* § 8. The Section states in full:

> *The Coconut Investment Fund.* There shall be levied on the coconut farmer a sum equivalent to fifty-five centavos (Po.55) on the first domestic sale of every one hundred kilograms of copra, or its equivalent in terms of other coconut products, for which he shall be issued a receipt which shall be converted into shares of stock of the Company upon its incorporation as a private entity in accordance with Section seven hereof. For every fifty-five centavos (Po.55) so collected, fifty centavos (Po.50) shall be set aside to constitute a special fund, to be known as the Coconut Investment Fund, which shall be used exclusively to pay the subscription by the Philippine Government for and in behalf of the coconut farmers to the capital stock of said Company: *Provided*, That this levy shall be imposed until the one hundred million pesos authorized capital stock is fully paid, but collection of said levy shall not continue longer than ten years from the start thereof: *Provided, further*, That the Philippine Coconut Administration (PHILCOA) shall, in consultation with the recognized national association of coconut producers with the largest number of membership as determined by the Philippine Coconut Administration, prescribe and promulgate the necessary rules, regulations and procedures for the collection of such levy and issuance of the corresponding receipts: *Provided*, still further, That the receipts and/or certificates shall be non-transferable except to coconut farmers only and to the company: *Provided, furthermore*, That operational expenses of the Company shall be limited to and charged against the earnings and/or profits of the Fund: *Provided, finally*, That one-tenth of such earnings of the fund for each year shall be used to finance technical and economic research studies, promotional programs, scholarships grants and industrial manpower development programs for the coconut industry.

7. Provided for in Section 6 of the Act, to wit:

> The Company shall be capitalized at one hundred million pesos (P100,000,000), divided into ten million common shares with a par value of ten pesos each. The said capital stock shall be subscribe by the Government of the Republic of the Philippines for and on behalf of the coconut farmers and shall be initially paid from the proceeds of the levy imposed in section eight of This Act.

8. The Section hereunder quoted provides that the government holds the stocks merely in trust. Upon fulfillment of the conditions set forth in the Act, the same shall be transferred to the coconut farmers themselves. It is clear from the wording of the Act that the government does not own these shares of stock.

> Section 7. *Incorporation as a private entity under Act Numbered One thousand four hundred fifty-nine, as amended.* Upon full payment of the authorized capital stock, as evidenced by receipts issued for levies paid, or upon termination of a ten-year period from the start of the collection of the levy as provided in section eight hereof, whichever comes first, the shares of stock held by the Philippine Government for and on behalf of the coconut farmers shall be transferred, in accordance with such rules, regulations and procedures as the Company shall prescribe and promulgate, to and in the name of the coconut farmers who shall then incorporate as a private entity under Act Numbered One Thousand four hundred fifty-nine, as amended: *Provided*, That all powers, privileges and rights initially endowed on the Company under this Act shall be transferred to the new corporation together with all outstanding assets and liabilities, except the right to levy

be converted into shares of stock of the Company. The Act then provided that upon full payment of the authorized capital stock[7] or upon termination of the ten-year period from the start of the collection, the shares of stock held by the Philippine Government on behalf of the coconut farmers would be transferred, to and in the name of the coconut farmers, who should then incorporate as a private entity.[8]

The Act provided for the Philippine Coconut Administration (PHILCOA) as the government's collecting agent for the fund. PHILCOA would also serve as the trustee of the fund. Of the PhPo.55 collected from the farmers, PhPo.03 thereof should be appropriated to said Administration to defray various organizational and operational expenses incurred in pursuance of the provisions of the Act.[9] The remaining PhPo.02 of said levy would be placed at the disposition of the recognized national association of coconut producers with the largest number of membership, it being given the responsibility for continuing the liaison with the different sectors of the industries, the government, and its own mass base.[10]

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which shall be terminated upon the issuance of the certification of registration by the Securities and Exchange Commission to the Coconut Investment Company as a private corporation.

9. Section 9 of the Act confirms the nature of the Coconut Investment Fund as a trust fund in favor of the coconut farmers. Ownership of the shares of stock derived from the payment of the levy was never intended to be vested in any agency of government.

> Section 9. *PHILCOA as Collection Agent and Trustee of the Fund.* The PHILCOA shall collect the levy and immediately thereafter deposit the proceeds thereof in an interest-earning account with the Development Bank of the Philippines or any other government-owned or controlled banking institution to the credit of the Fund: *Provided*, That all deposits made by the PHILCOA to the credit of said Fund shall be transferred to the Company immediately upon its establishment: *Provided, however*, That the legal and administrative structure for such collection and issuance of receipts shall, within six (6) months from the approval of this Act, be completely set up by the PHILCOA in consultation with the recognized national association of coconut producers with the largest number of membership as determined by PHILCOA: *Provided*, also, That payments shall accrue from such time as the said structure shall function, as determined by PHILCOA. *Provided, further*, That three centavos (Po.03) out of every fifty-five centavos (Po.55) collected shall be set aside to be used exclusively to defray the expenses for: (a) the setting up and continued operation of the machinery for the collection and acknowledgment of payment, (b) the organization of municipal and provincial conventions of coconut planters, (c) the organization, supervision and conduct of regional coconut conventions and a national coconut congress, and (d) production and dissemination of information: *Provided, finally*, That the remaining two centavos (Po.02) shall be placed at the disposition of the recognized national association of coconut producers with the largest number of membership as determined by the Philippine Coconut Administration for the maintenance and operation of its principal office which shall be responsible for continuing liaison with the different sectors of the industries, the government and its own mass base.

10. *Id.*

Republic Act 6260 was the first in a series of governmental acts that formed the core of the issues that have been argued in a number of actions before the Sandiganbayan and the Supreme Court. The Act authorized the first exaction of tax from the coconut industry.

B. Presidential Decree No. 232:[11] creating the Philippine Coconut Authority

Two years after R.A. 6260 came into legal force, former president Marcos issued Presidential Decree No. 232 in order to integrate the diffused efforts of various sectors towards the development of the coconut industry.[12] This Decree was the first in a line of executive issuances that dealt with the issues of the industry. Marcos assessed that the development of the industry at the time was portrayed by relatively low yields and quality. He posited that the situation may still be substantially improved through a support system consisting of research extension work, marketing, and the strengthening of credit institutions.[13] As with previous legislation on the same subject matter, the decree affirmed that "the economic well-being of a major part of the population depends to a large extent on the viability of the industry and its improvement in the areas of production, processing and marketing."[14]

The Decree created a government agency, the Philippine Coconut Authority (PCA), to uphold the policy of the State to promote the growth and development of the coconut and other palm oil industries with the intention to ensure the benefits from such improvement would accrue to the greatest number.[15] In addition, the PCA should: (1) promote the accelerated development of the coconut and other palm oils industry in all its aspects; (2) provide general directions for the steady and orderly development of the industry; and (3) achieve vertical integration of the coconut industry so that coconut farmers become participants in and beneficiaries of the development and growth of the coconut industry.[16]

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11. Creating a Philippine Coconut Authority, Presidential Decree No. 232 (1973).

12. *Id.* First Whereas clause.

13. *Id.* Third Whereas clause.

14. *Id.* Fourth Whereas clause.

15. *Id.* § 1.

16. *Id.* § 2. In furtherance of the purposes and objectives of the PCA, the Decree prescribes its powers and functions, which are basically administrative, recommendatory, and regulatory in character, to wit:

> Section 3. Powers and Functions. To carry out the purposes and objectives mentioned in the preceding section, the Authority, through its Board as hereinafter constituted, is hereby vested with the following powers, in addition to those transferred to it under Section 6 of this Decree:

The Decree also served to abolish then-existing governmental agencies connected with the coconut industry. The PHILCOA, which was created by virtue of R.A. 6260, was among the agencies abolished. Consequently, PHILCOA's powers and functions were transferred to the PCA. The Decree

a. To formulate and adopt a general program of development for the coconut and other palm oils industry;

b. To evaluate the existing policies, programs and projects of all agencies and instrumentalities having to do with industry development and to integrate and coordinate the various facets of such activities into the approved general development program;

c. To recommend to the President of the Philippines and, upon his approval, to effect the integration of agencies charged with the prosecution of certain aspects of industry development with the view of attaining efficiency and effectiveness in implementation of the general program;

d. To supervise, coordinate and evaluate the activities of all agencies charged with the implementation of the various aspects of industry development, and to allocate and/or coordinate the release of public funds in accordance with approved development programs and projects;

e. To regulate the marketing and export of coconut products and by-products, as well as those of other palm oils, including the establishment of quotas thereon, whenever the national interest so requires;

f. To receive and administer funds provided by law; to draw, with the approval of the President, funds from existing appropriations as may be necessary in support of its program, and to accept donations, grants, gifts and assistance of all kinds from international and local private foundations, associations or entities, and to administer the same in accordance with the instructions or directions of the donor or, in default thereof, in the manner it may in its direction determine;

g. To borrow the necessary funds from local and international financing institutions, and to issue bonds and other instruments of indebtedness, subject to existing rules and regulations of the Central Bank, for the purpose of financing programs and projects deemed vital and necessary for the early attainment of its goals and objectives;

h. To formulate and recommend for adoption credit policies affecting production, marketing and processing of coconut and other palm oils;

i. To formulate and recommend for adoption by other agencies and instrumentalities, such programs and projects as are necessary to accelerate industry development;

j. To enter into, make and execute contracts of any kind as may be necessary or incidental to the attainment of its purposes and, generally, to exercise all the powers necessary to achieve the purposes and objectives for which it is organized.

The above-quoted Section was subsequently modified by Presidential Decree Nos. 276 and 582, *infra*, which granted additional powers to the PCA.

also provided that appropriations, funding from all sources, equipment, and other assets of the agencies to be abolished should similarly be transferred to the PCA.[17] Finally, the Decree provided that for purposes of coordinating plans and policies the PCA should be attached to the Department of Agriculture and Natural Resources.[18]

C. *Presidential Decree No. 276:[19] establishing the Coconut Consumers Stabilization Fund*

Two months after creating the Philippine Coconut Authority, the former President established the Coconut Consumers Stabilization Fund (CCSF) in view of the "escalating crisis brought about by an abnormal situation in the world market for fats and oils" that "resulted in supply and price dislocations in the domestic market for coconut-based consumer goods, and has created hardships for consumers thereof."[20] The policy adopted to address the crisis was the socialized pricing of coconut-based commodities so as to benefit those who depend on the industry for sustenance.

To this end, the PCA was authorized to formulate and implement a stabilization scheme for coconut-based consumer goods, with the following guidelines: (a) a levy of PhP15.00 per 100 kilograms of *copra resecada* or its equivalent shall be imposed on every first sale, in accordance with the mechanics set forth in R.A. 6260, the proceeds of which "shall be deposited with the Philippine National Bank or any other government bank to the account of the Coconut Consumers Stabilization Fund, as a separate trust fund which shall not form part of the general fund of the government;"[21] and (b) the CCSF shall be utilized to subsidize the sale of coconut-based products at prices set by the Price Control Council, in order to stabilize the coconut market.[22]

The Decree also provided that the collection of the CCSF should terminate after one year or earlier, provided that the prevailing crisis at the time, for which the measure was instituted, no longer existed. Thereafter, any balance remaining should be immediately revert to and form part of the Coconut Investment Fund constituted under R.A. 6260.[23]

17. P.D. No. 232, § 6.
18. *Id.* § 7.
19. Establishing a Coconut Consumers Stabilization Fund, Presidential Decree No. 276 (1973).
20. P.D. No. 276, First Whereas Clause.
21. *Id.* § 1(a).
22. *Id.* § 1(b).
23. *Id.* § 2.

The CCSF eventually became a permanent fund as mandated by Presidential Decree No. 414.[24] An amendment to P.D. 232, the Decree provided, *inter alia*, that the PCA was empowered "to impose a levy on every first sale in accordance with the mechanics established under R.A. 6260."[25] Similarly, P.D. 414 provided that "the levy shall be deposited with the Philippine National Bank or any of the authorized depositories for government funds to the account of the Coconut Consumers Stabilization Fund."[26] Thereafter, the CCSF could be utilized to: (a) provide a subsidy for coconut-based products, depending on the prices set by the Price Control Council; (b) refund wholly or in part any premium export duty collected. The Board shall take into account the degree of processing of the coconut product exported in refunding the premium export duty; and (c) set aside funds for investment in processing plants, research and development, and extension services to the coconut industry.[27]

D. *Presidential Decree No. 582:[28] establishing the Coconut Industry Development Fund*

Presidential Decree No. 582 was issued by the former dictator in order to "enable the country to compete in the international market of vegetables fats and oils and thereby ensure stable and better incomes for the coconut farmers, it is imperative that the country should pursue a vigorous program of replanting existing coconut farms and idle lands with superior hybrid coconut trees."[29] It amended P.D. 232, by giving the PCA the following additional functions: (a) to formulate and implement within the next five (5) years nationwide coconut replanting program using precocious high-yielding hybrid seednuts; (b) to distribute, for free, to coconut farmers the hybrid coconut seednuts herein authorized to be acquired.[30]

The Decree created yet another permanent fund known as the Coconut Industry Development Fund (CIDF). The aims of the CIDF were "to finance the establishment, operation and maintenance of a hybrid coconut seednut farm as would insure that the country shall have, at the earliest possible time, a proper, adequate and continuous supply of high yielding hybrid seednuts;" "to purchase all of the seednuts produced by the hybrid coconut seednut farm which shall be distributed, for free, by the (PCA) to

24. Presidential Decree No. 414 (1974) (further amending P.D. 232).

25. P.D. No. 232, § 3-A, *amended by* P.D. No. 414.

26. P.D. No. 232, § 3-A.

27. *Id.*

28. Presidential Decree No. 582 (1974) (further amending P.D. 232).

29. *Id.* Second Whereas Clause.

30. P.D. No. 232, § 3 (o) and (p), *amended by* P.D. No. 582.

coconut farmers," provided that the farmers who have been paying the CIDF should be given priority; and "to finance the establishment, operation and maintenance of extension services, model plantations and other activities as would insure that the coconut farmers shall be informed of the proper methods of replanting their farms with the hybrid seednuts."[31]

The initial funds of the CIDF, consisting of PhP100,000,000.00, should be paid by the PCA out of the CCSF to the CIDF an amount equal to at least PhP0.20 per kilogram of *copra resecada* or its equivalent out of its current collections of the coconut consumers stabilization levy, which the PCA is similarly ordered to remit.[32] In the event that the CCSF is lifted:

> a permanent levy of twenty centavos (P0.20) is thereafter automatically imposed on the first sale of every kilogram of copra or its equivalent in terms of other coconut products which shall be collected and paid to the Coconut Industry Development Fund by the Authority in accordance with the mechanics presently followed in the collection of the coconut consumers stabilization levy.[33]

E. *Presidential Decree No. 755:[34] acquiring a commercial bank for the benefit of the coconut farmers*

Recognizing the credit problems besetting the coconut farmers, which were preventing the growth and development of the coconut industry, the Philippine Coconut Authority had ascertained that ownership by the coconut farmers of a commercial bank was a permanent solution to their perennial credit problems.[35] It was determined that "an operating commercial bank owned by the coconut farmers will accelerate the growth and development of the coconut industry and achieve a vertical integration thereof so that coconut farmers will become participants in, and beneficiaries of, such growth and development."[36]

It was thereby declared the State policy to "provide readily available credit facilities to the coconut farmers at preferential rates."[37] In furtherance of this policy, the expeditious implementation of the "Agreement for the

31. P.D. No. 232, § 3-B, *amended by* P.D. No. 582.

32. *Id.*

33. *Id.*

34. Approving the Credit Policy for the Coconut Industry as Recommended by the Philippine Coconut Authority and Providing Funds Therefor, Presidential Decree No. 755 (1975).

35. *Id.* First and Third Whereas Clauses.

36. *Id.* Fourth Whereas Clause.

37. *Id.* § 1.

Acquisition of a Commercial Bank for the benefit of the Coconut Farmers," executed by the PCA was ordered.[38] Likewise, the PCA was authorized "to distribute, for free, the shares of stock of the bank it acquired to the coconut farmers under such rules and regulations it may promulgate."[39] The funds to be used in the acquisition of a commercial bank were to be drawn from the CCSF.[40]

The commercial bank acquired "for the benefit of the coconut farmers," in pursuit of the Decree, came to be known as the United Coconut Planters Bank.

