SUPREME COURT
EN BANC

CENTRAL BANK OF THE PHILIPPINES AND HON. JOSE B. FERNANDEZ,
***Petitioners*,**

-versus-

G.R. No. 88353
May 8, 1992

HON. COURT OF APPEALS, RTC JUDGE TEOFILO GUADIZ, JR., PRODUCERS BANK OF THE PHILIPPINES AND PRODUCER PROPERTIES, INC.,
***Respondents*.**
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ATTY. LEONIDA G. TANSINSIN-ENCARNACION, as the Acting Conservator of Producers Bank of the Philippines, and Producers Bank of the Philippines,
***Petitioners*,**

-versus-

G.R. No. 92943
May 8, 1992

PRODUCERS BANK OF THE PHILIPPINES, allegedly represented by HENRY L. CO, HON. COURT OF APPEALS, HON. TEOFILO GUADIZ, JR., and the "LAW FIRM OF QUISUMBING, TORRES AND EVANGELISTA" (RAMON J. QUISUMBING, VICENTE TORRES, RAFAEL E. EVANGELISTA JR. AND CHRISTOPHER L. LIM),

Respondents.

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D E C I S I O N

DAVIDE, JR., *J.*:

SEPARATE OPINIONS:

***GUTIERREZ, JR., J., concurring.*:**

The common origin of these cases is Civil Case No. 17692 filed before Branch 147 (Makati) of the Regional Trial Court, National Capital Judicial Region and entitled Producers Bank of the Philippines and Producers Properties, Inc. versus Central Bank of the Philippines, Jose B. Fernandez, Jr. and the Monetary Board. On 21 January 1991, this Court ordered the consolidation of G. R. No. 92943 with G. R. No. 88353.[1]

The first case, G. R. No. 88353, is a Petition for Review on *Certiorari* of the Decision of 6 October 1988[2] and the resolution of 17 May 1989[3] of the respondent Court of Appeals in C. A. G.R. No. SP-13624.

The impugned decision upheld the 21 September 1987 Order of respondent Judge Teofilo Guadiz, Jr. in Civil Case No. 17692 granting the motion for issuance of a writ of preliminary injunction — enjoining petitioners Central Bank of the Philippines (CB), Mr. Jose B. Fernandez, Jr. and the Monetary Board, or any of their agencies from implementing Monetary Board (MB) Resolutions No. 649 and No. 751, or from taking the threatened appropriate alternative action — and the 27 October 1987 Order in the same case denying petitioners' motion to dismiss and vacate said injunction. The challenged resolution, on the other hand, denied petitioners' motion for reconsideration of the 6 October 1988 Decision.

The second case, G. R. No. 92943, is a petition for review directed principally against the 17 January 1990 decision of the respondent Court of Appeals in C.A.-G.R. SP. No. 16972. The said decision dismissed the petition therein filed and sustained the various Orders of the respondent Judge in Civil Case No. 17692, but directed the plaintiffs therein to amend the amended complaint by stating in its prayer the specific amount of damages which Producers Bank of the Philippines (PBP) claims to have sustained as a result of losses of operation and the conservator's bank frauds and abuses; the Clerk of Court was also ordered to determine the amount of filing fees which should be paid by the plaintiffs within the applicable prescriptive or reglementary period.[4]

The records of both cases reveal the following factual and procedural antecedents:

> Petitioners claim that on 29 April 1983, during the regular examination of the PBP, CB examiners stumbled upon some highly questionable loans which had been extended by the PBP management to several entities. Upon further examination, it was discovered that these loans, totaling approximately P300 million, were "fictitious" as they were extended, without collateral, to certain interests related to PBP owners themselves. Said loans were deemed to be anomalous particularly because the total paid-in capital of PBP at that time was only P140.544 million. This means that the entire paid-in capital of the bank, together with some P160 million of

depositors' money, was utilized by PBP management to fund these unsecured loans.

Sometime in August of the same year, at the height of the controversy surrounding the discovery of the anomalous loans, several blind items about a family-owned bank in Binondo which granted fictitious loans to its stockholders appeared in major newspapers. These news items triggered a bank-run in PBP which resulted in continuous over-drawings on the bank's demand deposit account with the Central Bank; the over-drawings reached P74.109 million by 29 August 1983. By 17 January 1984, PBP's overdraft with the CB increased to P143.955 million, an indication of PBP's continuing inability to maintain that condition of solvency and liquidity necessary to protect the interests of its depositors and creditors. Hence, on 20 January 1984, on the basis of the report submitted by the Supervision and Examination Sector, Department I of the CB, the Monetary Board (MB), pursuant to its authority under Section 28-A of R.A. No. 265 and by virtue of MB Board Resolution No. 164, placed PBP under conservatorship.[5]

While PBP admits that it had no choice but to submit to the conservatorship,[6] it nonetheless requested that the same be lifted by the CB. Consequently, the MB issued on 3 February 1984 Resolution No. 169 directing the principal stockholders of PBP to increase its capital accounts by such an amount that would be necessary for the elimination of PBP's negative net worth of P424 million. On 10 April 1984, CB senior deputy Governor Gabriel Singson informed PBP that pursuant to MB Resolution No. 490 of 30 March 1984, the CB would be willing to lift the conservatorship under the following conditions:

"(a) PBP's unsecured overdraft with the Central Bank will be converted into an emergency loan, to be secured by sufficient collateral, including but not limited to the following properties offered by PBP's principal stockholders:

i. 6 floors and other areas of the Producers Bank Bldg., at Paseo de Roxas, owned by PBP;

ii. 15 floors of the Producers Bank Bldg., at Paseo de Roxas, Makati, owned by the Producers Properties, Inc.;

iii. Manhattan Bldg. on Nueva Street, Binondo, Manila; and

iv. Producers Bank, Makati Branch Bldg., at Buendia Avenue, Makati;

(b) A comptroller for PBP and any number of bank examiners deemed necessary to oversee PBP's operations shall be designated by the Central Bank, under terms of reference to be determined by the Governor;

(c) A letter from the Management of PBP authorizing the Central Bank to automatically return clearing items that would result in an overdraft in its Central Bank account shall be submitted to the Central Bank."

On 27 April 1984, the MB adopted Resolution No. 584 approving the consolidation of PBP's other unsecured obligations to the CB with its overdraft and authorizing the conversion thereof into an emergency loan. The same resolution authorized the CB Governor to lift the conservatorship and return PBP's management to its principal stockholders upon completion of the documentation and full collateralization of the emergency loan, but directed PBP to pay the emergency loan in five (5) equal annual installments, with interest and penalty rates at MRR 180 days plus 48% per annum, and liquidated damages of 5% for delayed payments.

On 4 June 1984, PBP submitted a rehabilitation plan to the CB which proposed the transfer to PBP of three (3) buildings owned by Producers Properties, Inc. (PPI), its principal stockholder and the subsequent mortgage of said properties to the CB as collateral for the bank's overdraft obligation.[7] Although said proposal was explored and discussed, no program acceptable to both the CB and PPI was arrived at because of disagreements on certain matters such as interest rates, penalties and liquidated damages.

