

Postscript

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30-year sequestration of Philcomsat lifted

AFTER 30 years of wrongful sequestration, the giant Philcomsat telecommunications group is finally removed from the clutches of the Presidential Commission on Good Government and other government agencies that had abetted its being looted.



The Supreme Court has just handed down its decision – retroactive to 1987 – lifting PCGG sequestration over Philippine Overseas Telecommunications Corp. and its 100 percent-owned subsidiary Philippine Communications Satellite Corp. (Philcomsat).

The private owners filed to lift sequestration 11 years ago in the Sandiganbayan. However, their petition and motions for reconsideration were denied, because of objections of the Solicitor General and the PCGG that was looting Philcomsat.

The owners went to the Supreme Court in 2006 and followed up with five motions for early resolution – and the High Court finally granted the petition last Feb. 10, effective not just on the decision date (which is normal in similar decisions) but dating back to 1987.

The ruling's dispositive portion says: *"The writ of sequestration issued against petitioner POTC and Philcomsat is hereby declared LIFTED six months after the ratification of the 1987 Constitution on 2 February 1987."*

But it seems we have not heard the last shots. Asked for a reaction, Philcomsat President-CEO Lin I. Bildner said: "This is a major victory for our companies. Now we will run after PCGG for their crimes, abuses, plunder, etc., on our companies from 1987 to today."

Philcomsat owners are still smarting from almost three decades of litigation marked by PCGG oppression (such as annotating Philcomsat land titles covering hundreds of hectares, marking them as "sequestered" and thus unmarketable), billions of pesos of assets plundered or dissipated by the PCGG, and untold wasted judicial and legal resources.

Bildner asked: "What to do when justice comes after all the money is long gone, and when the repeat offender is the Presidential Commission on Good Government – the very entity ironically mandated to conserve and preserve?"

Another irony is that the POTC, the group's mother holding company, is 35 percent owned by the Republic of the Philippines. Per Philcomsat's website, the 65-percent balance is owned by six private groups: Ilusorio (Bildner), Nieto, Poblador, Africa, Benedicto/Traders Royal Bank (BOC), and Ponce-Enrile.

The POTC owns 100 percent of Philippine Communications Satellite Corp., the telecommunications company holding a mega-franchise for telecommunications. In turn, Philcomsat owns 81 percent of PSE-listed Philcomsat Holdings Corp., 19 percent of which is owned by some 2,000 private shareholders.

• **PCGG men loot PHC's P900-M trove**

SINCE 1986, the PCGG has sequestered and plundered POTC and Philcomsat without impleading them in the original complaint. There was never any judicial action filed by the state or the PCGG against the two corporate entities; thus depriving them of due process.

After depleting the two companies' resources, the PCGG proceeded to entrench itself in PHC, which has never been sequestered, and continued to plunder it:

An earlier Supreme Court decision on a related case decreed that a pack of errant PCGG nominees, using PCGG "clout," elected themselves to PHC's board in 2004, disenfranchising the true owners.

By the time the SC decision was handed down, PHC's cash trove of over P900 million had been dissipated by the interlopers. The High Court ordered the PCGG-led gang to produce a full accounting of the looted funds and return the money.

In its Feb. 12 decision, the Supreme Court ruled that the failure to properly implead POTC and Philcomsat as defendants in the original Sandiganbayan Civil Case 0009 (which was against private individual shareholders) constitutes "a fatal jurisdictional error."

This was consistent with a prior sequestration ruling finding that "a complaint against individual shareholders does not constitute a suit against the corporation."

While other SC decisions on lifting sequestration cite basic law and jurisprudence, it is significant that the POTC/Philcomsat decision, penned by Associate Justice Jose Portugal Perez, ruled that such lifting took effect 30 years ago. The SC said in effect that both POTC and Philcomsat have been illegally sequestered for almost 30 years.

• **'New PCGG' insists on oppressive acts**

THE HIGH COURT also ruled that sequestration should be lifted because the final and executory Compromise Agreement entered into between a private POTC shareholder and the PCGG in 2000 resulted in the Republic's definitive 34.9-percent ownership in POTC/Philcomsat.

That agreement should have ended the provisional and conservatory aspect of sequestration. That was exactly what the Department of Justice (the PCGG's administrative head) had ordered the PCGG to do.

With impunity, however, the "New PCGG" continues to ignore its superior's dictum that the PCGG had "lost authority" over the 35-percent block of POTC shares owned by the Republic – instead persisting on sequestration.

The latest victory for POTC and Philcomsat, however, does not stem the wrongs of almost three decades. While the "New PCGG" is quick to distance itself from outright plunder, the current regime continues to flout the spirit and the letter of the law.

Shareholders of PHC complain that the "New PCGG" has been harassing and causing them damage by insisting on the freezing of their shares of the company that is not even under the jurisdiction of the PCGG.

They note that the PCGG has also been preventing the listing of new-issue PHC shares on the PSE, the bulk of which is beneficially owned by the Republic.

Moreover, the "New PCGG", under its former chair Andres D. Bautista (now chair of the Commission on Elections) citing "sequestration," has refused to lift the annotation on property titles, thus preventing property owners POTC and Philcomsat from transacting business.

The PCGG reportedly has been using the "sequestration" excuse to justify the egregious actions. Ironically, complaints filed against the PCGG in the Ombudsman's office get dismissed or go unnoticed.

What to do now that the Supreme Court has determined that the sequestration of POTC/Philcomsat is deemed lifted as of 1987? How does the Republic rectify three decades of abuses and plunder, when the government itself is also a victim?

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