F. *Presidential Decree No. 961*:[41] *Coconut Industry Code*

Five years after the promulgation of the first in a series of Presidential Decrees relating to the coconut industry, Marcos issued Presidential Decree No. 961, known as the Coconut Industry Code. The intention of this Decree was:

> to make more meaningful the participation of the coconut farmers in the resulting benefits from the growth and development of the industry and to re-affirm the intention of the Government in restricting its role therein to the performance of purely governmental functions and in allowing the coconut farmers to own coconut commercial and industrial enterprises.[42]

Thus, there was a "necessity of accordingly re-structuring the various laws that have been enacted to promote the rapid development of the industry and integrate said laws into a single codified law."[43] The government reaffirmed its policy "to promote the rapid integrated development and growth of the coconut and other palm oil industry in all its aspects and to ensure that the coconut farmers become direct participants in, and beneficiaries of, such development and growth."[44]

38. *Id.* § 1.

39. *Id.* Section 3 of the Decree provides for a tax exemption on the delivery and receipt of the farmers of their shares of stock in the bank, to wit:

> Section 3. *Exemptions.* To minimize the costs in the acquisition and control by the coconut farmers of the Bank, the provisions of the National Internal Revenue Code and other laws notwithstanding, the delivery to, and receipt by, the parties concerned of the shares of the Bank pursuant to the Agreement are hereby declared to be exempt from taxation.

40. *Id.* § 2.

41. Coconut Industry Code, Presidential Decree No. 961 (1976).

42. *Id.* Third Whereas Clause.

43. *Id.* Third Whereas Clause.

44. *Id.* art. I, § 2.

This Decree was fundamentally a codification of various laws and presidential issuances relating to the coconut industry. It upheld the collection of various levies, which at that time, were already operational.[45]

45. *Id.* art. III. The relevant sections thereof are reproduced for reference. A comparison of the pertinent provisions in P.D. 276 and 582 with those of P.D. 961 hereunder quoted will reveal a substantial concurrence as regards the purposes set forth by the respective Decrees.

> Section 1. *Coconut Consumers Stabilization Fund Levy.* The Authority is hereby empowered to impose and collect a levy, to be known as the Coconut Consumers Stabilization Fund Levy, on every one hundred kilos of copra resecada, or its equivalent in other coconut products delivered to, and/or purchased by, copra exporters, oil millers, desiccators and other end-users of copra or its equivalent in other coconut products. The levy shall be paid by such copra exporters, oil millers, desiccators and other end-users of copra or its equivalent in other coconut products under such rules and regulations as the Authority may prescribe. Until otherwise prescribed by the Authority, the current levy being collected shall be continued.
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> Section 2. *Utilization of Fund.* All collections of the Coconut Consumers Stabilization Fund Levy shall be utilized by the Authority for the following purposes:
>
> (a) When the national interests so requires, to provide a subsidy for coconut-based products the amount of which subsidy shall be determined on the basis of the base price of copra or its equivalent as fixed by the Authority and the pieces of coconut-based products as fixed by the Price Control Council;
>
> (b) To refund wholly or in part any premium duty collected on copra or its equivalent sold prior to February 17, 1974;
>
> (c) To finance the development and operating expenses of the Philippine Coconut Producers Federation including projects such as scholarships for the benefit of deserving children of the coconut farmers; and
>
> (d) To finance the establishment and operation of industries and commercial enterprises relating to the coconut and other palm oil industry as described in Section 9 hereof.
>
> Section 3. *Coconut Industry Development Fund Levy.* There is hereby created a permanent fund to be known as Coconut Industry Development Fund which shall be deposited, subject to the provisions of P.D. No. 755, with, and administered and utilized by, the Philippine National Bank through its subsidiary, the National Investment and Development Corporation for the following purposes:
>
> (a) To finance the establishment, operation and maintenance of a hybrid coconut seednut farm under such terms and conditions that may be negotiated by the National Investment and Development Corporation with any private person, corporation, firm or entity as would insure that the country shall have, at the earliest possible time, a proper, adequate and continuous supply of high yielding hybrid seednuts and, for this purpose,

The Decree provided that the balance from the CIDF not needed to finance its various authorized projects should be utilized for the acquisition of "shares of stock in corporations organized for the purpose of engaging in the establishment and operation of industries...relating to coconut and other palm oil industries."[46] It was also provided:

> investments made...shall all be equitably distributed, for free, by the bank to the coconut farmers except such portion of the investments which it may consider necessary to retain to insure continuity and adequacy of financing of the particular endeavor. In effecting the distribution of the

the contract entered into by NIDC as herein authorized is hereby confirmed and ratified;

(b) To purchase all of the seednuts produced by the hybrid coconut seednut farm which shall be distributed, for free by the Authority to coconut farmers in accordance with, and in the manner prescribed in, the nationwide coconut replanting program; Provided, That farmers who have been paying the levy herein authorized shall be given priority;

(c) To defray the cost of implementing the nationwide replanting program;

(d) To finance the establishment, operation and maintenance of extension services, model plantations and other activities as would insure that the coconut farmers shall be informed of the proper methods of replanting; and

(e) The balance, if any, shall be utilized for investments for the benefit of the coconut farmers as prescribed in Section 9 hereof.

Section 4. *Coconut Industry Development Fund Levy*. As the initial funds of the Coconut Industry Development Fund, the Authority is hereby directed to pay to the Coconut Industry Development Fund the amount of One hundred million pesos, (P100,000,000.00) out of the Coconut Consumers Stabilization Fund and thereafter the Authority shall pay to the said Fund an amount equal to at least twenty centavos (P0.20) per kilogram of copra resecada or its equivalent out of its current collections of the Coconut Consumers Stabilization Fund Levy. In the event that the Coconut Consumers Stabilization Fund Levy is lifted, a permanent levy of twenty centavos (P0.20) is thereafter automatically imposed on every kilogram of copra or its equivalent in terms of other coconut products which shall be collected and paid to the Coconut Industry Development Fund by copra exporters, oil millers, desiccators and other end-users of copra or its equivalent under rules prescribed by the Authority. The Philippine National Bank is hereby authorized to invest the idle portion of the Fund in easily convertible investments and all earnings therefrom shall form part of the Fund.

The sale or transfer of the hybrid coconut seednuts herein authorized to be acquired is hereby declared exempt from the payment of the coconut consumers stabilization levy and any and all taxes and fees of whether kind and nature.

46. *Id.* art. III, § 9. This Section was amended by P.D. 1468; however, it still carried the same thrust articulated in the original provision.

> investments to the coconut farmers, the bank shall provide measures as would ensure the viability and stability of the particular enterprise and afford the widest distribution of the investments among the coconut farmers.[47]

G. *Presidential Decree No. 1841:*[48] *creating the Coconut Industry Stabilization Fund*

On May 27, 1980, Marcos issued Presidential Decree No. 1699, which suspended the collection of the Coconut Consumers Stabilization Fund and Coconut Industry Development Fund. Almost a year and a half hereafter, more specifically on October 2,1981, he issued P.D. 1841, which effectively revived the collection of the levies, but under the title of the Coconut Industry Stabilization Fund. Amended by P.D. 1842,[49] the provision read:

> to ensure the viability and stability of the coconut industry as a whole, the copra exporters, the oil millers, the refiners, the desiccators and other end-users of copra or its equivalent in other coconut products are hereby assessed an amount equivalent to a specific percentage of the prevailing copra equivalent of the world market price of coconut oil which shall be imposed on copra resecada or its equivalent in other coconut products delivered to and/or purchased by them.[50]

The assessment should be collected by the PCA.[51]

The Decree further provided that:

> the collections of the Coconut Industry Stabilization Fund shall be utilized to support socio-economic and developmental programs for the benefit of the coconut farmers, in particular, and the coconut industry, as a whole, in a manner to be determined by the Philippine Coconut Authority subject to the approval of the President.[52]

H. *Executive Order No. 1:*[53] *creating the Presidential Commission on Good Government*

On February 22-24, 1986, the Philippines was witness to the People Power Revolution, which overthrew the former dictatorship and established a

47. *Id.* art. III, § 10.

48. Presidential Decree No. 1841 (1981).

49. Presidential Decree No. 1842 (1982).

50. P.D. No. 1841, § 1, *amended by* P.D. No. 1842.

51. *Id.*

52. P.D. No. 1841, § 2.

53. Creating the Presidential Commission on Good Government, Executive Order No. 1 (1986).

democratic government under the stewardship of President Corazon Aquino. Numerous issuances were made by President Aquino in order to effect substantial changes in government. Under a Revolutionary government, she implemented a great amount of re-evaluation and re-organization of the State. More specifically, her Executive Orders relating to the coconut industry produced the current cases pending before the Sandiganbayan.

First among these was Executive Order No. 1, which created the Presidential Commission on Good Government. The issuance of the Order was premised on the fact that "vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad" and that "there is an urgent need to recover all ill-gotten wealth."[54]

Aquino created a Commission[55] charged with assisting the President regarding: (a) the recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship; (b) the investigation of such cases of graft and corruption as the President may assign to the Commission from time to time; and (c) the adoption of safeguards to ensure that the above practices shall not be repeated in any manner under the new government, and the institution of adequate measures to prevent the occurrence of corruption.[56] Fundamentally, PCGG was clothed with the responsibility and burden of recovering for the Philippine Government the assets and properties allegedly misappropriated and illegally acquired during the previous regime.

PCGG was empowered to conduct preliminary investigations when necessitated in furtherance of its purposes.[57] Likewise, it was authorized:

> to sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto, in order to prevent their destruction, concealment or disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission from accomplishing its task.[58]

PCGG could:

> provisionally take over in the public interest or to prevent its disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities.[59]

Furthermore, it could even "enjoin or restrain any actual or threatened commission of facts by any person or entity that may render moot and academic, or frustrate, or otherwise make ineffectual the efforts of the Commission to carry out its tasks under this order."[60]

The other powers of PCGG included the administration of oaths and issuance of subpoenas requiring the attendance and testimony of witnesses and/or the production of such books, papers, contracts, records, statement of accounts and other documents as may be material to the investigation conducted by the Commission;[61] the authority "to hold any person in direct or indirect contempt and impose the appropriate penalties, following the same procedures and penalties provided in the Rules of Court;"[62] the power "to seek and secure the assistance of any office, agency or instrumentality of the government;"[63] and the promulgation of "such rules and regulations as may be necessary to carry out the purpose of this order."[64]

The Order also gave PCGG and its members immunity from any civil action "for anything done or omitted in the discharge of the task contemplated by this order."[65] Likewise, no member or staff of PCGG could be "required to testify or produce in any judicial, legislative or administrative proceeding concerning matters within its official cognizance."[66]

54. E.O. No. 1, First and Second Whereas Clauses.
55. The Commission was composed of Minister Jovito R. Salonga, as Chairman; Mr. Ramon Diaz, Mr. Pedro L. Yap, Mr. Raul Daza and Ms. Mary Conception Bautista, as Commissioners.
56. E.O. No. 1, § 2.
57. *Id.* § 3(a).
58. *Id.* § 3(b).
59. *Id.* § 3(c).
60. *Id.* § 3(d)
61. *Id.* § 3(e).
62. *Id.* § 3(f).
63. *Id.* § 3(g).
64. *Id.* § 3(h).
65. *Id.* § 4(a).
66. *Id.* § 4(b).

I. Executive Order No. 2[67] regarding the funds, moneys, assets, and properties illegally acquired or misappropriated by former President Ferdinand Marcos

The change of government brought about an examination of the previous regime and its reputation for being a bastion of corruption and cronyism. After the People Power Revolution of 1986, the Philippine government came into

> possession of evidence showing that there are assets and properties purportedly pertaining to former President Ferdinand E. Marcos, and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines.[68]

It was recognized that the assets were "in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominium, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world."[69] PCGG was given the additional duty to investigate "any claims with respect to aforesaid assets and properties."[70] Consistent with the establishment of democracy and the principles of justice and due process, all claims against the former President Marcos and his wife, Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees notwithstanding, they were afforded the fair opportunity to contest the claims lodged against them before appropriate Philippine authorities.[71]

In this Order, Aquino froze "all assets and properties in the Philippines in which former President Marcos and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees have any interest or participation;"[72] prohibited "any person from transferring, conveying, encumbering or otherwise depleting or concealing such assets and properties or from assisting or taking part in their

67. Executive Order No. 2 (1986).

68. *Id.* First Whereas Clause.

69. *Id.* Second Whereas Clause.

70. *Id.* Fifth Whereas Clause.

71. *Id.* Sixth Whereas Clause.

72. *Id.* § 1.

transfer, encumbrance, concealment, or dissipation under pain of such penalties as are prescribed by law;"[73] It required:

> all persons in the Philippines holding such assets or properties, whether located in the Philippines or abroad, in their names as nominees, agents or trustees, to make full disclosure of the same to the Commission on Good Government within (30) days from publication of this Executive Order, or the substance thereof, in at least two (2) newspapers of general circulation in the Philippines.[74]

In addition, it imposed on former President Marcos and Imelda Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees the following prohibition:

> from transferring, conveying, encumbering, concealing or dissipating said assets or properties in the Philippines and abroad, pending the outcome of appropriate proceedings in the Philippines to determine whether any such assets or properties were acquired by them through or as a result of improper or illegal use of or the conversion of funds belonging to the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their official position, authority, relationship, connection or influence to unjustly enrich themselves at the expense and to the grave damage and prejudice of the Filipino people and the Republic of the Philippines.[75]

Appeal to foreign governments wherein such assets or properties may be found was also made in order to freeze them and to prevent their transfer, conveyance, encumbrance, concealment, or liquidation, pending the outcome of appropriate proceedings in the Philippines.[76]

J. PCGG Rules and Regulations

As authorized by E.O. 1, Presidential Commission on Good Government issued its Rules and Regulations on April 11, 1986. The Rules provided for the definition of various actions that PCGG was empowered to utilize in the performance of its functions.

"Ill-gotten wealth" was defined as follows:

> any asset, property, business enterprise or material possession of persons within the purview of Executive Orders Nos. 1 and 2, acquired by them directly, or indirectly thru dummies, nominees, agents, subordinates and/or business associates by any of the following means or similar schemes: (1) through misappropriation, conversion, misuse or malversation of public

73. *Id.* § 2.

74. *Id.* § 3.

75. *Id.* § 4.

76. *Id.* § 4.

funds or raids on the public treasury; (2) through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned; (3) by the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations; (4) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation in any business enterprise or undertaking; (5) through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interests; and (6) by taking undue advantage of official position, authority, relationship or influence for personal gain or benefit.[77]

"Sequestration" was taken to mean the:

taking into custody or placing under the Commission's control or possession any asset, fund or other property, as well as relevant records, papers and documents, in order to prevent their concealment, destruction, impairment or dissipation pending determination of the question whether the said asset, fund or property is ill-gotten wealth under Executive Orders Nos. 1 and 2.[78]

"Freeze order" was considered:

an order intended to stop or prevent any act or transaction which may affect the title, possession, status, condition, integrity or value of the asset or property which is or might be the object of any action or proceeding under Executive Orders Nos. 1 and 2, with a view to preserving and conserving the same or to preventing its transfer, concealment, disposition, destruction or dissipation.[79]

Lastly, "Hold order" was contemplated as:

an order to temporarily prevent a person from leaving the country where his departure will prejudice, hamper or otherwise obstruct the task of the Commission in the enforcement of Executive Orders Nos. 1 and 2, because such person is known or suspected to be involved in the properties or transactions covered by said Executive Orders. A 'hold order' shall be valid only for a maximum period of six months, unless for good reasons extended by the Commission en banc.[80]

77. Rules and Regulations of the PCGG, § 1(a).

78. *Id.* § 1(b).

79. *Id.* § 1(c).

80. *Id.* § 1(d).

The Rules had therefore outlined three actions that could be taken by PCGG in the performance of its mandate. These actions were considered provisional, pending the final determination of the legal issues before the Sandiganbayan, the proper court decreed by law[81] to hear and resolve the same.

A writ of sequestration, freeze order, or hold order could be issued by PCGG "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."[82] The person against whom a writ of sequestration, freeze order, or hold order had been directed "may request the lifting thereof in writing, either personally or through counsel within five (5) days from receipt of the writ of order, or in case of a hold order, from date of knowledge thereof."[83]

PCGG could conduct a hearing, after due notice to the parties concerned, to ascertain whether or not any particular asset, property, or enterprise constituted ill-gotten wealth and to determine the appropriate action to be taken in such circumstances.[84] As provided for by the Rules, the hearings to be undertaken by PCGG "shall not be strictly bound by the technical rules of evidence. The hearing shall be open to the public."[85]

A *prima facie* evidence of ill-gotten wealth was presumed in the case of "any accumulation of assets, properties and other material possessions of these persons covered by Executive Orders Nos. 1 and 2, whose value is out of proportion to their known lawful income."[86] After a determination by PCGG, which was based on the evidence presented before it, the Commission would determine whether or not there was "reasonable ground to believe that the asset, property, or business enterprise in question constitute ill-gotten wealth as described in Executive Orders Nos. 1 and 2."[87]

81. Executive Order No. 14 (1986), *amended by* Executive Order No. 14-A, (1986).

82. Rules and Regulations of the PCGG, § 3.

83. *Id.* § 5.