No other rehabilitation program was submitted by PBP for almost three (3) years, as a result thereof, its overdrafts with the CB continued to accumulate. By the end of June 1987, the figure swelled to a staggering P1.023 billion. Consequently, per Resolution No. 649 dated 3 July 1987, the CB Monetary Board decided to approve in principle what it considered a viable rehabilitation program for PBP. The program had these principal features:

> "A1. The Central Bank will assign in favor of the Philippine Deposit Insurance Corporation (PDIC) its claim over the overdraft of PBP net of net peso differential arising from swap transactions and interest thereon, up to the amount of the par value of the Producers Properties, Inc. (PPI) shares of stock in PBP presently pledged to the Central Bank, and PDIC will enter into a contract of dacion en pago with PBP and PPI whereby PDIC will acquire 4,116,100 preferred shares of stock of PBP with a par value of P100 per share in consideration for which PDIC will convey its rights over the overdraft assigned to it by the Central Bank, in favor of PPI;
>
> 2. The balance of the overdraft of PBP, after the assignment to PDIC of a portion of such overdraft referred to in Item I above, will also be assigned to PDIC and converted into preferred shares of stock of PBP;
>
> 3. The interest on the overdraft of PBP will be reduced to 11.75% p.a. retroactively to the date when the overdraft of PBP was incurred;
>
> 4. The accrued interest on the overdraft of PBP, at the reduced rate approved in Item 3 above, as well as the unbooked penalties on legal reserve deficiencies of PBP will be assigned in favor of PDIC and such amounts will be allowed to be converted into preferred shares of stock of PBP; and
>
> 5. The booking of valuation reserves will be allowed as follows:

3rd year	—	P 31 million
4th year	—	48 million
5th year	—	67 million
6th year	—	85 million
7th year	—	105 million
8th year	—	124.61 million

subject to the following conditions:

a. Fresh capital of P200.0 million shall be put up, provided that a new group of stockholders shall hold at least 40% of the total outstanding voting shares of stock of PBP;

b. PBP shall submit additional collaterals to fully collateralize its overdraft with the Central Bank;

c. PPI shall convey to PBP the remaining floors of the Producers Bank Centre for a value of P143.54 million partly in payment of DOSRI loans of P27.6 million, principal plus interest, and the balance of P115.94 million for shares of stock of PBP, P15.12 million common and P100.89 million preferred, with features as presently provided under PBP's Articles of Incorporation and By-Laws;

d. PBP's Articles of Incorporation and By-Laws shall be amended so as to create a special class of preferred, non-voting, cumulative, non-participating shares of stock with a dividend rate of 12%, which shall be issued (i) in exchange for the PPI shares that will be conveyed to PDIC under the dacion en pago mentioned in Item 1 above, (ii) in consideration of the balance of PBP's overdraft assigned to PDIC under Item 2 above, and (iii) in consideration of the accrued interest on PBP's overdraft assigned to PDIC and the unbooked penalties on legal reserve deficiencies of PBP also assigned to PDIC. The

said preferred shares of stock shall be convertible into common voting shares of stock upon the sale of such preferred shares to private parties at the option of such parties. Proceeds from the sale of these shares of stock shall be used to liquidate the advances made by the Central Bank to PDIC by virtue of the various assignments under Items 1, 2 and 4 above. The said shares of stock shall not share in losses and other capital adjustments representing reduction of capital accounts as recommended by SES Department I incurred up to the date of the issuance of such shares of stock;

e. PBP shall execute in favor of a trustee to be approved by the Central Bank of mortgage trust indenture covering the assets presently mortgaged/pledged to the Central Bank as collateral for the overdraft of PBP as well as additional collaterals to be submitted to fully collateralize the overdraft of PBP, under which indenture PDIC as holder of the preferred shares of stock, shall have the first lien and preference over the assets subject of the indenture in case of insolvency, to the extent of the overdraft converted into preferred shares of stock, provided that PBP shall submit an opinion from the Securities and Exchange Commission that such indenture is legal and valid; and

f. The principal stockholders of both PBP and PPI shall submit in writing their conformity to the above conditions, with the effect that any previous agreements to the contrary shall be set aside.

B. To require PBP to submit to the Monetary Board for approval the identities of the new stockholders and the new management which shall not be changed without the prior approval of the Central Bank, it being understood that final

approval of the above rehabilitation plan shall depend entirely upon the acceptance by the Board of the new stockholders and the new management; and to give PBP a period of two weeks after such final approval within which to implement the above rehabilitation plan."[8] (Emphasis provided)

There being no response from both PBP and PPI on the proposed rehabilitation plan, the MB issued Resolution No. 751 on 7 August 1987 instructing Central Bank management to advise the bank, through Mr. Henry Co, as follows:

"a. The Central Bank conservatorship over PBP may be lifted only after PBP shall have identified the new group of stockholders who will put in new capital in PBP and after the Monetary Board shall have considered such new stockholders as acceptable; and

b. The stockholders of PBP have to decide whether or not to accept the terms of the rehabilitation plan as provided under Resolution No. 649 dated July 3, 1987 within one week from receipt of notice hereof and if such terms are not acceptable to them, the Central Bank will take appropriate alternative action on the matter."[9]

Additionally, in a letter dated 14 August 1987, the CB called the attention of the PBP directors and officers to Section 107 of R.A. No. 265, as amended by Executive Order No. 289 dated 23 July 1987, which provides, inter alia, that:

"Any bank which incurs an over-drawing in its deposit account with the Central Bank shall fully cover said overdraft not later than the next clearing day; Provided, Further, That settlement of clearing balances shall not be effected for any account which continue (sic) to be overdrawn for five consecutive banking days until such time as the overdrawing is fully covered or otherwise converted into an emergency loan or advance pursuant to the provisions of Sec. 90 of this Act. Provided, Finally, That the appropriate clearing office shall be officially notified of banks with overdrawn balances. Banks with existing overdrafts with the Central Bank as of the effectivity of this amended section

> shall, within such period as may be prescribed by the Monetary Board, either convert the overdraft into an emergency loan or advance with a plan of payment, or settle such overdrafts, and that upon failure to so comply herewith, the Central Bank shall take such action against the bank as may be warranted under this Act." (Emphasis provided)

A few days later, or on 27 August 1987, the PBP, without responding to the communications of the CB, filed a complainant verified by its former board chairman, Henry Co, with the Regional Trial Court of Makati against the CB, the MB and CB Governor Jose B. Fernandez, Jr. The complaint, docketed as Civil Case No. 17692,[10] devoted several pages to specific allegations in support of PBP's assertions that the conservatorship was unwarranted, ill-motivated, illegal, utterly unnecessary and unjustified; that the appointment of the conservator was arbitrary; that herein petitioners acted in bad faith; that the CB-designated conservators committed bank frauds and abuses; that the CB is guilty of promissory estoppel; and that by reason of the conservatorship, it suffered losses enumerated in paragraph 27 thereof, the total quantifiable extent of which is P108,479,771.00, exclusive of loss of profits and loss of goodwill.[11] It concluded with a prayer for:

> "Judicial review of Monetary Board Resolutions No. 649 dated July 3, 1987 and No. 751 dated 14 August, 1987 and that judgment be rendered nullifying the same and ordering defendant Central Bank's conservator to restore the viability of PBP as mandated by section 28-A of R.A. 265 and to fully repair the damages inflicted on PBP consisting of losses of operation and the conservators' bank frauds and abuses, with costs against defendants." (Emphasis supplied)

and for:

> "The issue of a temporary restraining order/preliminary injunction enjoining defendants' coercion on PBP to accept the rehabilitation plan within one week or their taking 'appropriate alternative action' including exclusion of PBP from settlement of clearing balances at the Central Bank clearing house, pending judicial review of Monetary Board Resolutions No. 649 dated

July 3, 1987 and No. 751 dated August 14, 1987 — defendants not being above the law."[12]

Only P102.00 was paid as docket fee.