84. *Id.* § 7.

85. *Id.* § 8.

86. *Id.* § 9.

87. *Id.* § 10. The Section further provided that "in the event of an affirmative finding, the Commission shall certify the case to the Solicitor General for appropriate action in accordance with law. Businesses, properties, funds and other assets found to be lawfully acquired shall be immediately released and the writ of sequestration, hold/or freeze orders lifted accordingly."

III. *Republic v. COCOFED*[88]

A. Facts surrounding the case

The legal framework, most especially the creation of the Presidential Commission on Good Government, had brought about the current actions before the courts regarding the sequestration of assets believed to be ill-gotten. In the instant case subject of this commentary, the Supreme Court defined the substantive issue to be resolved as: "who may vote the sequestered UCPB shares while the main case for their reversion to the State is pending in the Sandiganbayan?"[89]

As recognized by the Court, the roots of the case were anchored on the historic events that transpired during the change of government in 1986:

> On the explicit premise that 'vast resources of the government have been amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad,' the Presidential Commission on Good Government was created by Executive Order No. 1 to assist the President in the recovery of the ill-gotten wealth thus accumulated whether located in the Philippines or abroad.[90]

Pursuant to the Executive Orders issued by former President Aquino, "the PCGG issued and implemented numerous sequestrations, freeze orders and provisional takeovers of allegedly ill-gotten companies, assets and properties, real or personal."[91] The shares of stock in the United Coconut Planters Bank registered in the names of the alleged one million coconut farmers, the Coconut Industry Investment Fund companies, and the properties of Respondent Eduardo Cojuangco Jr., were among the properties sequestered by PCGG.[92] Thereafter, on July 31, 1987, PCGG instituted an action for reconveyance, reversion, accounting, restitution, and damages docketed as Case No. 0033 in the Sandiganbayan.[93] This was made pursuant to Article XVIII, § 26 of the 1986 Constitution, which read:

> 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.
>
> 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.

88. G.R. Nos. 147062-64, Dec. 14, 2001.

89. *Id.* at 12.

90. *Id.* at 4 (*citing* Republic v. Sandiganbayan (First Division), 240 SCRA 376, 389-90 (1995)).

91. *Id.* at 5.

92. *Id.*

93. *Id.* at 6.

The Sandiganbayan, however, lifted the sequestration order made by PCGG against the UCPB shares on the ground that the COCOFED and the CIIF companies were not impleaded as parties-defendants in the action for reconveyance, reversion, accounting, restitution, and damages filed on July 31, 1987. In its ruling, the Sandiganbayan decreed that:

> Writ of Sequestration issued by the Commission was automatically lifted for PCGG's failure to commence the corresponding judicial action within the six-month period ending on August 2, 1987 provided under Section 26, Article XVIII of the 1987 Constitution. The anti-graft court noted that though these entities were listed in an annex appended to the Complaint, they had not been named as parties-respondents.[94]

In the opinion of the Sandiganbayan, PCGG, thus, committed a technical mistake that resulted in the nullification of the sequestration order.

In challenging the Sandiganbayan Resolution in a Petition for Certiorari docketed as G.R. No. 96073, which was subsequently decided on January 23, 1995,[95] PCGG argued that an "'action or proceeding' was actually filed with regard or in relation to, in respect of., in connection with, or concerning the sequestration, freezing or provisional takeover of corporations and other property, and that said 'action or proceeding' was filed within the six-month period provided by the Constitution."[96] PCGG argued further that with regard to the contemplated judicial action or proceeding provided for in the Constitution,

> [t]here is no particular description or specification of the kind and character of the 'judicial action or proceeding' contemplated, much less an explicit requirement for the impleading of the of the corporations sequestered, or of the ostensible owners of property suspected to be ill-gotten. The only modifying or qualifying requirement in the constitution is that the action or

94. *Id.*

95. Republic v. Sandiganbayan (First Division), 240 SCRA 376 (1995).

96. *Id.* at 465.

> proceeding be filed *'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.* What is apparently contemplated is that the action or proceeding concern of involve the matter of sequestration, freezing or provisional takeover of specific property, corporeal or incorporeal, personal or real; and should have as objective, the demonstration by competent evidence that the property thus sequestered, frozen or taken over is indeed 'ill-gotten wealth' over which the government has a legitimate claim for recovery and other relief. Stated otherwise, the action or proceeding contemplated is one for the *final* substantiation or proof of the *prima facie* showing on the basis of which a particular order of sequestration, freezing or takeover was issued.[97]

The Sandiganbayan, on February 5, 1991, ordered the holding of elections for the Board of Directors of UCPB. This was, however, reversed by a Restraining Order issued by the Court on March 5, 1991, upon motion by PCGG, thus enjoining the holding of the election. In a later order dated March 3, 1992, the Court later reversed itself and lifted the Restraining Order, thus permitting UCPB to proceed with the election of its Board and allowing the sequestered shares to be voted by their registered owners.[98]

Thereafter, the Court issued a Resolution dated February 16, 1993, which declared that the right to vote on stock in their names at the meetings of the UCPB could not be conceded at the time, as such right had yet to be established before the Sandiganbayan. Until the court makes a determination on the matter, COCOFED et al., Ballares et al., and Cojuangco et al. cannot be deemed legitimate owners of UCPB stock and cannot be accorded the right to vote them.[99] The Court further stated:

> IN VIEW OF THE FOREGOING, the Court recalls and sets aside the Resolution dated March 3, 1992 and, pending resolution on the merits of the action at bar, and until further orders, suspends the effectivity of the lifting of the sequestration decreed by the Sandiganbayan on November 15, 1990, and directs the restoration of the status quo ante, so as to allow the PCGG to continue voting the shares of stock under sequestration at the meetings of the United Coconut Planters Bank.[100]

On January 23, 1995, the Supreme Court rendered its Decision in G.R. No. 96073, nullifying and setting aside the November 15, 1990 Sandiganbayan Resolution, which lifted the sequestration of the UCPB shares.[101] The Court, speaking through Chief Justice Andres Narvasa, enunciated that the express impleading of COCOFED et al. in the action

97. *Id.* at 464-65.

98. *Republic-Cocofed*, G.R. Nos. 147062-64 at 7.

99. *Id.*

100. *Id.*

101. *Id.* at 8.

filed before the Sandiganbayan was unnecessary as "the judgment may simply be directed against the shares of stock shown to have been issued in consideration of ill-gotten wealth."[102] Furthermore, the Court stated that the companies "are simply the *res* in the actions for the recovery of illegally acquired wealth, and there is, in principle, no cause of action against them and no ground to implead them as defendants in said actions."[103]

After the decision of the Court in *Republic v. Sandiganbayan*, PCGG subdivided Case No. 0033 filed before the Sandiganbayan into eight complaints and docketed them as Case Nos. 0033-A to 0033-H.[104]

On February 13, 2001, the Board of Directors of UCPB received a letter written on behalf of COCOFED and the alleged nameless one million coconut farmers, demanding the holding of a stockholders' meeting for the purpose of, *inter alia*, electing the members of the Board. In response to this, the Board approved a Resolution calling for a stockholders' meeting on March 6, 2001 at three o'clock in the afternoon.[105]

Ten days thereafter, on February 23, 2001, COCOFED, et al. and Ballares, et al. filed a Class Action Omnibus Motion asking the Sandiganbayan: (1) to enjoin PCGG from voting the UCPB shares of stock registered in the respective names of the more than one million coconut farmers; and (2) to enjoin PCGG from voting the SMC shares registered in the names of the 14 CIIF holding companies including those registered in the name of PCGG.[106]

On February 28, 2001, after hearing the parties on oral argument, the Sandiganbayan issued the assailed Order allowing the petitioners in the Class Action Omnibus Motion to exercise their rights to vote the sequestered UCPB shares of stock.[107]

The Sandiganbayan then issued on March 1, 2001 a Writ of Preliminary Injunction:

> enjoining PCGG from voting the sequestered shares of UCPB at its stockholders' meeting on March 6, 2001, or at anytime at which the meeting may be continued or reset until otherwise ordered by the same court. In the same writ, the Sandiganbayan also directed the chairman and the secretary of the stockholders' meeting of UCPB to acknowledge the right of Eduardo M. Cojuangco, Jr. et al. to vote the shares of stock

102. *Republic-Sandiganbayan*, 240 SCRA at 469.

103. *Id.*

104. *Republic-COCOFED*, G.R. Nos. 147062-64 at 8.

105. *Id.* at 9.

106. *Id.*

107. *Id.*

registered in their names on all matters that may be properly considered before said stockholders' meeting.[108]

On March 5, 2001, the Republic of the Philippines, represented by PCGG,

> filed the petition premised on the fact that at all times prior to the questioned order, PCGG had been voting the sequestered UCPB shares registered in the names of private respondents under the authority of the Court's pronouncement in G.R. No[s]. 96073 and 104850. PCGG claimed that the right granted to it to vote the sequestered shares was the *status quo* and for this *status quo* to be disturbed, there must be a clear showing that this Court has reversed or, at the very least, modified its prior pronouncements on the matter. Since there was none, petitioner contended that respondent *Sandiganbayan* gravely abused its discretion, tantamount to lack or excess of jurisdiction, when it granted the right to vote said sequestered shares to private respondents COCOFED, Ballares, and Cojuangco, Jr. et al. PCGG likewise insisted that the subject sequestered shares were purchased with coconut levy funds, funds declared public in character, and that the Resolution issued by this Court dated February 13, 1993 in G.R. No. 96073 remains effective.[109]

The case had initially been raffled to the Court's Third Division, which, by a vote of 3-2, issued a Resolution dated March 6, 2001 requiring the parties to maintain the *status quo ante* of the issuance of the questioned Sandiganbayan Order dated February 28, 2001.

On March 7, 2001, Respondent COCOFED et al. moved that the instant Petition be heard by the Court *en banc*, which motion was unanimously granted by the Third Division.[110]

Thereafter, the Supreme Court, on April 17, 2001, heard Oral Arguments regarding the case in Baguio City.[111]

108. *Id.* at 6-7 (Melo, J., dissenting).

109. *Id.* at 7 (Melo, J., dissenting).

110. *Id.* at 10.

111. *Id.* During the hearing, it admitted the intervention of a group of coconut farmers and farm worker organizations, the *Pambansang Koalisyon ng mga Samahang Magsasaka at Manggagawa ng Niyugan* (PKSMMN). The coalition claims that its members have been excluded from the benefits of the coconut levy fund. Among other assertions, it joined petitioner in praying for the exclusion of private respondents in voting the sequestered shares.

In ruling as regards the intervention of PKSMMN, the Court stated:

> "Intervenors anchor their interest in this case on an alleged right that they are trying to enforce in another Sandiganbayan case docketed as SB Case No. 0187. In that case, they seek the recovery of the subject UCPB shares from herein private respondents and the corporations controlled by them. Therefore, the rights sought to be protected and the reliefs prayed for by intervenors are still being litigated in the said case. The purported rights they are invoking are mere expectancies wholly dependent on the outcome of that case in the Sandiganbayan.
>
> "Clearly, we cannot rule on intervenors' alleged right to vote at this time and in this case. That right is dependent upon the Sandiganbayan's resolution of their action for the recovery of said sequestered shares. Given the patent fact that intervenors are not registered stockholders of UCPB as of the moment, their asserted rights cannot be ruled upon in the present proceedings. Hence, no positive relief can be given them now, except insofar as they join petitioner in barring private respondents from voting the subject shares." (*Id.* at 43)

B. Majority holding[112]

The majority of the Court held that "the government should be allowed to continue voting those shares inasmuch as they were purchased with coconut levy funds — funds that are *prima facie* public in character or, at the very least, are 'clearly affected with public interest.'"[113]

In discussing the merits of the case, the Court articulated several principles with respect to the issue of shares that had been sequestered pursuant to prevailing laws. The majority holding was reasoned out in the following manner: *As a general rule, sequestered shares are voted by the registered shareholder. Exceptions to this rule are shares that were acquired with public funds. Given the fact that the UCPB shares were acquired with coconut levy funds and that the coconut levy funds are affected with public interest, such funds are prima facie public funds.*

The right and privilege to vote the shares of a corporation is reserved to the registered owner thereof.[114] Even the voting of shares that were sequestered should defer to this general rule. As the sequestrating agent of the State, PCGG cannot perform acts of dominion over the shares, as it is a mere conservator. As declared by the Court in *BASECO v. PCGG*,[115]

> One thing is certain, and should be stated at the outset: the *PCGG cannot exercise acts of dominion* over property sequestered, frozen or provisionally taken over. AS already earlier stressed with no little insistence, the act of sequestration; freezing or provisional takeover of property does not import or bring about a divestment of title over said property; does not make the

112. Constituted by Chief Justice Davide and Justices Bellosillo, Puno, Vitug, Mendoza, Quisumbing, Buena, de Leon, and Carpio, with Justice Panganiban as *ponente*.

113. *Id.* at 12.

114. *See* Batas Pambansa Blg. 68 (Corporation Code), § 24 (1980).

115. BASECO v. PCGG, 150 SCRA 181 (1987). In this case, private corporation Bataan Shipyard and Engineering Co. was placed under sequestration by PCGG.

PCGG the owner thereof. In relation to the property sequestered, frozen or provisionally taken over, the PCGG *is a conservator, not an owner.* Therefore, it can not perform acts of strict ownership; and this is specially true in the situations contemplated by the sequestration rules where, unlike cases of receivership, for example, no court exercises effective supervision or can upon due application and hearing, grant authority for the performance of acts of dominion.

Equally evident is that the resort to the provisional remedies in question should entail the least possible interference with business operations or activities so that, in the event that the accusation of the business enterprise being "ill gotten" be not proven, it may be returned to its rightful owner as far as possible in the same condition as it was at the time of sequestration.

x x x

The PCGG may thus exercise only powers of administration over the property or business sequestered or provisionally taken over, much like a court-appointed receiver, such as to bring and defend actions in its own name; receive rents; collect debts due; pay outstanding debts; and generally do such other acts and things as may be necessary to fulfill its mission as conservator and administrator. In this context, it may in addition enjoin or restrain any actual or threatened commission of acts by any person or entity that may render moot and academic, or frustrate or otherwise make ineffectual its efforts to carry out its task; punish for direct or indirect contempt in accordance with the Rules of Court; and seek and secure the assistance of any office, agency or instrumentality of the government. In the case of sequestered businesses generally (i.e., going concerns, businesses in current operation), as in the case of sequestered objects, its essential role, as already discussed, is that of conservator, caretaker, "watchdog" or overseer. It is not that of manager, or innovator, much less an owner.[116]

In a similar manner, the Court, in *Cojuangco, Jr. v. Roxas,*[117] reiterated that "PCGG has no right to vote the sequestered shares...including the sequestered corporate shares. Only their owners, duly authorized representatives or proxies may vote the said shares."[118]

There are, however, exceptions to this rule, as can be seen from the two-tiered test, as reiterated in *PCGG v. Cojuangco, Jr.*,[119] to wit:

Until the main sequestration suit is resolved, the right to vote the SMC sequestered shares depends on whether the two-tiered test set by the Court in its June 10, 1993 Resolution in G.R. No. 115352 (Cojuangco v. Calpo) concurs. Those guidelines must be observed by the SB in resolving similar motions involving the right to vote the said shares, which are:

116. *Id.* at 236-37.

117. Cojuangco, Jr. v. Roxas, 195 SCRA 797 (1991).

118. *Id.* at 814.

119. PCGG v. Cojuangco, Jr., 302 SCRA 217 (1999).

1: whether there is *prima facie* evidence showing that the said shares are ill-gotten and thus belong to the state; and

2. whether there is an immediate danger of dissipation thus necessitating their continued sequestration and voting by the PCGG while the main issue pends with the Sandiganbayan.[120]

From the general two-tiered principle, an exception was made with regard to sequestered shares acquired with public funds. In the mind of the Court, the right to vote such shares should not be evaluated from the two-tier test. The issue should, rather, be resolved by the "public character" test as essentially enunciated in *BASECO v. PCGG* and *Cojuangco Jr. v. Roxas.* Where government shares are taken over by private persons or entities who/which registered them in their own names and where the capitalization or shares that were acquired with public funds somehow landed in private hands, PCGG may vote upon these shares. In the words of the Court in *Cojuangco Jr. v. Roxas*:

The rule in this jurisdiction is, therefore, clear. The PCGG cannot perform acts of strict ownership of sequestered property. It is a mere conservator. It may not vote the shares in a corporation and elect the members of the board of directors. The only conceivable exception is in a case of a takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands as in BASECO.[121]

In her concurring opinion in *BASECO v. PCGG*, Mme. Justice Melencio-Herrera stated that while the voting of sequestered shares of stock is "an exercise of an attribute of ownership" and that the voting of shares "goes beyond the purpose of a writ of sequestration," she nonetheless affirmed the right to vote of PCGG with regard to sequestered stock acquired with public funds:

I have no objection to according the right to vote sequestered stock in case of a take-over of business actually belonging to the government or whose capitalization comes from public funds but which, somehow, landed in the hands of private persons, as in the case of BASECO. To my mind, however, caution and prudence should be exercised in the case of sequestered shares of an on-going private business enterprise, specially the sensitive ones, since the true and real ownership of said shares is yet to be determined and proven more conclusively by the Courts.[122]

The justification of the right to vote sequestered shares of stock in *BASECO v. PCGG* was discussed by the Court in this wise:

120. *Id.* at 223-24.

121. *Cojuangco, Jr.*, 195 SCRA at 813.

122. *BASECO*, 150 SCRA at 253.

> Now, in the special instance of a business enterprise shown by evidence to have been 'taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos,' the PCGG is given power and authority, as already adverted to, to 'provisionally take (it) over in the public interest or to prevent * * (its) disposal or dissipation;' and since the term is obviously employed in reference to going concerns, or business enterprises in operation, something more than mere physical custody is connoted; the PCGG may in this case exercise some measure of control in the operation, running, or management of the business itself.[123]

Thus, the general rule that PCGG may not exercise acts of ownership must accede to situations wherein a business enterprise was taken over by private individuals. In the present case, the Court formulated the "public character" test requirements as follows:

> (1) Where government shares are taken over by private persons or entities who/which registered them in their own names, and
>
> (2) Where the capitalization or shares that were acquired with public funds somehow landed in private hands.[124]

For the Court, these exceptions are based on the principle that "legal fiction must yield to truth; that public property registered in the names of non-owners is affected with trust relations; and that the *prima facie* beneficial owner should be given the privilege of enjoying the rights flowing from the *prima facie* fact of ownership."[125] As the Court decreed:

> ...when sequestered shares registered in the names of private individuals or entities are alleged to have been acquired with ill-gotten wealth, then the two-tiered test is applied. However, when the sequestered shares in the name of private individuals or entities are shown, *prima facie*, to have been (1) originally government shares, or (2) purchased with public funds or those affected with public interest, then the two-tiered test does not apply. Rather, the public character exceptions in *Baseco v. PCGG* and *Cojuangco Jr. v. Roxas* prevail; that is, the government shall vote the shares.[126]

As required by the "public character" test itself, it is necessary, therefore, that prior to any adjudication on the question of the right to vote, there must first be a determination whether or not the contended sequestered shares of stock originated from public funds, but which eventually landed in the hands of private individuals. It is precisely because of this requirement for prior determination that the Court, in this case, declared the UCPB shares of stock, which are the objects at issue, to be *prima facie public funds*. In support of this declaration, the majority, in the course of its holding, made use of the different modes of determining whether the funds are public or private in character.

123. *Id.* at 237 (citations omitted). In this case, the facts manifest that "BASECO was owned and controlled by President Marcos 'during his administration, through nominees, by taking undue advantage of his public office and/or using his powers, authority, or influence,' and that it was by and through the same means, that BASECO had taken over the business and/or assets of the National Shipyard and Engineering Co., Inc., and other government-owned or controlled entities." (*Id.* at 219)

124. *Republic-COCOFED*, G.R. Nos. 147062-64 at 14.

125. *Id.* at 15.

126. *Id.* at 18.

In the first place, there is no disagreement as regards the money used to purchase the sequestered UCPB shares. It has been established that the same were purchased using the Coconut Consumers Stabilization Fund. In other words, from the ordaining statue itself, it is clear that coconut levy funds were used to purchase the shares.[127]

Without a doubt, the coconut levy funds that were used to purchase the shares are "affected with public interest," being imposed by virtue of the powers of taxation of the State. It would be a travesty, therefore, if the right to vote such stock — acquired by public funds — would be given to private individuals. In discussing the reasons for not affording the right to vote to private individuals, though they may be the registered shareholders, the Court said in the February 16, 1993 Resolution issued in connection with the case of *Republic v. Sandiganbayan*:

> The coconut levy funds being 'clearly affected with public interest, it follows that the corporations formed and organized from those funds, and all assets acquired therefrom should also be regarded as 'clearly affected with public interest.'
>
> x x x x x x x x x
>
> Assuming, however, for purposes of argument merely, the lifting of sequestration to be correct, may it also be assumed that the lifting of sequestration removed the character of the coconut levy companies of being affected with public interest, so that they and their stock and assets may now be considered to be of private ownership? May it be assumed that the lifting of sequestration operated to relieve the holders of stock in the coconut levy companies — affected with public interest — of the obligation of proving how that stock had been legitimately transferred to private ownership, or that those stockholders who had had some part in the collection, administration, or disposition of the coconut levy funds are now deemed qualified to acquire said stock, and freed from any doubt or suspicion that they had taken advantage of their special or fiduciary relation with the agencies in charge of the coconut levies and the funds thereby accumulated? The obvious answer to each of the questions is a negative one. It seems plain that the lifting of sequestration has no relevance to the nature of the coconut levy companies or their stock or property, or to the

127. *See* discussion *supra* Part II. E.

legality of the acquisition by private persons of their interest therein, or to the latter's capacity or disqualification to acquire stock in the companies or any property acquired from coconut levy funds.

This being so, the right of the [petitioners] to vote stock in their names at the meetings of the UCPB cannot be conceded at this time. That right still has to be established by them before the Sandiganbayan. Until that is done, they cannot be deemed legitimate owners of UCPB stock and cannot be accorded the right to vote them.[128]

It was, however, contended by respondents that the above-quoted Resolution was in the nature of a temporary restraining order, which became *functus oficio* when the Court rendered its final decision in *Republic v. Sandiganbayan*.[129] This contention stemmed from the dispositive portion of said decision, to wit:

WHEREFORE, judgment is hereby rendered:

A. *NULLIFYING AND SETTING ASIDE:*

1) in G.R. No. 96073, the challenged Resolution of the Sandiganbayan promulgated on November 39, 1990;

2) in G.R. No. 104065, the Sandiganbayan's Resolutions issued on November 18, 1991 and January 31, 1992;

3) in G.R. No. 104167, the challenged Resolutions of the Sandiganbayan issued on October 28, 1991 and February 19, 1991;

4) in G.R. No. 104168, said Court's challenged Resolutions dated October 11, 1991 and February 12, 1992;

5) in G.R. No. 104679, its challenged Resolutions issued on December 13, 1991 and March 18, 1992;

6) in G.R. No. 104850, its questioned Resolution promulgated on April 8, 1992;

7) in G.R. No. 104883, its questioned Resolution promulgated on April 24, 1992;

8) in G.R. No. 105170, its questioned Resolutions dated September 17, 1991 and January 17, 1992;

9) in G.R. No. 105205, its Resolutions issued on November 15, 1991 and January 17, 1992;

10) in G.R. No. 105206, its Resolutions dated October 10, 1991 and May 4, 1992;

128. *Republic-COCOFED*, G.R. Nos. 147062-64 at 20-21.

129. *Id.* at 21.

11) in G.R. Nos. 105711-12, its assailed Decision dated March 30, 1992, and Resolutions dated May 28, 1992;

12) in G.R. 105808, the Sandiganbayan's Resolutions dated October 3, 1991 and May 26, 1992; and in G.R. No. 105809, its Resolutions issued on May 25, 1992;

13) in G.R. No. 105850, the Resolutions issued on December 4, 1991 and June 18, 1992;

14) in G.R. No. 106176, the challenged Resolutions dated October 18, 1991 and June 19, 1992;

15) in G.R. No. 106765, the Sandiganbayan's impugned Decision dated November 27, 1990;

16) in G.R. No. 107233, its Resolutions issued on November 29, 1991; and

17) In G.R. No. 109314, its impugned Resolutions dated November 29, 1991 and February 16, 1993;

B. CONFIRMING AND MAINTAINING the temporary restraining orders issued in G.R. Nos. 104883, 105170, 105206, 105808, 105809, 107233, and 107908, which shall continue in force and effect during the continuation of the proceedings in the corresponding civil actions in the Sandiganbayan, subject to the latter's power to modify or terminate the same in the exercise of its sound discretion in light of such evidence as may subsequently be adduced; and

C. DISMISSING the petitions in G.R. No. 107908 and 109592 for lack of merit.[130]

Respondents argued that since the Resolution in G.R. No. 96073 was not among those confirmed and maintained in the decision in *Republic v. Sandiganbayan*, it already lost it effectivity. Thus, in their mind, the bar previously dictated by the Court in its February 16, 1993 Resolution no longer applied.

Such argument was nonetheless refuted by the petitioners in its Memorandum, which asserted:

Indeed, there was no need to expressly re-affirm the 16 February 1993 Resolution in the Consolidated Decision dated 23 January 1995 in G.R. No. 96073. The Resolution dated 16 February 1993 is not a mere provisional remedy or temporary restraining order. It is a categorical declaration on the character of the coconut levy funds and the legal effects of that declaration, *i.e.*, [the PCGG] has the right to vote the sequestered UCPB shares *pendente lite*. The ruling made in the Resolution dated 16 February 1993 confirming the public nature of the coconut levy funds and denying claimants their purported right to vote is an affirmation of

130. 240 SCRA at 474-76 (emphasis supplied).

> doctrines laid down in the cases of *COCOFED v. PCGG* supra, *Baseco v. PCGG*, supra, and *Cojuangco v. Roxas*, supra.
>
> Therefore it is of no moment that the Resolution dated 16 February 1993 has not been ratified. Its jurisprudential bases remain. Indeed, the Consolidated Decision dated 23 January 1995 did not reverse or abandon the doctrinal pronouncements on the aforesaid cases holding: (1) that assets acquired with public funds constitute an *exception* to the application in the two-tiered test; and (2) in which case, until it is demonstrated satisfactorily that they have legitimately become private funds, they must, *prima facie* and by reason of the circumstances in which they were raised and accumulated, be deemed public.[131]

Regardless of whether or not the Supreme Court Resolution dated February 16, 1993 issued in connection with G.R. No. 96073 was *functus oficio*, the fact still remains that the disputed UCPB shares were acquired through public funds, in the form of the CCSF. No amount of contortion will change this fact. As established by the Court, such juridical situation has not changed. "It is still the truth today: 'the coconut levy funds are clearly affected with public interest.' Private respondents have not 'demonstrated satisfactorily that they have legitimately become private funds.'"[132]

In the same light, the Court inquired as to the delay of the respondents to enforce their right to vote the sequestered shares, if they truly believed that the decision in *Republic v. Sandiganbayan* was decided in their favor. As questioned by the Court:

> If private respondents really and sincerely believed that the *final* Decision of the Court in *Republic v. Sandiganbayan* (G.R. No. 96073, promulgated on January 23, 1995) granted them the right to vote, why did they wait for the lapse of six long years before definitively asserting it (1) through their letter dated February 13, 2001, addressed to the UCPB Board of Directors, demanding the holding of a shareholders' meeting on March 6, 2001; and (2) through their Omnibus Motion dated February 23, 2001 filed in the court *a quo*, seeking to enjoin PCGG from voting the subject sequestered shares during the said stockholders' meeting? Certainly, if they even half believed their submission now — that they already had such right in 1995 — why are they suddenly and imperiously claiming it *only now*?[133]

Furthermore, it was stressed that the assailed Sandiganbayan Order dated February 28, 2001, allowing private respondents to vote the sequestered shares, was not based on any prior determination that the shares of stock and the coconut levy used in its acquisition have "legitimately become private

131. Memorandum for Petitioner, at 56-57.

132. *Republic-COCOFED*, G.R. Nos. 147062-64 at 22.

133. *Id.* at 23.

funds."[134] Until such a determination is made, the government, through PCGG as its authorized agent, must be allowed to vote the shares.

In the mind of the Court, the Sandiganbayan, in issuing the assailed Order, grossly misapplied the two-tiered test. As if to further clarify its holding, the Court stated:

> To stress, the two-tiered test is applied only when the sequestered asset in the hands of a private person is alleged to have been acquired with ill-gotten wealth. Hence, in *PCGG v. Cojuangco*, we allowed Eduardo Cojuangco Jr. to vote the sequestered shares of the San Miguel Corporation (SMC) registered in his name but alleged to have been acquired with ill-gotten wealth. We did so on his representation that he had acquired them with borrowed funds *and* upon failure of the PCGG to satisfy the "two-tiered" test. This test was, however, not applied to sequestered SMC shares that were purchased with coco levy funds.
>
> In the present case, the sequestered UCPB shares are confirmed to have been acquired with coco levies, not with alleged ill-gotten wealth. Hence, by parity of reasoning, the right to vote them is not subject to the "two-tiered test" but to the public character of their acquisition which...must *first* be determined.[135]

The Court, "to avoid misunderstanding and confusion," subsequently went on to categorically declare that the coconut levy funds are "not only affected with public interest" but are in fact "*prima facie* public funds."[136]

Citing American jurisprudence, the Court defined public funds as "moneys belonging to the State or to any political subdivision of the State; more specifically, taxes, customs duties and moneys raised by operation of law for the support of the government or for the discharge of its obligations."[137] Without question, the coconut levy funds fall under this definition, by virtue of the following reasons:

> 1. Coconut levy funds are raised with the use of the police and taxing powers of the State
>
> 2. They are levies imposed by the State for the benefit of the coconut industry and its farmers.
>
> 3. Respondents have judicially admitted that the sequestered shares were purchased with public funds.
>
> 4. The Commission on Audit (COA) reviews the use of coconut levy funds.

134. *Id.*

135. Id. at 24.

136. *Id.* at 24-25.

137. *Id.* at 25 (*citing* Becker v. Commonwealth, 5 SE2d 525 (1939)).

5. The Bureau of Internal Revenue (BIR), with the acquiescence of private respondents, has treated them as public funds.

6. The very laws governing coconut levies recognize their public character.[138]

First of all, as clearly exposed by pertinent issuances, the coconut levy funds were raised through the police and taxing powers of the State. As stated by the Court, "[i]ndeed, coconut levy funds partake of the nature of taxes which, in general, are enforced proportional contributions from persons and properties, exacted by the State by virtue of its sovereignty for the support of government and for all public needs."[139]

Based on this, a tax imposed by the State has three elements, namely: a) it is an enforced proportional contribution from persons and properties; b) it is imposed by the State by virtue of its sovereignty; and c) it is levied for the support of the government. As regards the first element, the coconut levy funds were "generated by virtue of statutory enactments imposed on the coconut farmers requiring the payment of prescribed amounts," as in the case of Presidential Decree No. 276, creating the CCSF. In satisfaction of the second element, the coconut levies were "imposed pursuant to the laws enacted by the proper legislative authorities of the State," as in the case of the same Presidential Decree issued by former President Marcos in the exercise of his legislative powers under Martial Law. On the third element, the funds were clearly exacted for a public purpose, as "there is absolutely no question that they were collected to advance the government's avowed policy of protecting the coconut industry."[140]

Taxation may by imposed by the State either for the raising of revenues or for the rehabilitation or stabilization of a particular industry. It is not necessary that the tax be exacted for a general purpose. As the Court stated, it may be designated for a specified purpose, yet it is still considered public in character:

> Even if the money is allocated for a special purpose and raised by special means, it is still public in character. In the case before us, the funds were even used to organize and finance State offices. In *Cocofed v. PCGG*, the Court observed that certain agencies or enterprises "were organized and financed with revenues derived from coconut levies imposed under a succession of laws of the late dictatorship x x x with deposed Ferdinand Marcos and his cronies as the suspected authors and chief beneficiaries of the resulting coconut industry monopoly."
>
> x x x.

138. *Republic-COCOFED*, G.R. Nos. 147062-64 at 25-26.

139. *Id.* at 26.

140. *Id. at* 26-29.