The case was raffled to Branch 147 of said court which was then presided over by respondent Judge.

On 31 August 1987, respondent Judge issued a temporary restraining order and set the hearing of the application for preliminary injunction on 9 September 1987.[13] On 11 September 1987, petitioner filed an Opposition to the application for preliminary injunction.[14]

Subsequently, on 21 September 1987, respondent Judge issued an Order granting the writ[15] and enjoining defendant-petitioners or any of their agents from:

"Implementing Monetary Board Resolutions Nos. 649 and 751 or from taking the threatened 'appropriate alternative action' including exclusion of plaintiff bank from settlement of clearing balances at the Central Bank clearing house or any other action that will disturb the status quo or the viability of plaintiff bank during the pendency of this case conditioned upon the posting of a bond in the amount of P2,000,000.00."

On 25 October 1987, PBP filed the Amended Complaint[16] impleading PPI as an additional plaintiff. No new allegations or causes of action for said plaintiff were made.

On 5 November 1987, petitioners filed a Motion to Dismiss the Amended Complaint. The motion contained a prayer to vacate the injunction and raised the following grounds:

1) the amended complaint states no cause of action; MB Resolution Nos. 649 and 751 are merely advisory, thus, neither effect impairment of plaintiffs' rights nor cause it prejudice, loss or damage; furthermore, there is no basis for the averments on the legality or illegality of the conservatorship since the amended complaint does not seek its annulment;

2) the amended complaint is not authorized by the management of PBP; and

3) the lower court did not acquire jurisdiction over the case except to order the amended complaint expunged from the records because the proper filing fee was not paid.[17]

On 27 November 1987, the trial court, through the respondent Judge, handed down an Order denying the motion to dismiss on the following grounds: (a) the amended complaint alleges ultimate facts showing that plaintiff has a right and that such a right has been violated by defendant; the questioned MB Resolutions were issued arbitrarily and with bad faith, "being a part of a scheme to divest plaintiff's present stockholders of their control of PBP and to award the same to the PDIC or its unknown transferees"; and the averments of legality or illegality of the conservatorship are relevant to the cause of action since the complaint seeks the lifting of the conservatorship; (b) while it is true that under Section 28-A of the Central Bank Act the conservator takes over the management of a bank, the Board of Directors of such bank is not prohibited from filing a suit to lift the conservatorship and from questioning the validity of both the conservator's fraudulent acts and abuses and its principal's (MB) arbitrary action; besides, PPI is now a party-plaintiff in the action, and (c) plaintiffs have paid the correct filing fees since "the value of the case cannot be estimated."[18]

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Unable to accept the above Order, herein petitioners CB and Jose B. Fernandez, Jr. filed with respondent Court of Appeals on 11 January 1988 a petition for *certiorari* with preliminary injunction[19] to annul the 21 September and 27 November 1987 Orders of the respondent Judge, restrain the implementation of the same and nullify the writ of preliminary injunction. They contend therein that:

1. The trial court's injunctive order and writ are anomalous and illegal because they are directed against CB acts and measures which constitute no invasion of plaintiff's rights, and

2. The complaint filed was, on its face, dismissible: (a) for failure to state a cause of action, (b) for being unauthorized by the party in whose name it purports to have been filed, and (c) for failure of the purported plaintiff to pay the required filing fees.

Confronted with the "threshold and decisive issue of whether the respondent Judge gravely abused his discretion when he issued the Writ of Preliminary Injunction to enjoin petitioner from implementing Monetary Board Resolutions Nos. 649 and 751 for having been issued arbitrarily and with bad faith," the respondent Court promulgated the challenged decision dismissing the petition for lack of merit.[20] Respondent Court ruled that the CB's sudden and untimely announcement of the conservatorship over PBP eroded the confidence which the banking public had hitherto reposed on the bank and resulted in the bank-run; it then concluded that when the CB "peremptorily and illtimely (sic) announced" the conservatorship, PBP was not given an opportunity to be heard since the CB arbitrarily brushed aside administrative due process notwithstanding PBP's having "sufficiently established its inherent corporate right to autonomously perform its banking activities without undue governmental interference that would in effect divest its stockholders of their control over the operations of the bank." It further held that the challenged resolutions of the MB are not just advisory in character "because the same sought to impose upon the respondent bank petitioners' governmental acts that were specifically designed and executed to devise a scheme that would irreparably divest from the stockholders of the respondent bank control of the same."

The motion filed by petitioners for the reconsideration of the above decision was denied by the respondent Court in its Resolution of 17 May 1989.[21] On the issue of the non-payment of the correct docket fees, the said court, in ruling that the correct amount was paid, said that "the instant case is incapable of pecuniary estimation because the value of the losses incurred by the respondent bank cannot be calibrated nor pinned down to a specific amount in view of the damage that may be caused by the appointment of a conservator to its goodwill and standing in the community."

Undaunted by the adverse decision of the Court of Appeals, petitioners filed with this Court on 30 July 1989 the instant petition for review under Rule 45 of the Rules of Court.[22] It is alleged therein that the respondent Court committed grave abuse of discretion in:

(1) Ignoring petitioners' contention that since PBP did not pay the correct filing fees, the trial court did not acquire jurisdiction over the case; hence, pursuant to Manchester Development Corp., et al. vs. Court of Appeals, et al., G.R. No. 75919, 7 May 1987,[23] the complaint should have been dismissed for lack of jurisdiction on the part of the court;

(2) Ruling on the propriety or impropriety of the conservatorship as a basis for determining the existence of a cause of action since the amended complaint does not seek the annulment or lifting of the conservatorship;

(3) Not holding that the amended complaint should have been dismissed because it was filed in the name of PBP without the authority of its conservator; and

(4) Not setting aside the Order of the trial court granting the issuance of a writ of preliminary injunction which unlawfully restrained the CB from exercising its mandated responsibilities and effectively compelled it to allow the PBP to continue incurring overdrafts with it.

This petition was docketed as G.R. No. 88353.

On 19 July 1989, this Court required the respondents to comment on the petition.[24]

In the Comment[25] filed on 9 October 1989, private respondents maintain that: (a) the issue of whether or not they paid the correct filing fees involves a question of correctness of judgment, not grave abuse of discretion; errors of judgment cannot be the subject of the present petition for *certiorari*; (b) the complaint and the amended complaint state sufficient causes of action because they both contain specific allegations of an illegal, unnecessary, disastrous and repressive conservatorship conducted contrary to its mandated

purpose, and breach of promissory estoppel; furthermore, the trial court committed no grave abuse of discretion when it found that the questioned MB Resolutions were arbitrarily issued in contravention of the due process clause of the Constitution; (c) the filing of the complaint without authority from the conservator is an issue involving an error of judgment; besides, it would be ridiculous and absurd to require such prior authorization from the conservator for no one expects him to sanction the filing of a suit against his principal — the CB; moreover, Rule 3 of the Rules of Court requires that every action must be prosecuted and defended in the name of the real party in interest; besides, no administrative authority, even the CB, can nullify judicial review of administrative action by requiring that only said administrative authority or its designated conservator can file suit for judicial review of its actuation; and (d) the writ of preliminary injunction was properly issued.

Petitioners filed a Reply[26] to the Comment on 3 November 1989.

In their Supplemental Comment, private respondents argue that the Manchester rule is not applicable to the case at bar because what is primarily sought for herein is a writ of injunction and not an award for damages; it is further alleged that an order denying a motion to dismiss is neither appealable nor be made the proper subject of a petition for *certiorari* absent a clear showing of lack of jurisdiction or grave abuse of discretion.

On 15 February 1990, this Court resolved to give due course to the instant petition and require the parties to simultaneously file their respective Memoranda,[27] which they complied with.

On 1 March 1990, petitioners filed an Urgent Motion[28] informing this Court of the fact that on 6 June 1989, PBP, Through Henry Co, proposed another rehabilitation plan which involved the infusion of fresh capital into PBP by Banque Indosuez (Banque) and the AFP-Retirement and Separation Benefits System (ARSBS). Under said proposal, all existing law suits of PBP against the Central Bank and the PBP conservator, and vice versa, shall be withdrawn upon approval and implementation of the plan. The plan was approved by the Monetary Board in its Resolution No. 497 dated 23 June 1989. However, before the mechanics of the rehabilitation plan could be

threshed out among the parties, a "quarrel" developed between Henry and Luis Co, who both have controlling interests in PBP Luis accused Henry of "serious manipulations" in PBP and both steadfastly refused to settle their differences notwithstanding efforts of mediators, including prospective investors. Eventually, the prospective investors, in a letter dated 20 November 1989, advised the Central Bank that they are withdrawing their offer to infuse capital in PBP and that they have terminated all discussions with the Co family.

Petitioner further allege that with the withdrawal of Banque Indosuez and RSBS, the rehabilitation plan for PBP is no longer feasible. Meanwhile, the bank's overdraft with the Central Bank continues to rise. As of 13 February 1990, PBP's overdraft with the CB increased to P1.233 billion. If the injunction is not lifted, PBP will continually bleed the CB because of the former's inability to discharge its responsibilities under the law.

G.R. No. 92943

Pursuant to the powers and authority conferred upon her by the Central Bank, Atty. Leonida Tansinsin-Encarnacion, in her capacity as conservator, instituted reforms aimed at making PBP more viable. With this purpose in mind, she started reorganizing the bank's personnel and committees.

In order to prevent her from continuing with the reorganization, PBP filed on 24 October 1987, or after it obtained a writ of preliminary injunction in Civil Case No. 17692, an Omnibus Motion asking the trial court for an order: (a) reinstating PBP officers to their original positions and restoring the bank's standing committees to their respective compositions prior to said reorganization; (b) enjoining the lease of any portion of the bank's space in Producers Bank Center building to third parties and the relocation of departments/offices of PBP as was contemplated; and (c) to hold, after an opportunity to be heard is given her, said conservator in contempt of court for disobedience of and resistance to the writ of injunction. An opposition to the contempt charge was later filed by said petitioner.

Subsequently, upon its inclusion as party-plaintiff via the amended complaint, PPI filed on 4 November 1987 a motion asking the lower

court to order the Central Bank and its agents to restore to PPI the administration of the three (3) buildings earlier assigned to PBP pending the lifting of the conservatorship. PPI claimed that such transfer was necessary to prevent the rental income of said buildings being dissipated by the conservator.

On 17 November 1987, both PBP and PPI filed a motion praying:

> "(1) that the CB Conservator be ordered to publish PBP's financial statement for the last quarter of 1987 and every quarterly statement thereafter during the tendency of this case, with the following claims of plaintiff PBP against the Central Bank, to wit:
>
> (a) Interest in unconscionable rates of CB overdrawing illegally paid by the CB conservators to CB — now totaling P56,002,000.00;
>
> (b) Penalties on reserve deficiencies illegally paid by the CB conservators to CB — now totaling P20,657,000.00;
>
> (c) Penalties on reserve deficiencies not yet paid but which the conservator has booked as liabilities — now totaling P31,717,000.00;
>
> (d) Losses of operation by the CB conservators from January 31, 1984 to October 31, 1987 — now totaling P461,092,000.00.
>
> as 'suspense' accounts; and (2) that the CB conservator be ordered to carry those 'suspense' accounts in the books of PBP."

The following day, respondent Judge issued an Order (a) requiring conservator Tansinsin-Encarnacion to reinstate PBP officers to their original positions prior to the reorganization of the bank's personnel and restore PBP's standing committees to their original compositions, and (b) restraining her from leasing out to third parties any portion of PBP's space in the Producers Bank Center building. However,

respondent Judge held in abeyance the contempt proceedings against the conservator pending her immediate compliance with the Order.

On 22 December 1987, respondent Judge granted PPI's motion for an order transferring to it the administration of the three (3) buildings assigned to PBP. A motion for reconsideration of this order was filed by petitioners but was subsequently denied by respondent Judge in the Order of 4 October 1988.

A second Order, issued by respondent Judge on the same day, 22 December 1987, directed conservator Tansinsin-Encarnacion to publish the financial statement of PBP in the manner prayed for in the aforesaid 17 November 1987 motion. The motion to reconsider this Order was denied by respondent Judge on 3 October 1988.

On several occasions thereafter, conservator Tansinsin-Encarnacion caused the publication of PBP's financial statement as required by regulations, without, however, carrying the items enumerated by the trial court as "suspense accounts." Consequently, two (2) contempt charges were filed against her, one for the 3 February 1988 publication in the Manila Standard of PBP's statement of condition as of 29 December 1987 and the other for the 29 July 1988 publication in the Daily Globe of the bank's statement as of 30 June 1988. Oppositions to both charges of contempt were filed.

On 9 November 1988, respondent Judge declared said conservator guilty of contempt of court on three (3) counts and imposed upon her a fine of P1,000.00 for each count of contempt. The latter asked for a reconsideration of the order but the respondent Judge denied the same.

Another contempt charge against her was filed for publishing the statement of condition of PBP (as of 13 September 1988) in the 9 November 1988 issue of the Daily Globe without carrying the alleged "suspense accounts." She was again found guilty as charged and her motion for reconsideration was denied. Finding no other adequate relief, Tansinsin-Encarnacion filed with this Court on 11 January 1989 a petition for *certiorari* against respondent Judge, Henry L. Co and the law firm of Quisumbing, Torres and Evangelista. This case was docketed as G.R. No. 86526. She prays therein for judgment declaring

respondent judge to be without jurisdiction to entertain both the complaint and amended complaint in Civil Case No. 17692; declaring null and void all his orders, specially the contempt orders; and finding respondent Judge and respondent lawyers guilty of violating their respective oaths of office.[29]

On 8 February 1989, this Court resolved to refer said petition to the Court of Appeals which docketed it as C.A.-G.R. SP No. 16972.