> It cannot be denied that the coconut industry is one of the major industries supporting the national economy. It is, therefore, the State's concern to make it a strong and secure source not only of the livelihood of a significant segment of the population, but also of export earnings the sustained growth of which is one of the imperatives of economic stability.[141]

Secondly, the Court admitted that the coconut levy funds were levied for the benefit of the coconut industry and its farmers. It drew a similarity between the coconut levy funds and the sugar and oil stabilization funds. As decreed by the Court, the coconut levy constitutes State funds even if it was held for a special public purpose.[142]

Citing Executive Order No. 481,[143] the Court likened the coconut levy to the sugar levy, for the reason that both funds were "special public funds acquired through the taxing and police powers of the State."[144] As a manner of lateral analogy, the Court cited its decision in *Gaston v. Republic Planters Bank*,[145] which held that such funds were indeed public funds:

> The stabilization fees collected are in the nature of a tax which is within the power of the State to impose for the promotion of the sugar industry (*Lutz vs. Araneta*, 98 Phil. 148). They constitute sugar liens (Sec. 7[b], P.D. No. 388). The collections made accrue to a 'Special Fund,' a 'Development and Stabilization Fund,' almost identical to the 'Sugar Adjustment and Stabilization Fund' created under Section 6 of Commonwealth Act 567. The tax collected is not in a pure exercise of the taxing power. It is levied with a regulatory purpose, to provide means for the stabilization of the sugar industry. The levy is primarily in the exercise of the police power of the State. (Lutz vs. Araneta, *supra*.)."
>
> x x x
>
> The stabilization fees in question are levied by the State upon sugar millers, planters and producers for a special purpose — that of 'financing the growth and development of the sugar industry and all its components, stabilization of the domestic market including the foreign market.' *The fact that the State has taken possession of moneys pursuant to law is sufficient to constitute them as state funds, even though they are held for a special purpose (Lawrence v. American Surety Co., 263 Mich 586. 294 ALR 535, cited in 42 Am. Jur., Sec. 2., p. 718). Having been levied for a special purpose, the revenues collected are to be treated as a special fund, to be, in the language of the statute, 'administered in trust' for the purpose intended. Once the purpose has been fulfilled or abandoned, the balance, if any, is to be transferred to the general funds of the Government. That*

141. *Id.* at 30.

142. *Id.*

143. Dated May 1, 1998.

144. *Republic-COCOFED*, G.R. Nos. 147062-64 at 31.

145. 158 SCRA 627 (1988).

is the essence of the trust intended (see 1987 Constitution, Art. VI, Sec. 29[3], lifted from the 1935 Constitution, Article VI, Sec. 23[1]. (Italics supplied)

> The character of the Stabilization Fund as a special fund is emphasized by the fact that the funds are deposited in the Philippine National Bank and not in the Philippine Treasury, moneys from which may be paid out only in pursuance of an appropriation made by law (1987 Constitution, Article VI, Sec. 29[1], 1973 Constitution, Article VIII, Sec. 18[1]).
>
> That the fees were collected from sugar producers, planters and millers, and that the funds were channeled to the purchase of shares of stock in respondent Bank do not convert the funds into a trust fund for their benefit nor make them the beneficial owners of the shares so purchased. It is but rational that the fees be collected from them since it is also they who are to be benefited from the expenditure of the funds derived from it. The investment in shares of respondent Bank is not alien to the purpose intended because of the Bank's character as a commodity bank for sugar conceived for the industry's growth and development. Furthermore, of note is the fact that one-half (1/2) or Po.50 per picul, of the amount levied under P.D. No. 388 is to be utilized for the 'payment of salaries and wages of personnel, fringe benefits and allowances of officers and employees of PHILSUCOM' thereby immediately negating the claim that the entire amount levied is in trust for sugar, producers, planters and millers.
>
> To rule in petitioners' favor would contravene the general principle that revenues derived from taxes cannot be used for purely private purposes or for the exclusive benefit of private persons. The Stabilization Fund is to be utilized for the benefit of the entire sugar industry, 'and all its components, stabilization of the domestic market including the foreign market,' the industry being of vital importance to the country's economy and to national interest.[146]

In similar fashion, the Court ruled that oil stabilization funds were similarly public in character and, therefore, subject to audit by the Commission on Audit. In *Osmeña v. Orbos*,[147] the Court resolved:

> Hence, it seems clear that while the funds collected may be referred to as taxes, they are exacted in the exercise of the police power of the State. Moreover, that the [Oil Price Stabilization Fund] is a special fund is plain from the special treatment given it by E.O. 137. It is segregated from the general fund; and while it is placed in what the law refers to as a 'trust liability account,' the fund nonetheless remains subject to the scrutiny and review of the COA. The Court is satisfied that these measures comply with the constitutional description of a 'special fund.' Indeed, the practice is not without precedent.[148]

146. *Id.* at 632-34

147. 220 SCRA 703 (1993).

148. *Id.* at 711.

In light of applicable jurisprudence, the majority therefore reached the conclusion that the coconut levy funds, just like sugar levy and oil price stabilization funds, are funds exacted by the State by virtue of its police and taxing powers. In this ratiocination alone, the Court established that the funds in question in this case were, and are, *prima facie* public funds.[149]

Thirdly, to further support its assertion, the Court exposes that the respondents themselves judicially admitted that the coconut levies are government funds. Quoting from the pleadings of the respondent themselves, the majority unveiled their concessions:

> Collections on both levies constitute government funds. However, unlike other taxes that the Government levies and collects such as income tax, tariff and customs duties, etc., the collections on the CCSF and CIDF are, by express provision of the laws imposing them, for a definite purpose, not just for any governmental purpose. As stated above part of the collections on the CCSF levy should be spent for the benefit of the coconut farmers. And in respect of the collections on the CIDF levy, P.D. 582 mandatorily requires that the same should be spent *exclusively* for the establishment, operation and maintenance of a hybrid coconut seed garden and the distribution, for free, to the coconut farmers of the hybrid coconut seednuts produced from that seed garden.
>
> On the other hand, the laws which impose special levies on specific industries, for example on the mining industry, sugar industry, timber industry, etc., do not, by their terms, expressly require that the collections on those levies be spent exclusively for the benefit of the industry concerned. And if the enabling law thus so provide, the fact remains that the governmental agency entrusted with the duty of implementing the purpose for which the levy is imposed is vested with the discretionary power to determine when and how the collections should be appropriated.[150]

Fourthly, the audit conducted by the Commission on Audit itself manifests the very nature of the coconut levy funds as public. By virtue of COA Office Order No. 86-9470 dated April 15, 1986, "the COA reviewed the expenditure and use of the coconut levies allocated for the acquisition of the UCPB. The audit was aimed at ascertaining whether these were utilized for the purpose for which they had been intended."[151] Since the funds in question were subjected to COA audit — which power was given to the

149. *Republic-COCOFED*, G.R. Nos. 147062-64 at 34.

150. *Id.* at 34-35 (emphasis supplied). This was presented as Exhibit 196 of the respondents, which is the July 18, 1975 letter of Rolando de la Cuesta, acting corporate secretary of the Philippine Coconut Authority, to Finance Secretary Cesar Virata, submitted as part of the Class Action Omnibus Motion for COCOFED.

151. *Id.* at 35.

COA by the 1987 Constitution[152] — it is beyond argument that they are *prima facie* public in character.[153]

Fifthly, the Bureau of Internal Revenue itself has pronounced that the coconut levy funds are taxes exacted by the State. The Court cited the response of the Commissioner of Internal Revenue to the query posited by the administrator of the Philippine Coconut Authority regarding the character of the coconut levy funds. In affirming the public character of the funds, BIR held: "[T]he coconut levy is not a public trust fund for the benefit of the coconut farmers, but is in the nature of a tax and, therefore,...public funds that are subject to government administration and disposition."[154]

Furthermore, in issuing Executive Order No. 277,[155] then President Ramos directed the mode of treatment, utilization, administration, and management of the coconut levy funds as follows:

> (a) The coconut levy funds, which include all income, interests, proceeds or profits derived therefrom, as well as all assets, properties and shares of stocks procured or obtained with the use of such funds, *shall be treated, utilized, administered and managed as public funds* consistent with the uses and purposes under the laws which constituted them and the development priorities of the government, including the government's coconut productivity, rehabilitation, research extension, farmers organizations, and market promotions programs, which are designed to advance the development of the coconut industry and the welfare of the coconut farmers.[156]

Lastly, the Court stated that the very laws governing the coconut levies recognized their public nature and character, to wit:

> The third Whereas clause of P.D. No. 276 treats them as special funds for a specific public purpose. Furthermore, P.D. No. 711 transferred to the general funds of the State all existing special and fiduciary funds including the CCSF. On the other hand, P.D. No. 1234 specifically declared the CCSF as a special fund for a special purpose, which should be treated as a special account in the National Treasury.

152. Article IX-D, § 2(1). The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities...

153. *Republic-COCOFED*, G.R. Nos. 147062-64 at 35-36.

154. BIR Ruling No. 354-92, dated Dec. 15, 1992.

155. Dated September 24, 1995.

156. *Republic-COCOFED*, G.R. Nos. 147062-64 at 36-37.

> Moreover, even President Marcos himself, as the sole legislative/executive authority during the martial law years, struck off the phrase *which is a private fund of the coconut farmers* from the original copy of Executive Order No. 504 dated May 31, 1978, and we quote:
>
> > "WHEREAS, by means of the Coconut Consumers Stabilization Fund ('CCSF'), *which is the private fund of the coconut farmers* (deleted), essential coconut-based products are made available to household consumers at socialized prices." (Emphasis supplied)
>
> The phrase in [italics] — *which is the private fund of the coconut farmers* — was crossed out and duly initialed by its author, former President Marcos. This deletion, clearly visible in "Attachment C" of petitioner's Memorandum, was a categorical legislative intent to regard the CCSF as public, not private, funds.[157]

Thus, after a thorough exposition by the Court on the character of the coconut levy funds, it resolved, "Having shown that the coconut levy funds are not only affected with public interest, but are in fact *prima facie* public funds, this Court believes that the government should be allowed to vote the questioned shares, because they belong to it as the *prima facie* beneficial and true owner."[158] The Court further held:

> As stated at the beginning, voting is an act of dominion that should be exercised by the share owner. One of the recognized rights of an owner is the right to vote at meetings of the corporation. The right to vote is classified as the right to control. Voting rights may be for the purpose of, among others, electing or removing directors, amending a charter, or making or amending bylaws. Because the subject UCPB shares were acquired with government funds, the government becomes their *prima facie* beneficial and true owner.
>
> Ownership includes the right to enjoy, dispose of, exclude and recover a thing without limitations other than those established by law or by the owner. Ownership has been aptly described as the most comprehensive of all real rights. And the right to vote shares is a mere incident of ownership. In the present case, the government has been shown to be the *prima facie* owner of the funds used to purchase the shares. Hence, it should be allowed the rights and privileges flowing from such fact.
>
> And paraphrasing *Cocofed v. PCGG*, already cited earlier, the Republic should continue to vote those shares until and unless private respondents are able to demonstrate, in the main cases pending before the Sandiganbayan, that "they [the sequestered UCPB shares] have legitimately become private."[159]

157. *Id.* at 37-38.

158. *Id.* at 38.

159. *Id.* at 39-40.

In resolving the issues of grave abuse of discretion, the Court held, contrary to the assertions of the respondents, that "the Sandiganbayan gravely abused its discretion when it contravened the rulings of this Court in *Baseco* and *Cojuangco-Roxas* — thereby unlawfully, capriciously and arbitrarily depriving the government of its right to vote sequestered shares purchased with coconut levy funds which are *prima facie* public funds."[160] It further stated:

> Indeed, grave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence. In one case, this Court ruled that the lower court's resolution was 'tantamount to overruling a judicial pronouncement of the highest Court x x x and unmistakably a very grave abuse of discretion.'[161]

In the same manner, the Court disagreed with the contention of the respondents that the issue of the public nature of the coconut levy funds was never raised as an issue before the Sandiganbayan, thus preventing its resolution before the Supreme Court in this case. With authority, the Court thus ruled:

> By ruling that the two-tiered test should be applied in evaluating private respondents' claim of exercising voting rights over the sequestered shares, the Sandiganbayan effectively held that the subject assets were private in character. Thus, to meet this issue, the Office of the Solicitor General countered that the shares were not private in character, and that quite the contrary, they were and are public in nature because they were acquired with coco levy funds which are public in character. In short, the main issue of who may vote the shares cannot be determined without passing upon the question of the public/private character of the shares and the funds used to acquire them. The latter issue, although not specifically raised in the Court *a quo*, should still be resolved in order to fully adjudicate the main issue.
>
> Indeed, this Court has "the authority to waive the lack of proper assignment of errors if the unassigned errors closely relate to errors properly pinpointed out or if the unassigned errors refer to matters upon which the determination of the questions raised by the errors properly assigned depend."
>
> Therefore, "where the issues already raised also rest on other issues not specifically presented as long as the latter issues bear relevance and close relation to the former and as long as they arise from matters on record, the Court has the authority to include them in its discussion of the controversy as well as to pass upon them."[162]

160. *Id.* at 40-41.

161. *Id.* at 41.

162. *Id.* at 41-42 (citations omitted).

In conclusion, the Court held that the Sandiganbayan "committed grave abuse of discretion in grossly contradicting and effectively reversing existing jurisprudence, and in depriving the government of its right to vote the sequestered UCPB shares which are *prima facie* public in character."[163] The Court, however, clarified that in resolving this case, it is "in no way preempting the proceedings the Sandiganbayan may conduct or the final judgment it may promulgate in Civil Case Nos. 0033-A, 0033-B and 0033-F," as the determination in the case was "merely *prima facie,* and should not bar the anti-graft court from making a final ruling, after proper trial and hearing, on the issues and prayers in the said civil cases, particularly in reference to the ownership of the subject shares."[164]

The Court similarly clarified that in declaring the coconut levy funds to be *prima facie* public in character, it was "not ruling in any final manner on their classification — whether they are general or trust or special funds — since such classification is not at issue here,"[165] the determination in this case being "only for the purpose of determining the right to vote the shares, pending the final outcome of the said civil cases."[166]

Neither did the Court resolve the question of whether or not the shares held by Respondent Cojuangco are "the result of private enterprise." Such facts should also be addressed in the final decision in the cases that are pending before the Sandiganbayan.[167]

The majority holding stressed that the decision in the present case is merely an "incident of the main cases which are pending in the anti-graft court — the cases for the reconveyance, reversion and restitution to the State of these UCPB shares."[168]

In finally disposing the issues at bar, the Court ruled:

> WHEREFORE, the Petition is hereby *GRANTED* and the assailed Order *SET ASIDE*. The PCGG shall continue voting the sequestered shares until Sandiganbayan Civil Case Nos. 0033-A, 0033-B and 0033-F are finally and completely resolved. Furthermore, the Sandiganbayan is *ORDERED* to decide with finality the aforesaid civil cases within a period of six (6) months from notice. It shall report to this Court on the progress of the said cases every three (3) months, on pain of contempt. The Petition in

163. *Id.* at 44.

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.* at 45.

168. *Id.*

> Intervention is *DISMISSED* inasmuch as the reliefs prayed for are not covered by the main issues in this case.[169]

C. *Dissenting opinion*[170]

The minority of the Court, in essence, asserted that: (1) the coconut levy funds have not yet been established as public funds in a proper proceeding before a court of competent jurisdiction and that (2) as a result of the absence of determination on the character of the funds, the government should not be granted the right to vote any of the shares of stock in question.

Dissenting from the view of the majority, which declared that the Sandiganbayan acted with grave abuse of discretion in allowing respondents to vote their UCPB shares of stock registered in their names, the five Justices argued from the nature of what is considered "grave abuse of discretion" in light of the decision of the Court in *Republic v. Sandiganbayan*:

> In determining whether there has been "grave abuse of discretion," under Rule 65, the "unyielding yardstick" is whether the abuse of discretion is "so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility *(Sinon vs. Civil Service Commission*, 215 SCRA 410 [1992]; *Planters Products, Inc. vs. Court of Appeals*, 193 SCRA 563 [1991]; *Litton Mills, Inc. vs. Galleon Trader, Inc.*, 163 SCRA 489 [1988]; *Esguerra vs. Court of Appeals*, 267 SCRA 380 [1997]; *Republic vs. Villarama*, 278 SCRA 736 [1997])."
>
> To discharge its burden of showing that the *Sandiganbayan* acted with grave abuse of discretion, the PCGG relies principally on the Court's February 16, 1993 Resolution in *Republic vs. Sandiganbayan, et al.*, G.R. No. 96073 where we ordered the restoration of the *status quo ante* so as to allow PCGG to continue voting the shares of stock under sequestration at the meetings of the UCPB.
>
> As correctly pointed out by respondents, the February 16, 1993 Resolution, is in the nature of a temporary restraining order, having been issued to recall the March 3, 1992 Resolution lifting of the temporary restraining order previously issued by the Court on March 5, 1991. In other words, the subject resolution merely reinstated the temporary restraining order which the Court had earlier issued enjoining private respondents from voting the sequestered shares registered in their names. Being in the nature of a restraining order, the same is interlocutory in character and it became *functus oficio* when this Court decided the PCGG Sequestration Cases, including G.R. No. 96073, on January 23, 1995. A restraining order is but

169. *Id.* at 45-46.