In her Memorandum submitted to the Court of Appeals, Tansinsin-Encarnacion alleged that, (1) respondent Judge has no jurisdiction over Civil Case No. 17692 because its filing was not authorized by the petitioner or the conservator in violation of Section 28-A of R.A. No. 265, as amended, it was filed after the ten (10) day period prescribed by Section 29 of R.A. No. 265, as amended, and the correct docket fees were not paid; (2) respondent Judge illegally ordered her to return to PPI the administration of the bank's three (3) properties, contrary to his own writ of preliminary injunction and earlier order to make the bank viable, and to publish the alleged "suspense accounts" contrary to Section 28-A of R.A. No. 265, as amended, the writ of preliminary injunction and her constitutional right to silence; (3) respondent Judge erred in declaring her in contempt of court notwithstanding his lack of jurisdiction over the case and failure to set any date for the hearing and reception of evidence, in violation of her right to due process of law; and (4) respondents Judge and lawyers are administratively liable for their grossly illegal actuations and for depriving the Government of at least P13.2 million in filing fees.[30]

In its decision dated 17 January 1990, the Court of Appeals (Twelfth Division)[31] dismissed the petition; while finding the claim of lack of jurisdiction to be without merit, the said court nonetheless gave the following exception:

> "Except that plaintiffs in Civil Case No. 17692, within 15 days from receipt of a copy of this Decision, shall file the corresponding amendment to their amended complaint in said case, stating a specific amount 'to fully repair the damages inflicted on PBP consisting of losses of operation and the conservator's bank frauds and abuses', in the prayer of their

> amended complaint. Thereafter, the Clerk of Court of the lower court and/or his duly authorized Docket Clerk of Court in charge, should determine the amount found due, which should be paid by complainants within the applicable prescriptive or reglementary period, failure of which said claims for damages shall be dismissed."

In disposing of the issues raised, respondent Court merely adopted with approval the ruling of the respondent Judge on the question of jurisdiction and cited the decision of the Court of Appeals in C.A.-G.R. SP No. 13624 (subject of G.R. No. 88353), sustaining the respondent Judge's ruling. As to the filing of the complaint after the lapse of the 10-day period provided for in Section 29 of R. A. No. 265, it ruled that the section does not apply because the complaint essentially seeks to compel the conservator to perform his duties and refers to circumstances and incidents which transpired after said 10-day period.

On the issue of lack of jurisdiction for non-payment of correct filing fees, to which an exception was made in the dispositive portion, the respondent Court found the same to be "partly" meritorious. It agreed with petitioner that while the other losses and damages sought to be recovered are incapable of pecuniary estimation, the damages inflicted on PBP due to losses of operation and the conservator's bank frauds and abuses were in fact pegged at P108,479,771.00 in paragraph 26 of the amended complaint. This specific amount, however, should have been stated in the prayer of the complaint. It also held that the Manchester case "has been legally construed in the subsequent case of Sun Insurance Office Ltd.[32] and the case of Filipinas Shell Petroleum Corp.[33] to the effect that applying the doctrine initiated in the case of Manchester, together with said subsequent thereto (sic), plaintiffs in Civil Case No. 17692 should be given a reasonable time to amend their complaint, more particularly, to state in their prayer in the amended complaint the specific amount of damages."

On the orders of contempt and the reasons therefor, respondent Court merely stated:

> "Generally, when the court has jurisdiction over the subject matter and of the person, decisions upon or questions pertinent to the cause are decisions within its jurisdiction, and however, irregular or erroneous they may be, they cannot be corrected by *certiorari*. Whether the court's conclusion was based merely on speculations and conjecture, or on a misapprehension of facts and contrary to the documents and exhibits of the case, is not for us to determine in a petition for *certiorari* wherein only issues of jurisdiction may be raised. Thus, the instant petition cannot prosper."

And opined that under the Rules of Court, a judgment of contempt may be questioned on appeal and not on *certiorari*.

Finally, on the administrative liability of the respondent Judge and the lawyers, the respondent Court declared the claim to be without merit.

Petitioner's motion to reconsider the decision having been denied in the 2 April 1990 Resolution of the respondent Court,[34] she filed with this Court a petition under Rule 45 of the Rules of Court, which was docketed as G.R. No. 92943. Petitioner claims that respondent Court grossly erred in confirming/affirming the allegedly void Orders of respondent Judge which denied the motion to dismiss the complaint and granted the writ of preliminary injunction, restating in this regard the issues raised by the CB in G.R. No. 88353, and in holding her in contempt of court on four occasions. As to the last ground, she asserts that the Orders were issued in violation of the Rules of Court and infringed her right to due process since there was no hearing on the motions for contempt, except for the third motion wherein respondent Judge immediately ordered the movant to present evidence.

In their Comment,[35] filed in compliance with Our Resolution 21 May 1990, private respondents practically reiterated the arguments in their Comment to the petition in G.R. No. 88353; in addition, more specifically on the issue of contempt, they assert that while the motions for contempt were set for hearing, there is no showing that the scheduled hearings actually took place. Besides, the remedy to question a contempt order is an appeal;[36] since petitioner did not

appeal the questioned orders, the same became final and executory.[37]

After petitioner filed a Reply and private respondents submitted their Rejoinder thereto, this Court gave due course to the petition.

THE ISSUES

The basic issue in these cases is whether or not the respondent Court committed reversible error in affirming the challenged Orders of the respondent Judge. This necessarily calls for a determination of whether or not the respondent Judge committed grave abuse of discretion amounting to lack of jurisdiction:

(1) In not dismissing Civil Case No. 17692 on the following grounds: (a) lack of legal personality to bring the action as the same was filed in the name of the PBP without the authority of the conservator; (b) failure of the complaint and amended complaint to state a cause of action; and (c) non-payment of the correct amount of docket fee in violation of the rule enunciated in Manchester Development Corp. vs. Court of Appeals, et al.;

(2) In granting the writ of preliminary injunction; and

(3) In issuing the assailed Orders in G.R. No. 92943.

DISCUSSION

We shall take up the issues sequentially.