170. Penned by Justice Melo and concurred in by Justices Kapunan, Pardo, Ynares-Santiago, and Sandoval-Gutierrez.

> a *provisional remedy* to which parties may resort "for the preservation or protection of their rights or interests, and for no other purpose, *during the pendency of the principal action* (*Commissioner of Customs vs. Cloribel*, 19 SCRA 234 [1967])."
>
> Moreover, the Resolution of February 16, 1993 explicitly provided that it shall be effective only "pending resolution on the merits of the action at bar." G.R. No. 96073, the "action at bar" referred to, was decided on the merits on January 23, 1995.
>
> x x x
>
> Even a casual study of the above dispositive portion would show that the Court's Resolution dated February 16, 1993 is not among the temporary restraining orders "confirmed and maintained" in the January 23, 1995 decision.[171]

Citing *Calpo vs. Sandiganbayan*,[172] the Justices further advanced the contention that the crucial question in the various PCGG Sequestration Cases was not the question of the right of PCGG to vote sequestered shares of stock, to wit:

> The crucial question in "The PCGG Sequestration Cases," capsulized by the Court in its resolution of 23 January 1995, is this:
>
> > 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?
>
> xxx xxx xxx
>
> Neither the qualifications of the PCGG nominees to sit in the SMC Board of Directors *nor the right of the PCGG to vote the sequestered corporate shares*

171. *Republic-COCOFED*, G.R. Nos. 147062-64 at 8-9 (Melo, J., dissenting).

172. 265 SCRA 380 (1996).

> *have been mentioned,* even in passing, by the Court. In fact, the promulgation of the Court's resolution in the PCGG sequestration cases should now pave the way for the cognizance by the *Sandiganbayan* of the *quo warranto* proceedings.[173]

Following this argument — with the issue being "limited to the propriety of impleading the firms and corporations subject of sequestration" — it was asserted that the failure of the Court to confirm and maintain the February 16, 1993 Supreme Court Resolution "only means that it became *functus oficio* upon resolution of the main action on January 23, 1995." As a result, PCGG cannot "claim the continuing effectivity of said Resolution so as to authorize it to continue voting the sequestered UCPB shares."[174]

The dissent further opposed the majority view that PCGG's right to vote the sequestered shares remained since the *jurisprudential bases* for the Court's Resolution dated February 16, 1993 still remain.[175] With reference to *Buayan Cattle Co. v. Quintillan*,[176] the Justices averred that the Court "categorically declared that a complaint for injunctive relief must be construed strictly against the pleader;" meaning that "even if the jurisprudential bases for the Resolution are still extant, the fact that said Resolution was not 'confirmed and maintained' by the Court after it decided the main action militates against its continuing effectivity, otherwise a temporary restraining order would no longer be 'temporary.'"[177]

With the loss of effectivity of the February 16, 1993 Supreme Court Resolution, the question of who could vote the sequestered shares should revert to the *Sandiganbayan,* in accordance with the ruling in *COCOFED v. PCGG,*[178] which held that:

> 3. The incidents concerning the voting of the sequestered shares, the COCOFED elections, and the replacement of directors, being matters incidental to the sequestration, should be addressed to the *Sandiganbayan* in accordance with the doctrine laid down in PCGG vs. Pena, 159 SCRA 556, reiterated in G.R. No. 74910, Andres Soriano III vs. Hon. Manuel Yuzon,; G.R. No. 75075, Eduardo Cojuangco, Jr. *vs.* Securities and Exchange Commission; G.R. No. 75094, Clifton Ganay *vs.* Presidential Commission on Good Government; G.R. No. 76397, Board of Directors of San Miguel Corporation *vs.* Securities and Exchange Commission; G.R. No. 79459, Eduardo Cojuangco, Jr. *vs.* Hon. Pedro N. Laggui; G.R. No. 79520, Neptunia Corporation, Ltd. *vs.* Presidential Commission on Good Government, August 10, 1988.[179]

173. *Id.* at 386-87.

174. *Republic-COCOFED,* G.R. Nos. 147062-64 at 11 (Melo, J., dissenting).

175. *Id.*

176. 128 SCRA 276 (1984).

177. *Republic-COCOFED,* G.R. Nos. 147062-64 at 11 (Melo, J., dissenting).

178. 178 SCRA 236 (1989).

The Justices also call attention to the fact that even the February 16, 1993 Resolution recognized that the proper venue for the determination as to who possessed the right to vote the sequestered shares was the Sandiganbayan. The Resolution was quoted as stating: "...the right of the [petitioners] to vote stock in their names at the meetings of the UCPB cannot be conceded at this time. That right still has to be established by them before the Sandiganbayan."[180] Similar mindfulness was called upon as regards the temporary restraining orders that were confirmed and maintained by the Court in the Sequestration Cases, as such were clearly made subject to the power of the Sandiganbayan "to modify or terminate the same in the exercise of its sound discretion."[181]

It was also advanced that in determining who should vote the sequestered shares, the Sandiganbayan must let itself be guided by the principles enunciated in *BASECO v. PCGG,* which was subsequently explicated in *Cojuangco, Jr. v. Roxas.* In coming to fore with the issue in the latter case, the Court cited the oft-quoted holding in *BASECO v. PCGG,* which dealt with the scope and extent of the powers of PCGG:

> *a. PCGG May Not Exercise Acts of Ownership*
>
> One thing is certain, and should be stated at the outset: the PCGG cannot exercise acts of dominion over property sequestered, frozen or provisionally taken over. AS already earlier stressed with no little insistence, the act of sequestration; freezing or provisional takeover of property does not import or bring about a divestment of title over said property; does not make the PCGG the owner thereof. In relation to the property sequestered, frozen or provisionally taken over, the PCGG is a conservator, not an owner. Therefore, it can not perform acts of strict ownership; and this is specially true in the situations contemplated by the sequestration rules where, unlike cases of receivership, for example, no court exercises effective supervision or can upon due application and hearing, grant authority for the performance of acts of dominion.
>
> Equally evident is that the resort to the provisional remedies in question should entail the least possible interference with business operations or activities so that, in the event that the accusation of the business enterprise being "ill gotten" be not proven, it may be returned to its rightful owner as far as possible in the same condition as it was at the time of sequestration.
>
> *b. PCGG Has Only Powers of Administration*

179. *Id.* at 253.

180. *Republic-COCOFED,* G.R. Nos. 147062-64 at 12 (Melo, J., dissenting).

181. *Id.*

> The PCGG may thus exercise only powers of administration over the property or business sequestered or provisionally taken over, much like a court-appointed receiver, such as to bring and defend actions in its own name; receive rents; collect debts due; pay outstanding debts; and generally do such other acts and things as may be necessary to fulfill its mission as conservator and administrator. In this context, it may in addition enjoin or restrain any actual or threatened commission of acts by any person or entity that may render moot and academic, or frustrate or otherwise make ineffectual its efforts to carry out its task; punish for direct or indirect contempt in accordance with the Rules of Court; and seek and secure the assistance of any office, agency or instrumentality of the government. In the case of sequestered businesses generally (i.e., going concerns, businesses in current operation), as in the case of sequestered objects, its essential role, as already discussed, is that of conservator, caretaker, "watchdog" or overseer. It is not that of manager, or innovator, much less an owner.
>
> x x x
>
> *d. Voting of Sequestered Stock; Conditions Therefore*
>
> So, too, it is within the parameters of these conditions and circumstances that the PCGG may properly exercise the prerogative to vote sequestered stock of corporations, granted to it by the President of the Philippines through a Memorandum dated June 26, 1986. That Memorandum authorizes the PCGG, "pending the outcome of proceedings to determine the ownership of * * (sequestered) shares of stock," "to vote such shares of stock as it may have sequestered in corporations at all stockholders' meetings called for the election of directors, declaration of dividends, amendment of the Articles of Incorporation, etc." The Memorandum should be construed in such a manner as to be consistent with, and not contradictory of the Executive Orders earlier promulgated on the same matter. There should be no exercise of the right to vote simply because the right exists, or because the stocks sequestered constitute the controlling or a substantial part of the corporate voting power. The stock is not to be voted to replace directors, or revise the articles or by-laws, or otherwise bring about substantial changes in policy, program or practice of the corporation except for demonstrably weighty and defensible grounds, and always in the context of the stated purposes of sequestration or provisional takeover, i.e., to prevent the dispersion or undue disposal of the corporate assets. Directors are not to be voted out simply because the power to do so exists. Substitution of directors is not to be done without reason or rhyme, should indeed be shunned if at an possible, and undertaken only when essential to prevent disappearance or wastage of corporate property, and always under such circumstances as assure that the replacements are truly possessed of competence, experience and probity.[182]

As enunciated in *Cojuangco, Jr. v. Roxas*, "Nothing is more settled than the ruling of this Court in BASECO vs. PCGG, that PCGG cannot exercise

182. *BASECO*, 150 SCRA at 236-39 (citations omitted).

acts of dominion over property sequestered. It may not vote sequestered shares of stock or elect the members of the board of directors of the corporation concerned."[183]

In support of their assertions, the dissent further cited *BASECO v. PCGG* in this wise:

> In the case at bar, there was adequate justification to vote the incumbent directors out of office and elect others in their stead because the evidence showed *prima facie* that the former were just tools of President Marcos and were no longer owners of any stock in the firm, if they ever were at all. This is why, in its Resolution of October 28, 1986; this Court declared that-
>
> > 'Petitioner has failed to make out a case of grave abuse or excess of jurisdiction in respondents' calling and holding of a stockholders' meeting for the election of directors as authorized by the Memorandum of the President x x (to the PCGG) dated June 26, 1986, particularly, where as in this case, the government can, through its designated directors, properly exercise control and management over what appear to be properties and assets owned and belonging to the government itself and over which the persons who appear in this case on behalf of BASECO have failed to show any right or even any shareholding in said corporation.'
>
> It must however be emphasized that the conduct of the PCGG nominees in the BASECO Board in the management of the company's affairs should be henceforth be guided and governed by the norms herein laid down. They should never for a moment allow themselves to forget that they are conservators, not owners of the business; they are fiduciaries, trustees, of whom the highest degree of diligence and rectitude is, in the premises, required.[184]

The dissent then went back to the conclusion in *Cojuangco, Jr. v. Roxas*, which stated:

> The rule in this jurisdiction is, therefore, clear. The PCGG cannot perform acts of strict ownership of sequestered property. It is a mere conservator. It may not vote the shares in a corporation and elect the members of the board of directors. The only conceivable exception is in a case of a takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands as in BASECO.
>
> The constitutional right against deprivation of life, liberty and property without due process of law is so well- known and too precious so that the hand of the PCGG must be stayed in its indiscriminate takeover of and

183. *Cojuangco, Jr.*, 195 SCRA at 808 (citations omitted).

184. *BASECO*, 150 SCRA at 239-40 (citations omitted).

voting of shares allegedly ill-gotten in these cases. It is only after appropriate judicial proceedings when a clear determination is made that said shares are truly ill-gotten when such a takeover and exercise of acts of strict ownership by the PCGG are justified.[185]

The above-quoted principles found refinement in *PCGG v. Cojuangco, Jr.*, where it was ruled that:

Until the main sequestration suit is resolved, the right to vote the SMC sequestered shares depends on whether the two-tiered test set by the Court in its June 10, 1993 Resolution in G.R. No. 115352 (Cojuangco v. Calpo) concurs. Those guidelines must be observed by the SB in resolving similar motions involving the right to vote the said shares, which are:

1. whether there is *prima facie* evidence showing that the said shares are ill-gotten and thus belong to the state; and

2. whether there is an immediate danger of dissipation thus necessitating their continued sequestration and voting by the PCGG while the main issue pends with the Sandiganbayan.

There is therefore "a need for some factual moorings" to resolve the issues raised herein and since the Court is not a trier of facts, it is proper to refer the matter to the appropriate tribunal.[186]

As maintained by the minority, given the facts that the two points above-quoted require the presentation of evidence, the question may only be settled before the Sandiganbayan, it being well-settled that the Supreme Court is not a trier of facts.

In this light, the dissenting opinion disagreed with the view of the majority. It went on to raise:

However, the majority opinion holds that the two-tiered test above-enunciated finds no application to the case of a take-over of a business belonging to government or whose capitalization comes from public funds, but which landed in private hands, citing *Cojuangco vs. Roxas* and *BASECO* as authority therefor. The majority opinion asserts that the government is granted authority to vote sequestered shares:

1. Where government shares are taken over by private persons or entities who/which registered them in their own names; and

2. Where the capitalization or shares that were acquired with public funds somehow landed in private hands.

In fine, the majority points out that since the instant case involves shares that were acquired with public funds which somehow landed in private hands, there is no more need to apply the two-tiered test, the right to vote

185. 195 SCRA at 813.

186. 302 SCRA at 223-24 (1999).

said shares automatically vesting in the government, acting through the PCGG.

As stated earlier, the Court, in *Cojuangco vs. Roxas*, unequivocally declared that "[t]he rule in this jurisdiction is, therefore, clear. The PCGG cannot perform acts of strict ownership of sequestered property. It is a mere conservator. It may not vote the shares in a corporation and elect the members of the board of directors. *The only conceivable exception* is in a case of a takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands as in BASECO."

Thus, it is well-settled that *the only instance when PCGG can vote the shares in a sequestered corporation* is in case of a takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands. The foregoing principle, as stated in the majority opinion, has been reiterated in many subsequent cases, most recently in *Antiporda vs. Sandiganbayan* (G.R. No. 116941, May 31, 2001).

On the other hand, the two-tiered test, first enunciated in Cojuangco vs. Calpo and subsequently in PCGG vs. Cojuangco Jr., provides the guidelines or requisites to be fulfilled in determining whether or not PCGG can vote shares in a sequestered corporation. Since PCGG can vote the shares in a sequestered corporation only in case of a takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands, plainly the two-tiered test is applicable only in this instance. In other words, the two-tiered test is designed precisely to verify whether or not the sequestered corporation is a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands! Thus, I submit that the *Sandiganbayan* did not err when it applied the two-tiered test in disallowing the PCGG to vote the sequestered shares.[187]

In the Sandiganbayan's assailed Order dated February 28, 2001, which authorized COCOFED, Ballares, and Eduardo Cojuangco, Jr. to exercise their right to vote their shares of stock, it stated:

Jurisprudence, from as far back as the leading case of *Baseco* (150 SCRA 181), has clearly defined the functions and authority of the PCGG in relation to sequestered property. Be it noted by way of footnote that government agencies as well as government officials, do not have rights in the exercise of the functions of the office. They have only duties to perform and authority by means of which they may comply with those duties under the law.

In this instance, the issue is whether or not the authority of the PCGG exists to remain in control of the voting rights of sequestered shares of stock in general, and whether or not the sequestered shares of stock in the UCPB in particular may be voted by it as part of its functions as sequestor of these

187. *Republic-COCOFED*, G.R. Nos. 147062-64 at 16-17 (Melo, J., dissenting).

shares of stock; corollarily, may the moving stockholders exercise of their proprietary rights over the shares of stock, save for the limitations of free disposal, until judgment shall have been rendered against them thereon.

It may be stated that jurisprudence has evolved from certain categorical positions originally enunciated to more refinements as time and events demonstrated to be appropriate. Let it also be noted that jurisprudence has not reversed itself; rather, jurisprudence has re-stated the rules as the circumstances and the facts presented before the courts had required in order to put in proper perspective the earlier assertions of jurisprudence.