1. PBP has been under conservatorship since 20 January 1984. Pursuant to Section 28-A of the Central Bank Act,[38] a conservator, once appointed, takes over the management of the bank and assumes exclusive powers to oversee every aspect of the bank's operations and affairs. Petitioners now maintain that this power includes the authority to determine "whether or not to maintain suit in the bank's name."[39] The trial court overruled this contention stating that the section alluded to "does not prohibit the Board of Directors of a bank to file suit to lift the conservatorship over it, to question the validity of

the conservator's fraudulent acts and abuses and the arbitrary action of the conservator's principal — the Monetary Board of the Central Bank. The conservator cannot be expected to question his own continued existence and acts. He cannot be expected to file suit to annul the action of his principal or a suit that would point out the ill-motivation, the disastrous effects of the conservatorship and the conservator's bank frauds and abuses as alleged in the complaint."[40]

Obviously, the trial court was of the impression that what was sought for in Civil Case No. 17692 is the lifting of the conservatorship because it was arbitrarily and illegally imposed. While it may be true that the PBP devoted the first 38 pages of its 47-page complaint and amended complaint to what it considers an unwarranted, ill-motivated, illegal, unnecessary and unjustified conservatorship, it, nevertheless, submitted to the same. There is nothing in the amended complaint to reflect an unequivocal intention to ask for its lifting. Of course, as subsequent maneuvers would show, PBP sought to accomplish the lifting thereof through surreptitious means. That such action was not, on its face, filed to have the conservatorship lifted, is best evidenced by PBP's prayer for a judgment "ordering defendant Central Bank's conservator to restore the viability of PBP as mandated by Section 28-A of R.A. No. 265."[41] Unfortunately too, respondent Court was easily misled into believing that the amended complaint sought the lifting of the conservatorship. Thus, although the matter was not specifically raised in issue and clearly unnecessary for the determination of the issues squarely raised, the respondent Court opined:

> "It is Our sober assessment that the respondent bank was not given an opportunity to be heard when the Central Bank peremptorily and illtimely (sic) announced the appointment of a conservatorship over the latter (bank) for which reason We believe that administrative due process was arbitrarily brushed aside to the prejudice of the said bank."

If it were to lift the conservatorship because it was arbitrarily imposed, then the case should have been dismissed on the grounds of prescription and lack of personality to bring the action. Per the fifth paragraph of Section 29 of the Central Bank Act, as amended by Executive Order No. 289, the actions of the MB may be assailed in an

appropriate pleading filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt of notice by the said majority stockholders of the order placing the bank under conservatorship. The pertinent portion of said paragraph reads as follows:

> "The provisions of any law to the contrary notwithstanding, the actions of the Monetary Board under this Section, Section 28-A, and the second paragraph of Section 34 of this Act shall be final and executory, and can be set aside by a court only if there is convincing proof, after hearing, that the action is plainly arbitrary and made in bad faith: Provided, That the same is raised in an appropriate pleading filed by the stockholders of record representing the majority of the capital stock within ten (10) days from the date the receiver takes charge of the assets and liabilities of the bank or non-bank financial intermediary performing quasi-banking functions or, in case of conservatorship or liquidation, within ten (10) days from receipt of notice by the said majority stockholders of said bank or non-bank financial intermediary of the order of its placement under conservatorship or liquidation."

The following requisites, therefore, must be present before the order of conservatorship may be set aside by a court:

1. The appropriate pleading must be filed by the stockholders of record representing the majority of the capital stock of the bank in the proper court;

2. Said pleading must be filed within ten (10) days from receipt of notice by said majority stockholders of the order placing the bank under conservatorship; and

3. There must be convincing proof, after hearing, that the action is plainly arbitrary and made in bad faith.[42]

In the instant case, PBP was placed under conservatorship on 20 January 1984. The original complaint in Civil Case No. 17692 was filed only on 27 August 1987, or three (3) years, seven (7) months and seven (7) days later, long after the expiration of the 10-day period

referred to above. It is also beyond question that the complaint and the amended complaint were not initiated by the stockholders of record representing the majority of the capital stock. Accordingly, the order placing PBP under conservatorship had long become final and its validity could no longer be litigated upon before the trial court. Applying the original provision of the aforesaid Section 29 of the Central Bank Act, this Court, in Rural Bank of Lucena, Inc. vs. Arca, et al.,[43] ruled that:

> "Nor can the proceedings before Judge Arca be deemed a judicial review of the 1962 resolution No. 122 of the Monetary Board, if only because by law (Section 29, R.A. 265) such review must be asked within 10 days from notice of the resolution of the Board. Between the adoption of Resolution No. 122 and the challenged order of Judge Arca, more than one year had elapsed. Hence, the validity of the Monetary Board's resolution can no longer be litigated before Judge Arca, whose role under the fourth paragraph of section 29 is confined to assisting and supervising the liquidation of the Lucena bank."

This rule is still good law notwithstanding the amendment to Section 29 which expands its scope by including the actions of the MB under Section 28-A of the Act on the appointment of a conservator.

It was precisely an awareness of the futility of any action to set aside the conservatorship which prompted PBP to limit its action to a claim for damages and a prayer for an injunction against the implementation of MB Resolutions Nos. 649 and 751. However, to make it appear that it had a meritorious case and a valid grievance against the Central Bank, it wandered long into the past and narrated a sad story of persecution, oppression and injustice since the inception of the conservatorship — obviously to gain the sympathy of the court, which it eventually obtained.

The next crucial question that suggests itself for resolution is whether an action for damages arising from the MB's act of placing the PBP under conservatorship and the acts of the conservator, and to enjoin the MB from implementing resolutions related or incident to, or in connection with the conservatorship, may be brought only for and in behalf of the PBP by the stockholders on record representing the

majority of the capital stock thereof or simply upon authority of its Board of Directors, or by its Chairman. We hereby rule that as to the first kind of damages, the same may be claimed only if the MB's action is plainly arbitrary and made in bad faith, and that the action therefor is inseparable from an action to set aside the conservatorship. In other words, the same must be filed within ten (10) days from receipt of notice of the order placing the bank under conservatorship. Otherwise, the provision of the fifth paragraph of Section 29 of the Central Bank Act could be rendered meaningless and illusory by the bank's filing, beyond the prescribed ten-day period, of an action ostensibly claiming damages but in reality questioning the conservatorship As to actions for the second kind of damages and for injunction to restrain the enforcement of the CB's implementing resolutions, said fifth paragraph of Section 29 of the Central Bank Act, as amended, equally applies because the questioned acts are but incidental to the conservatorship. The purpose of the law in requiring that only the stockholders of record representing the majority of the capital stock may bring the action to set aside a resolution to place a bank under conservatorship is to ensure that it be not frustrated or defeated by the incumbent Board of Directors or officers who may immediately resort to court action to prevent its implementation or enforcement. It is presumed that such a resolution is directed principally against acts of said Directors and officers which place the bank in a state of continuing inability to maintain a condition of liquidity adequate to protect the interest of depositors and creditors. Indirectly, it is likewise intended to protect and safeguard the rights and interests of the stockholders. Common sense and public policy dictate then that the authority to decide on whether to contest the resolution should be lodged with the stockholders owning a majority of the shares for they are expected to be more objective in determining whether the resolution is plainly arbitrary and issued in bad faith.

The original complaint in Civil Case No. 17692 was not initiated by the majority of the stockholders, hence it should have been dismissed. However, confronted with this fatal flaw, counsel for PBP, through shrewd maneuvering, attempted to save the day by impleading as co-plaintiff a corporation, the PPI, which was not under conservatorship. Unfortunately, the maneuver was crudely and imperfectly executed. Except for the inclusion of its name, nothing new was actually added

to the original complaint in terms of causes of action and reliefs for PPI. The amendment then was an exercise in futility. We cannot, however, subscribe to the petitioner's view that: (a) once a bank is placed under conservatorship, no action may be filed on behalf of the bank without prior approval of the conservator, and (b) since in this case such approval was not secured prior to the filing of Civil Case No. 17692, the latter must also be dismissed on that ground. No such approval is necessary where the action was instituted by the majority of the bank's stockholders. To contend otherwise would be to defeat the rights of such stockholders under the fifth paragraph of Section 29 of the Central Bank Act. It must be stressed here that a bank retains its juridical personality even if placed under conservatorship;[44] it is neither replaced nor substituted by the conservator who, per Section 28-A of the Central Bank Act, as amended by P.D. No. 1932, shall only:

> "Take charge of the assets, liabilities, and the management of that institution, collect all monies and debts due said institution and exercise all powers necessary to preserve the assets of the institution, reorganize the management thereof, and restore its viability. He shall have the power to overrule, or revoke the actions of the previous management and board of directors, any provision of law to the contrary notwithstanding, and such other powers as the Monetary Board shall deem necessary."

Even assuming for the sake of argument that the action was properly brought by an authorized party, the same must nevertheless be dismissed for failure of the plaintiffs therein to pay the correct docket fees, pursuant to Manchester Development Corp. vs. Court of Appeals, et al.;[45] the said case was decided by this Court on 7 May 1987, exactly three (3) months and twenty (20) days before the filing of the original complaint and five (5) months and eighteen (18) days before the filing of the Amended Complaint in Civil Case No. 17692. We ruled therein that:

> "The Court acquires jurisdiction over any case only upon the payment of the prescribed docket fee. An amendment of the complaint or similar pleading will not thereby vest jurisdiction in the Court, much less the payment of the docket fee based on the amounts sought in the amended pleading. The ruling in the

> Magaspi case [115 SCRA 193], in so far as it is inconsistent with this pronouncement is overturned and reversed."

The respondent Judge, in ruling that PBP and PPI had paid the correct docket fee of P102.00, said that "the value of the case cannot be estimated" since what is sought is an injunction against the enforcement of the challenged resolutions of the MB; in short, the claim for damages is merely incidental. Upon the other hand, respondent Court, in its Resolution of 17 May 1989 in C.A.-G.R. SP No. 13624, ruled that the case is "incapable of pecuniary estimation" because the value of the losses incurred by the PBP "cannot be calibrated nor pinned down to a specific amount in view of the damage that may be caused by the appointment of a conservator to its goodwill and standing in the community."[46]

Both conclusions are unfounded and are the result of a misapprehension of the allegations and causes of action in both the complaint and amended complaint.

While PBP cleverly worded its complaint in Civil Case No. 17692 to make it appear as one principally for injunction, deliberately omitting the claim for damages as a specific cause of action, a careful examination thereof bears that the same is in reality an action for damages arising out of the alleged "unwarranted, ill-motivated and illegal conservatorship," or a conservatorship which "was utterly unnecessary and unjustified," and the "arbitrary" appointment of a conservator.[47] Thus, as stated earlier, it devoted the bulk of its petition to detailed events, occurrences and transactions in support thereof and patiently enumerated the losses it sustained and suffered. The pertinent portions of paragraph 27 of both the original and amended complaints read as follows:

> "27. The record of the Central Bank-conservatorship of PBP clearly shows that it was responsible for the losses.
>
> x x x
>
> (Then follows an enumeration, from (a) to (u), of particular acts causing or resulting in losses, most of which are specifically stated).

x x x

> (v) Total of only the foregoing mentioned losses and only of those that can be quantified as P108,479,771.00.

And that excludes loss of profits that PBP could have realized if that disastrous conservatorship had not been imposed on it and loss of goodwill.

The causes for these abuses of the conservators are of course graft and corruption of the conservators aside from fault in the system which denies private enterprise. (Emphasis supplied)

x x x

These are the very damages referred to in the prayer:

> "To fully repair the damages inflicted on PBP consisting of losses of operation and the conservators' bank frauds and abuses."

but not specified therein. To this Court's mind, this was done to evade the payment of the corresponding filing fees which, as computed by petitioner on the basis alone of the specified losses of P108,479,771.00, would amount to about P437,000.00. 48 The PBP then clearly acted with manifest bad faith in resorting to the foregoing clever strategy to avoid paying the correct filing fees. We are thus constrained to reiterate Our pronouncements in the Manchester case:

> "The Court cannot close this case without making the observation that it frowns at the practice of counsel who filed the original complaint in this case of omitting any specification of the amount of damages in the prayer although the amount of over P78 million is alleged in the body of the complaint. This is clearly intended for no other purpose than to evade the payment of the correct filing fees if not to mislead the docket clerk in the assessment of the filing fee."

The respondent Court itself, in its decision of 17 January 1990 in C.A.-G.R. SP No. 16972,[49] confronted by the same issue, but perhaps unaware of its Resolution of 17 May 1989 in C.A.-G. R. SP No. 13624 aforementioned, ruled that PBP and PPI are liable for the filing fees on the claim for damages. It even directed PBP and PPI to file "the corresponding amendment to their amended complaint in said case stating a specific amount 'to fully repair the damages inflicted on PBP consisting of losses of operation and the conservator's bank frauds and abuses,'" after which the Clerk of Court of the lower court or his duly authorized docket clerk should determine the amount found due, which said plaintiffs shall pay "within the applicable prescriptive or reglementary period."[50] The 17 January 1990 ruling, clearly reversing the earlier one, is of doubtful propriety in view of the petition for review of the Decision in C. A.-G.R. SP No. 13624 filed by the petitioner.

In granting PBP and PPI an opportunity to amend their amended complaint to reflect the specific amount of damages in the prayer of their Amended Complaint, respondent Court took refuge under the rule laid down in Sun Insurance Office. Ltd., et al. vs. Asuncion, et al.[51] and Pilipinas Shell Petroleum Corp. vs. Court of Appeals, et al.[52] Of course, it was erroneous for respondent Court to apply these last two (2) cases which were decided by this Court three (3) months short of two (2) years after the promulgation of the Manchester decision on 7 May 1987. Accordingly, since the original complaint in Civil Case No. 17692 was filed on 27 August 1987, the Manchester doctrine was the controlling and applicable law. The lower court had no choice but to apply it when its attention was called by the petitioner.

Moreover, even granting for the sake of argument that Sun Insurance and Pilipinas Shell[53] may apply in this case, We should not lose sight of the fact that in the former, this Court categorically stated:

> "1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject-matter or nature of the action. Where the filing of the initiatory pleadings is not accompanied by payment of the docket fee, the court may allow payment of the fee

> within a reasonable time but in no case beyond the applicable prescriptive or reglementary period."

The prescriptive period therein mentioned refers to the period within which a specific action must be filed. It means that in every case, the docket fee must be paid before the lapse of the prescriptive period. Chapter 3, Title V, Book III of the Civil Code is the principal law governing prescription of actions.

There can be no question that in the instant case, PBP's claims for damages arise out of an injury to its rights. Pursuant to Article 1146 of the Civil Code, the action therefor must be initiated within four (4) years from the time the cause of action accrued. Since the damages arose out of the alleged unwarranted, ill-motivated, illegal, unnecessary and unjustified conservatorship, the cause of action, if any, first accrued in 1984 and continued until 27 August 1987, when the original complaint was filed. Even if we are to assume that the four-year period should start running on 27 August 1987, that period lapsed on 27 August 1991. There is no showing that PBP paid the correct filing fee for the claim within the prescribed period. Hence, nothing can save Civil Case No. 17692 from being dismissed.