In this light, the Court is faced now with the question: Who may vote sequestered shares of stock in general, and who may vote them in the particular instance of the UCPB shares of stock at its scheduled Stockholders' Meeting on March 5, 2001?

xxx xxx xxx

In the light of all of the above, the Court submits itself to jurisprudence and with the statements of the Supreme Court in G.R. No. 115352 entitled *Enrique Cojuangco, Jr., et al. vs. Jaime Calpo, et al.* dated June 10, 1997, as well as the resolution of the Supreme Court promulgated on January 27, 1999 in the case of *PCGG vs. Eduardo Cojuangco, Jr., et al.*, G.R. No. 13319 which included the *Sandiganbayan* as one of the respondents. In these two cases, the Supreme Court ruled that the voting of sequestered shares of stock is governed by two considerations, namely,

> 1. whether there is *prima facie* evidence showing that the said shares are ill-gotten and thus belong to the State; and
>
> 2. whether there is an imminent danger of dissipation thus necessitating their continued sequestration and voting by the PCGG while the main issue pends with the *Sandiganbayan*.

This ruling does not state where, what or who the cause of the dissipation might be to justify the vote by the PCGG of the shares under sequestration. If the registered stockholders, however, have not participated in the management of the corporation, and the dissipation has not been demonstrated to have been caused either by the stockholders' action in the past, nor by action independent of the management during sequestration, then whatever "imminent danger of dissipation necessitating their continued sequestration and voting by the PCGG..." could not be raised against the voting rights of the asserting stockholders.

The Court has sought to obtain by all means any form of reinforcement from the PCGG on this matter, not only this morning but over the months that go as far back as July of the year 2000. Much to the impatience of this Court, the matter has not been responded to in any satisfactory manner.[188]

The Justices asserted that:

188. *Id.* at 17-19 (*citing* Order dated February 28, 2001) (citation omitted).

> a perusal of the above order would show that the *Sandiganbayan,* in allowing private respondents to vote their shares, merely followed judicial precedents laid down by the Court. These decisions have not been challenged by the PCGG. Their review, much less reversal, has not been sought. They continue to express good law. [189]

The Justices therefore found "no 'patent or gross' arbitrariness or despotism by reason of passion or personal hostility in the *Sandiganbayan*'s adherence to these precedents." It was thus submitted that "one can hardly characterize the *Sandiganbayan*'s order authorizing private respondents to vote their sequestered shares of stock as having been issued with grave abuse of discretion."[190]

In justifying the voting of sequestered shares, the majority relied on *Cojuangco, Jr. v. Roxas*, which held:

> [t]he only conceivable exception (to the rule that PCGG may not vote the shares in a corporation and elect the members of the board of directors) is in a case of a takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands as in BASECO."[191]

The Justices dispute the fact that the present case was being likened to the *BASECO* case. In arguing against the analogy, the minority stated:

> The *BASECO* case does not support petitioner's position. It was proven in the *BASECO* case that 95.82% of the outstanding stock of BASECO, endorsed in blank by the owners thereof, were inexplicably in the possession of then President Marcos. More, deeds of assignment of practically all the stock of the corporations owning the aforementioned 95.82% were also inexplicably in the possession of President Marcos. Thus, in the case of *BASECO,* the directors thereof were merely Marcos nominees or dummies, it having been proven that President Marcos not only exercised control over BASECO but also that he actually owned almost 100% of BASECO's outstanding stock. Then too, it was proven that BASECO had been able to take-over and acquire the business and assets of the National Shipyard and Steel Corporation and other government-owned or controlled entities through the undue exercise by then President Marcos of his powers, authority, and influence. Upon these premises, the Court held that the government could properly exercise control and management over what appeared to be properties and assets owned and belonging to the government itself. Hereunder are the pertinent observations of the Court in said case:
>
> > The facts show that the corporation known as BASECO was owned or controlled by President Marcos "during his

189. *Id.* at 19.

190. *Id.*

191. *Id.* at 19-20.

> administration, through nominees, by taking undue advantage of his public office and/or using his powers, authority, or influence," and that it was by and through the same means, that BASECO had taken over the business and/or assets of the National Shipyard and Engineering Co., Inc., and other government-owned or controlled entities.
>
> xxx xxx xxx
>
> In the case at bar, there was adequate justification to vote the incumbent directors out of office and elect others in their stead because the evidence showed *prima facie that the former were just tools of President Marcos and were no longer owners of any stock in the firm, if they ever were at all.* This is why, in its Resolution of October 28, 1986; this Court declared that -
>
> > Petitioner has failed to make out a case of grave abuse or excess of jurisdiction in respondents' calling and holding of a stockholders' meeting for the election of directors as authorized by the memorandum of the President (to the PCGG) dated June 26, 1986, particularly, where as in this case, the government can, though its designated directors, properly exercise control and management over what appear to be properties and assets owned and belonging to the government itself and over which *the persons who appear in this case on behalf of BASECO have failed to show any right or even any shareholding in said corporation."*

In contrast, respondents in the instant case are the registered stockholders. No evidence was presented before the *Sandiganbayan* showing that respondents are mere "tools of President Marcos and were no longer owners of any stock in the firm if they ever were at all."

Nor has it been shown that the sequestered UCPB shares of stock were inexplicably acquired by respondents. Respondent Cojuangco Jr. obtained his shares by virtue of an agreement with the Philippine Coconut Authority (PCA) whereby, as compensation for exercising his personal and exclusive option to acquire UCPB shares, Cojuangco Jr. would receive 1 share for every 9 acquired by PCA. The UCPB shares of stock in the name of the 1,405,366 coconut-farmers, on the other hand, were distributed to them by virtue of Presidential Decree No. 755, which authorized the distribution of UCPB's shares of stock, free, to coconut farmers. Other UCPB shares were acquired by the CIIF companies. It is precisely the validity of these acquisitions which is under litigation in the main case pending with the *Sandiganbayan.*[192]

192. *Id.* at 20-22.

The Justices likewise questioned the holding of the majority that the UCPB shares do in fact belong to the government, as such shares were acquired with the use of coconut levy funds:

> The view expressed by the majority that the UCPB shares, having been acquired with the use of coconut levy funds, and, therefore belong to the government, may very well turn out to be correct. However, since these issues are still pending litigation at the *Sandiganbayan,* it would be premature, I submit, to rule on this point at this time. Verily, the validity of the acquisition by Cojuangco Jr., *et al.* of their UCPB shares is the very *lis mota* of the action for reconveyance, accounting, reversion, and restitution filed by the PCGG with the *Sandiganbayan.* To rule on this matter would be to preempt said court.[193]

On another note, the Justices held that it was "absurd" to find the Sandiganbayan guilty of grave abuse of discretion, as did the majority, since the nature of the coconut levy funds was not even raised as an issue before it. Specifically:

> Too, the argument that the coconut levy funds used to purchase the sequestered UCPB shares of stock are public funds does not appear to have been raised before the *Sandiganbayan;* consequently, the *Sandiganbayan* did not rule on the nature of the fund. It would be absurd to hold that the *Sandiganbayan* gravely abused its discretion in not holding that the sequestered shares belong *prima facie* to the government, the issue of whether or not coconut levy funds are public funds not having been raised before it.[194]

The constitutionality of Section 5, Article III of Presidential Decree No. 961 and Section 5, Article III of Presidential Decree No. 1468 was also discussed by the dissenting opinion:

> Note should also be taken of the fact that the determination of whether the coconut levy funds are public funds involves the ascertainment of the constitutionality of Section 5, Article III of Presidential Decree No. 961 and Section 5, Article III of Presidential Decree No. 1468, both of which contain the following identical provisions:
>
> > Section 5. *Exemptions.*- The Coconut Consumers Stabilization Fund and the Coconut Industry Development Fund as well as all disbursements of said Funds for the benefit of the coconut farmers as herein authorized shall not be construed or interpreted, under any law or regulation, as special or fiduciary funds, or as part of the general funds of the national government within the contemplation of P.D. 771; nor as a subsidy, donation, levy, government funded investment or government share within the contemplation of P.D. 898, the intention being

193. *Id.* at 22.

194. *Id.*

> that said Fund and the disbursements thereof as herein authorized for the benefit of the coconut farmers shall be owned by them in their own private capacities.

Presidential Decrees No. 961 and 1468 have not been repealed, revoked, or declared unconstitutional, hence they are presumed valid and binding. Without a previous declaration of unconstitutionality, the coconut levy funds may not thus be characterized as *prima facie* belonging to the government. That issue must first be resolved by the *Sandiganbayan*. In fact, when the Solicitor General, in G.R. No. 96073, filed a motion to declare the coconut levies collected pursuant to the various issuances as public funds and to declare Section 5, Article III of Presidential Decree No. 1468 as unconstitutional, the Court denied the same in a Resolution dated March 26, 1996.

Parenthetically, in *Philippine Coconut Producers Federation, Inc. vs. PCGG* (*supra*), the Court ruled that the fund is "affected with public interest," implying that the fund is private in character. If the coconut levy funds were public funds, then the Court would have so held and there would be no reason to describe the same as funds "affected with public interest." It may not, thus, be immediately said that the coconut levy funds are public funds, the resolution of the issue being left, at the first instance, with the *Sandiganbayan*.

And if it is to be recalled, the issue involved herein is whether or not the *Sandiganbayan* committed grave abuse of discretion when it issued the disputed order allowing respondents to vote the UCPB shares of stock registered in their names. The question of whether the coconut levy funds are public funds is not in issue here. In fact, the constitutionality of Presidential Decrees No. 961 and 1468 have not been raised by the PCGG during the proceedings before the *Sandiganbayan*.[195]

The Justices also reacted in relation to the fact that the avowed purpose of sequestration was to preserve the assets in question, and not deprive the owner of the rights attached to those assets. They observed that:

> Moreover, it should be pointed out that the avowed purpose of sequestration is to preserve the assets sequestered to assure that if, and when, judgment is rendered in favor of the petitioner, the judgment may be implemented. "Preservation", not "deprivation" before judgment, is its essence. That is why in *BASECO*, we emphasized:
>
> *d. No Divestment of Title Over Property Seized*
>
> It may perhaps be well at this point to stress once again the provisional, contingent character of the remedies just described. Indeed the law plainly qualifies the remedy of takeover by the adjective, "provisional." These remedies may be resorted to only for a particular exigency: to prevent in the public interest the disappearance or dissipation of property or business, and conserve it pending adjudgment in appropriate proceedings of the primary issue of whether or not the acquisition of title or other right thereto by the apparent owner was attended by some vitiating anomaly. None of the remedies is meant to deprive the owner or possessor of his title or any right to the property sequestered, frozen or taken over and vest it in the sequestering agency, the Government or other person. This can be done only for the causes and by the processes laid down by law.
>
> That this is the sense in which the power to sequester, freeze or provisionally take over is to be understood and exercised, the language of the executive orders in question leaves no doubt. Executive Order No. 1 declares that the sequestration of property the acquisition of which is suspect shall last "until the transactions leading to such acquisition ... can be disposed of by the appropriate authorities." Executive Order No. 2 declares that the assets or properties therein mentioned shall remain frozen "pending the outcome of appropriate proceedings in the Philippines to determine whether any such assets or properties were acquired" by illegal means. Executive Order No. 14 makes clear that judicial proceedings are essential for the resolution of the basic issue of whether or not particular assets are "ill-gotten," and resultant recovery thereof by the Government is warranted.

195. *Id.* at 16-17 (Melo, J., dissenting).

In the instant case, however, the actuations of PCGG with regard to the sequestered shares partake more of deprivation rather than preservation. As pointed out by respondents, since 1986, only one (1) stockholders' meeting of UCPB has been held. At this meeting, PCGG voted all of the shares, as a result of which all members of the Board of UCPB, since 1986 to the present, have been PCGG nominees. When vacancies in the Board occur because of resignation, replacements are installed by the remaining members of the Board - on nomination of the PCGG. The stockholders' meeting scheduled on March 6, 2001 would have been the first stockholders' meeting since 1986 at which registered stockholders would exercise their right to vote and by their vote elect the members of the Board of Directors.

Also, the shares of stock in UCPB were sequestered in 1986. The civil action *"Republic of the Philippines v. Eduardo M. Cojuanco, Jr., Civil Case No. 033,"* was instituted before the *Sandiganbayan* on July 30, 1987. This action included, among other things, the UCPB shares of stock and was filed to maintain the effectivity of the writs of sequestration pursuant to Section 26, Article XVIII of the Constitution. Notwithstanding the lapse of more than 14 years, the proceedings have barely gone beyond the pre-trial stage. PCGG's exercise of the right to vote the sequestered shares of stock for a period of 14 years constitutes effectively a deprivation of a property right belonging to the registered stockholders (18 *Am. Jur.* 2d, Corporations 2d

> Section 1065, p. 859, citing cases), a state of affairs not within the contemplation of "sequestration" as a means of preservation of assets.[196]

In sum, the dissenting opinion held that "the issuance by respondent *Sandiganbayan* of its impugned Order dated February 28, 2001, is clearly not an act committed in grave abuse of discretion." In the belief of the minority:

> PCGG failed to persuade the *Sandiganbayan* — on the basis of the 'two-tiered test' enunciated by this Court in the *San Miguel* case, *supra* — that it is entitled to vote the UCPB sequestered shares. Verily, the *Sandiganbayan* was duty-bound to comply with the jurisprudence laid down by the Court on the matter. This is certainly not a case of abuse, much more grave abuse of discretion, on the part of respondent *Sandiganbayan*.[197]

It also held that the contention that the "law of the case" applicable herein was the Resolution dated February 16, 1993 in *Republic of the Philippines v. Sandiganbayan, et al.* was unacceptable, for the reason that "the UCPB shares of stock of respondents COCOFED, et al. and Ballares, et al. are not the subject of the case relied upon" and that "what is invoked by petitioner is, in effect, merely a restraining order which was not re-affirmed by the Court when we rendered the main decision in said consolidated sequestration cases."[198]

What the Justices found to be applicable was the decision in *COCOFED v. PCGG*,[199] which held that "the incidents concerning the voting of the sequestered shares, the COCOFED elections, and the replacement of directors, being matters incidental to the sequestration, should be addressed to the Sandiganbayan."[200] Furthermore,

> the *Sandiganbayan* has been given by the Court full discretion to evaluate and to allow or disallow the duly registered stockholders of the UCPB shares to exercise the right to vote the said shares in the UCPB elections and/or appointment/replacement of its directors. If, as in the case at hand, the *Sandiganbayan*, in the exercise of its sound discretion and for justifiable reasons cited in its assailed Order of February 28, 2001, allowed herein private respondents to vote the sequestered shares in question, one would simply be at a loss to understand how such action could be said to be tainted with grave abuse of discretion.[201]

196. *Id.* at 24-26.

197. *Id.* at 26.

198. *Id.*

199. 178 SCRA 236 (1989).

200. *Id.* at 253.

201. *Republic-COCOFED*, G.R. Nos. 147062-64 at 27 (Melo, J., dissenting).

IV. The Court's Conflict

Appealing to the "public character" tests as enunciated in *BASECO v. PCGG* and *Cojuangco, Jr. v. Roxas*, the majority pronounced that the shares of stock in the United Coconut Planters Bank are *prima facie* public funds. The minority, however, assert that the voting of the sequestered shares being matters incidental to the sequestration, the proper venue for the instant action is the Sandiganbayan and not the Supreme Court; following such logic, the Sandiganbayan, complying with jurisprudence on the matter, could not have possibly committed grave abuse of discretion when it issued the questioned Resolution dated February 28, 2001 enjoining PCGG from voting the sequestered shares.

The significant conflict between the majority of the Court and the dissenting Justices were contingent on the following issues: (1) disagreement as to the very nature of the coconut levy funds; (2) disagreement as to the effect of the decision in *Republic v. Sandiganbayan*, which, *inter alia*, nullified the Resolution of the Sandiganbayan dated 19 November 1990, and failed to confirm and maintain the Resolution dated 16 February 1993, allowing PCGG the right to vote on the sequestered shares of stock, which is essentially connected to the disagreement as to the test that should be used to determine the ownership of the sequestered shares of stock; and (3) disagreement as to the propriety of declaring the shares of stock in UCPB as *prima facie* public funds, given the fact that the final determination on the character of which is still pending in the Sandiganbayan.

As regards the first point of conflict, enlightenment may ensue from citing a passage from the separate opinion accompanying the majority holding of the Court in the present case:

> The fundamental rule is that tax proceeds may only be used for a public purpose, which may either be a general public purpose to support the existence of the state or a special public purpose to pursue certain legitimate objects of government in the exercise of police power, and none other. As a measure to ensure the proper utilization of money collected for a specified public purpose, the 1987 Constitution, restating another general principle, treats the proceeds as a special fund to be paid out for such purpose. If, however, that purpose has been fulfilled or is no longer forthcoming, the balance, if any, shall then be transferred to the general funds of the government, which may thereafter be appropriated by Congress and expended for any legitimate purpose within the scope of the general fund. An entity, whether public or private, which holds the tax money has no authority to disburse it or to pay any of it to anyone, the power to dispose of such money being vested in the legislature. Thus, the 1987 Constitution, like its counterparts in the 1935 and the 1973

> Constitution, mandates that no money shall be paid out of the national treasury except in pursuance of an appropriation made by law.[202]

It is clear from the foregoing discussion that the Coconut Levy Funds were implemented by virtue of the police and taxing powers of the State. Thus, whatever may be exacted from such levies are no less than public funds. Public funds are defined as "moneys belonging to government, or any department of it."[203] Therefore, no amount of legislation or executive action may change the nature of these funds. A levy collected for a specific public purpose may never be spent for private interests. Verily, "[p]ublic revenue derived from taxation and lawfully allocated to a special fund, or appropriated for any purpose, cannot be administratively or by legislative resolution diverted or taken therefrom..."[204] From this principle, the shares of stock of UCPB that are the subject of contention in this case will always remain to be assets of the government because of the fact that they were acquired through the coconut levies. Distribution to the alleged farmer-owners should not be sustained for the reason that such would be tantamount to an appropriation of a public fund to a private purpose or interest.

The public character of the coconut levy funds is indisputable from the very statutes and presidential issuances that created them. No amount of assertion to the contrary could destroy this fact. As stated in the separate opinion: "These transactions, nevertheless, did not change the character of the UCPB shares, these having been bought with coconut levy funds which the Court distinctly characterized to be 'clearly affected with public interest' and 'raised such as they were by the States' police and taxing powers.'"[205]

Relating this to the second conflict, the question of whether the Supreme Court Resolution dated 16 February 1993 remained effective or not after the Consolidated Decision rendered in *Republic v. Sandiganbayan* is of no moment since from the very principle of taxation, the funds were, are, and will always be public in character. Thus, even without the assailed Resolution, the jurisprudential bases in favor of PCGG remain, such being the holdings of the Court in *BASECO v. PCGG* and *Cojuangco, Jr. v. Roxas*. Both cases recognized an exception to the two-tiered principle with respect to sequestered shares acquired with public funds. In these cases, the "public character" test as elucidated in *BASECO v. PCGG* and *Cojuangco Jr. v. Roxas* was to be utilized. Where there is evidence that government shares

202. *Id.* at 6 (Vitug, J., sep. op.) (citation omitted).

203. BLACK'S LAW DICTIONARY 1229 (6d 1990).

204. 63 AM. JUR. 2d, Public Funds § 4.

205. *Republic-COCOFED*, G.R. Nos. 147062-64 at 6 (Vitug, J., sep. op.) (citation omitted).

were taken over by private persons or entities who/which registered them in their own names and where the capitalization or shares that were acquired with public funds somehow landed in private hands, PCGG may vote these shares. The Court ruled:

> The rule in this jurisdiction is, therefore, clear. The PCGG cannot perform acts of strict ownership of sequestered property. It is a mere conservator. It may not vote the shares in a corporation and elect the members of the board of directors. The only conceivable exception is in a case of a takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands as in BASECO.[206]

The general rule that PCGG may not exercise acts of ownership must defer to predicaments wherein an enterprise was taken over by private individuals. Thus, the private character test:

> (1) Where government shares are taken over by private persons or entities who/which registered them in their own names, and
>
> (2) Where the capitalization or shares that were acquired with public funds somehow landed in private hands.[207]

It must be emphasized that:

> when sequestered shares registered in the names of private individuals or entities are alleged to have been acquired with ill-gotten wealth, then the two-tiered test is applied. However, when the sequestered shares in the name of private individuals or entities are shown, *prima facie*, to have been (1) originally government shares, or (2) purchased with public funds or those affected with public interest, then the two-tiered test does not apply. Rather, the public character exceptions in *Baseco v. PCGG* and *Cojuangco Jr. v. Roxas* prevail; that is, the government shall vote the shares.[208]

The distinction made by the Court as above-quoted must not be forgotten. With the recognition of this peculiarity, the conflict on this pont must yield to clarity.

The nullification of the Sandiganbayan Resolution dated November 19, 1990 upholds the validity of the sequestration by PCGG of the shares of stock in the United Coconut Planters Bank. With this affirmation, PCGG may then vote the shares, since such shares are in danger of dissipation, therefore warranting strict acts of ownership by PCGG pending final

206. 195 SCRA at 813 (1991).

207. *Republic-COCOFED*, G.R. Nos. 147062-64 at 14.

208. *Id.* at 18.

resolution of the Sandiganbayan on the issue of genuine ownership of such shares.[209]

Given this situation, the apparent categorical non-inclusion by the Supreme Court in its disposition in *Republic v. Sandiganbayan* of the temporary restraining order in G.R. No. 96073 does not effect to divest or deprive PCGG of its conservatory powers. The silence of the majority as to the status of the temporary relief granted on February 16, 1993 in favor of PCGG is not fatal to the cause of sequestration. Assuming, *ex hypotesi*, that the silence of the Court as to the status of the restraining order in G.R. No. 96073 constituted its revocation, such adverse result still does not destroy the fact that the Sandiganbayan Resolution was nullified. Therefore, the validity of the sequestration initiated and executed by PCGG prevails. The nullification of Sandiganbayan Resolution dated November 19, 1990 brings back the status previous to the issuance of the assailed Resolution, which entails that PCGG has the right to vote sequestered shares if such shares are in danger of dissipation, thus allowing the Commission to exercise strict acts of ownership.[210] Contrary to the arguments of the minority, PCGG has not been depriving the registered owners of the right to vote the shares. Quite differently, it is precisely fulfilling its mandate in preserving the sequestered shares pending final judgment on the matter. The issue of preservation vis-à-vis deprivation of assets, as raised by the minority, is nonetheless open to interpretation, as such is dependent on a certain point of view.

The perceptible oversight of the Supreme Court in its majority holding is not an affirmation of the right to vote of Cojuangco, et. al. On the contrary, it is a reaffirmation of the validity of the sequestration by PCGG of the various assets in question of the impleaded parties and the legality of the assumption or execution by the Commission in behalf of the Republic of the Philippines of any authority or act incidental to the conservation of the shares in dispute.

209. 195 SCRA at 813. This justification was arrived at in the holding of the Supreme Court in *Cojuangco, Jr. v. Roxas*. The Solicitor General contends in these two cases that if the purpose of sequestration is to "help prevent the dissipation of the corporation's assets" or to "preserve" the said assets, the PCGG may resort to "acts of strict ownership," such as voting the sequestered shares. The Court decreed that "the PCGG cannot perform acts of strict ownership of sequestered property. It is a mere conservator. It may not vote the shares in a corporation and elect the members of the board of directors. The only conceivable exception is in a case of a takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands as in BASECO."

210. *Id.*

Whether the temporary restraining order in question has indeed been confirmed and maintained or has lost its effectivity, the fact still remains that the funds that were used to acquire the disputed shares of stock is *prima facie* public in character. Thus, the prevailing jurisprudence on such circumstance must govern.

The minority asserted that since the respondents in this case are the registered stockholders of the disputed shares, then they should be allowed to vote the same. Again, despite the evidence that the sequestered UCPB shares were registered in the name of the respondents, that does not discount or destroy the fact that the shares were acquired with public funds. In other words, the public character of the levies that were used to buy the shares cannot be made private. Registration of these shares in the name of private individuals or entities must not be used to deprive the State of its assets. The State is the ultimate beneficiary of these shares. Thus, it must not be deprived of voting these shares.

As regards the third conflict, the dissenting opinion asserted that while the holding of the majority as regards the public character of the sequestered UCPB shares of stock may indeed be correct, it was still premature as such was the very question pending before Sandiganbayan. It should be stressed that the Court merely declared the sequestered shares to be *prima facie* public in character. In the dispositive portion of the majority opinion, the Court held that "[t]he PCGG shall continue voting the sequestered shares until Sandiganbayan Civil Case Nos. 0033-A, 0033-B and 0033-F are finally and completely resolved."[211] Without any doubt, the Court did not preclude the Sandiganbayan from making a final determination on the matter. The determination of the Court in this case was made only for the purpose of determining the right to vote on the specific stockholders meeting in contention. Beyond that, it is the Sandiganbayan that has proper jurisdiction on the character of the UCPB shares. The decision of the Court in this case is only a provisional determination pending final determination by the proper court. Until that time comes, PCGG must not be deprived of its mandate to preserve assets of the State that were apparently squandered from its coffers.

V. The Inescapable Conclusion

> *All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.*[212]

211. *Id.* at 13.

212. PHIL. CONST. art. VI, § 29(3).

The Constitution cannot be more clear on the matter. The coconut levy is a tax imposed by the State for a special purpose. It shall, therefore, "be treated as a special fund and paid out for such purpose only." The public character of the coconut levy funds shall forever attach. No amount of legislation or executive fiat can change the nature of these Funds from what it originally was.

The most important issue in *Republic v. COCOFED* was the character of the coconut levy funds. From this flowed all the other matters adjunct or which necessarily follow. From this also flowed the primordial conflict of the Court. While the majority held that the funds were *prima facie* public funds, the minority emphatically questioned this conclusion.[213] In the minds of the dissenting Justices, while the conclusion reached by the majority may in fact be correct, the declaration was improper to lay down at this point, since the Sandiganbayan has yet to pronounce final determination on this issue. This line of thinking suggests that due to the absence of a conclusive judicial disposition on the issue, the public nature of the funds cannot be recognized as dogma. A view of this kind essentially goes against the very statutes that exacted the various levies. In holding that the nature of the funds could only be acknowledged as public after a final judicial determination on the matter, the dissent casts aside the language and intent of the pertinent statutes. It is indeed absurd, if not totally devoid of reason, to argue that the nature of a particular fund in question hangs in the balance due to pendency of an action in a court of law. Even a cursory reading of the statutes would reveal the nature of the funds as public, and yet the minority vehemently holds firm to its conviction that such cannot be said to be the case until the Sandiganbayan says that it is the case.

It is fortunate that the majority saw things differently. The Court, indeed, ascertained and, with greater degree of empathy, held that "having shown that the coconut levy funds are not only affected with public interest, but are in fact *prima facie* public funds, this Court believes that the government should be allowed to vote the questioned shares, because they belong to it as the *prima facie* beneficial and true owner."[214] The majority holding affirmed what the pertinent statutes have stated and intended all along.

A recollection of the general principles of taxation would bear that "a tax is a burden, charge, imposition, or contribution, assessed in accordance with some reasonable rule of apportionment by authority of a sovereign state upon the persons or property within its jurisdiction, to provide public revenue for the support of the government, the administration of the law, or the payment of public expenses. Any payment exacted by the state or its municipal subdivisions as a contribution toward the cost of maintaining

213. *See supra* note 190.

214. *Republic-COCOFED*, G.R. Nos. 147062-64 at 38.

governmental functions, where the special benefits derived from their performance is merged in the general benefit, is a tax."[215] Without any scintilla of doubt, the coconut levy funds are public funds.

Being public funds sustained for a specific purpose, the coconut levy funds should not, and in fact cannot, be metamorphosed into a fund in aid of private interests. Since its inception, the levies have been held for the stabilization and increased competitiveness of the coconut industry. The transfer of these funds to private individuals and entities is, therefore, a depredation prejudicial to the State and its citizens. In this regard, enlightenment may be had in this wise: "It has been said that to lay, with one hand, the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises and build up private fortunes, is not taxation. Moreover, *inasmuch as taxation is a mode of raising revenue for public purposes, it ceases to be taxation, and becomes plunder, when it is prostituted to objects in no way connected with the public interest or welfare.* Transferring money from the owners of it into the possession of those having no title to it, although it is done under the name and form of tax, is unconstitutional, for all the reasons which forbid the legislature to usurp any power not granted."[216]

Private individuals and entities have no business holding the coconut levy funds. The Third Whereas Clause of Presidential Decree No. 276, which mandated the collection of the levy, declare that the Coconut Consumer Stabilization Fund, which was eventually utilized in the acquisition of a commercial bank for the benefit of the coconut farmers pursuant to Presidential Decree No. 755, shall be treated as a special fund for the specific public purpose of promoting the welfare and economic well-being of the consuming public. In addition, pursuant to Presidential Decree No. 711, all special fiduciary and special funds, which included the CCSF, were to be transferred to the general fund of the State. Further, Presidential Decree No. 1234 unequivocally declared that the CCSF, among other coconut levy funds, was a fund for a special public purpose, which should be treated as a special account in the National Treasury. In the same wise, the respondents themselves judicially admitted the CCSF is a public fund.[217]

Apart from these recitation of facts, the indelible marks of taxation are clear in the CCSF. First of all, being in the nature of a tax, the CCSF was an enforced contribution. Verily, it is an obligation of citizens to hand over to the State a certain part of their income as their involuntary contribution to

215. 71 AM. JUR. 2d *Tax* § 2 (citations omitted).

216. 71 AM. JUR. 2d *Necessity that tax be for public purpose* § 3 (citations omitted) (emphasis supplied).

217. *See* Memorandum for Petitioner, at 19-22.

the government for public benefit. Stressing the compulsory nature of the coconut levy, P.D. 276 provided for penal sanctions for those who did not heed of its provisions.[218] Secondly, the CCSF was legitimately mandated by the law-making authority at the time of the former dictatorship.

From its inception, the CCSF was a tax levied by the State for a special purpose. There is no contest as to this fact. Consequently, therefore, no amount of legal or legislative manipulation can change the character of the coconut levy funds. All revenues derived from the power of taxation of the State are public funds. Moreover, public funds that were specifically allocated for a mandated purpose must not be channeled to other interests. The simplicity and clarity of this line of reasoning cannot be stressed enough. To hold otherwise would be to prostitute the very nature of taxation.

In two cases prior to *Republic v. COCOFED — Gaston v. Republic Planters Bank*[219] and *Osmeña v. Orbos*[220] — the Supreme Court made similar pronouncements as to particular levies in question. The Court has been consistent in its holdings as regards taxes levied for specific purposes.

The power of taxation, however, is not without limit. The funds generated from levies by the State must be for a public purpose. With regard to this core principle, it must be stressed that "under the express or implied provisions of the constitution, public funds may be used only for a public purpose. The right of the legislature to appropriate public funds is correlative with its right to tax, and, under constitutional provisions against taxation except for public purposes and prohibiting the collection of a tax for one purpose and the devotion thereof to another purpose, no appropriation of...funds can be made for other than a public purpose."[221] Furthermore, "the test of the constitutionality of a statute requiring the use of public funds is whether the statute is designed to promote the public interests, as opposed to the furtherance of the advantage of individuals, although such advantage to individuals might incidentally serve the public."[222]

It is beyond the powers of the legislative body to allocate funds derived from taxation for purposes other than what can be characterized as public in nature. Quoting jurisprudence, "it is a general rule that the legislature is without power to appropriate public revenue for anything but a public purpose.... Incidental advantage to the public or to the state, which results from the promotion of private interests and the prosperity of private

218. P.D. No. 276, § 3.

219. 158 SCRA 627 (1988).

220. 220 SCRA 703 (1993).

221. 81 C.J.S. 1147 (citations omitted).

222. *Id.* at 1148 (citations omitted).

enterprises or business, does not justify their aid by the use of public money."[223]

Undeniably, the principles in this regard have been consistent. The taxing power of the State must be exercised for public purposes only. The advancement of private interests are not germane to taxation. Thus, the rule as to the nature of the coconut levy funds is certain — it was a tax levied for a specific public purpose, and being such, it must be treated as a special fund and paid out for such purpose only.

The quintessential issue with respect to the long line of sequestration cases has been the question of whether or not the defendants in those cases — certainly not limited to those impleaded in this action — have the right to the assets they have acquired. More narrowly, in this case, the instant action rests on the question of whether or not the defendants at bar have the right to the shares of stock they allegedly registered in their names, which shares were acquired with the use of the Coconut Consumers Stabilization Fund, and to vote these shares of stock. As answered by the Court, they do not have that right. In so holding that the sequestered UCPB shares of stock are *prima facie* public funds, as they were acquired through coconut levy funds by virtue of the police and taxing powers of the State, the Supreme Court upheld the very fundamental principles of law with respect to the sovereign powers of taxation. The pronouncement of the Court affirmed the resolution and policy of the State to bring to its possession its rightful assets.

The conclusion is, thus, inescapable. After much study of the case, due comprehension of the facts, and critique of the judgment of the Court, the sovereign powers of the State must be upheld. A survey of statutes, jurisprudence, and legal principles leads to no other determination — coconut levy funds are public funds. As such, private individuals or entities do not have any business to hold such funds for their own benefit.

223. Pascual v. Secretary of Public Works, et al., 110 Phil. 331, 340 (1960).