2. And now on the issue of the writ of preliminary injunction.

The challenged Orders of the trial court granting the application for a writ of preliminary injunction and the assailed decision of the respondent Court in C.A.-G.R. No. 13624 clearly betray a prejudgment of the case. In both instances, not only did said courts declare MB Resolutions Nos. 649 and 751 to be arbitrary, both also declared the conservatorship to have been issued in violation of PBP's right to administrative due process, which the CB "arbitrarily brushed aside to the prejudice" of the latter. The said courts further concluded that "the sudden and untimely announcement by the Central Bank that respondent. Producers Bank will be under a conservatorship that will oversee its operations worked havoc over the confidence that the public had hitherto reposed on respondent bank so that the majority of its depositors over-reacted and rashly withdrew their accounts from said bank, thus it incurred a loss of P593.707 million or 59.5% of its deposits."

Thus, save only for the determination of the full extent of PBP's claim for damages, said courts have, at the most, decided or, at the very least, prejudged the case. Courts, notwithstanding the discretion given to them, should avoid issuing writs of preliminary injunction which in effect dispose of the main case without a trial.[54] We do not then hesitate to rule that there was grave abuse of discretion in the issuance of the writ of preliminary injunction.

Besides, there was neither arbitrariness nor bad faith in the issuance of MB Resolutions Nos. 649 and 751. It must be stressed in this connection that the banking business is properly subject to reasonable regulation under the police power of the state because of its nature and relation to the fiscal affairs of the people and the revenues of the state.[55] Banks are affected with public interest because they receive funds from the general public in the form of deposits. Due to the nature of their transactions and functions, a fiduciary relationship is created between the banking institutions and their depositors. Therefore, banks are under the obligation to treat with meticulous care and utmost fidelity the accounts of those who have reposed their trust and confidence in them.[56]

It is then Government's responsibility to see to it that the financial interests of those who deal with banks and banking institutions, as depositors or otherwise, are protected. In this country, that task is delegated to the Central Bank which, pursuant to its charter,[57] is authorized to administer the monetary, banking and credit system of the Philippines. Under both the 1973 and 1987 Constitutions, the Central Bank is tasked with providing policy direction in the areas of money banking and credit; corollarily, it shall have supervision over the operations of banks.[58] Under its charter, the CB is further authorized to take the necessary steps against any banking institution if its continued operation would cause prejudice to its depositors, creditors and the general public as well. This power has been expressly recognized by this Court. In Philippine Veterans Bank-Employees Union-NUBE vs. Philippine Veterans Bank,[59] this Court held that:

> "Unless adequate and determined efforts are taken by the government against distressed and mismanaged banks, public faith in the banking system is certain to deteriorate to the

> prejudice of the national economy itself, not to mention the losses suffered by the bank depositors, creditors, and stockholders, who all deserve the protection of the government. The government cannot simply cross its arms while the assets of a bank are being depleted through mismanagement or irregularities. It is the duty of the Central Bank in such an event to step in and salvage the remaining resources of the bank so that they may not continue to be dissipated or plundered by those entrusted with their management."

One important measure adopted by the government to protect the public against unscrupulous practices of some bankers is to require banking institutions to set up reserves against their deposit liabilities. These reserves, pegged at a certain percentage of the volume of deposit liability, is that portion of the deposit received by a banking institution which it cannot use for loans and investments. The reserve requirement, which ordinarily takes the form of a deposit with the Central Bank, is one means by which the government ensures the liquidity of banking institutions.[60]

These reserve accounts maintained by banking institutions with the Central Bank also serve as a basis for the clearing of checks and the settlement of interbank balances.[61]

The need to maintain these required reserves cannot be over-emphasized. Thus, where over-drawings on deposit accounts (regardless of amount) are incurred, R.A. No. 265 requires the delinquent bank to:

> "Fully cover said overdraft not later than the next clearing day: Provided, Further, That settlement of clearing balances shall not be effected for any account which continue to be overdrawn for five consecutive banking days until such time as the overdrawing is fully covered or otherwise converted into an emergency loan or advance pursuant to the provisions of Sec. 90 of this Act. Provided, Finally, That the appropriate clearing office shall be officially notified of banks with overdrawn balances. Banks with existing overdrafts with the Central Bank as of the effectivity of this amended section shall, within such period as may be prescribed by the Monetary Board, either

> convert the overdraft into an emergency loan or advance with a plan of payment, or settle such overdrafts, and that, upon failure to so comply herewith, the Central Bank shall take such action against the as may be warranted under this Act."[62] (Emphasis supplied)

The fact that PBP is grossly overdrawn on its reserve account with the CB (up to P1.233 billion as of 13 February 1990) is not disputed by PBP. This enormous overdraft evidences the patent inability of the bank's management to keep PBP liquid. This fact alone sufficiently justifies the remedial measures taken by the Monetary Board.

MB Resolutions Nos. 649 and 751 were not promulgated to arbitrarily divest the present stockholders of control over PBP, as is claimed by the latter. The same contemplates an effective and viable plan to revive and restore PBP. It is to be noted that before issuing these resolutions, the MB gave the management of PBP ample opportunity (from 30 March 1984 to June of 1987) to submit a viable rehabilitation plan for the bank.

MB Resolution No. 751 merely reiterated the requirement set forth in Resolution No. 649 for PBP to identify and submit the list of new stockholders who will infuse new capital into the bank for CB approval. In this Resolution, the MB gave PBP's stockholders one (1) week from notice within which to signify their acceptance or rejection of the proposed rehabilitation plan.

The foregoing resolutions refer to a recommended rehabilitation plan. What was conveyed to PBP was a mere proposal. There was nothing in the resolutions to indicate that the plan was mandatory. On the contrary, PBP was given a specific period within which to accept or reject the plan. And, as petitioners correctly pointed out, the plan was not self-implementing. The warning given by the MB that should said proposal be rejected, the CB "will take appropriate alternative actions on the matter," does not make the proposed rehabilitation plan compulsory. Whether or not there is a rehabilitation plan agreed upon between PBP and the MB, the CB is authorized under R. A. No. 265 to take appropriate measures to protect the interest of the bank's depositors as well as of the general public.

Furthermore, the assignment of claims to PDIC and the subsequent dacion en pago (payment of credit through shares) do not divest the present stockholders of control over PBP. As may be readily observed from the terms of Resolution No. 645, the shares which shall be issued to PDIC under the dacion are preferred non-voting and non-participating shares. Hence, except for the instances enumerated in the Corporation Code where holders of non-voting shares are given the right to vote, PDIC shall have no hand in the bank's operation or business. In any event, these preferred shares will eventually be sold to private parties or new stockholders as soon as they are identified by PBP and approved by the CB. Prior approval by the CB of the stockholders is necessary for screening purposes.

There is nothing objectionable to the actions of the MB. We, therefore, find to be completely without legal or evidentiary basis the contention that the impugned resolutions are arbitrary, illegal and made in bad faith.

Moreover, respondent Judge acted in complete disregard of Section 107 of R.A. No. 265 when he enjoined the CB from taking appropriate actions against the bank, "including exclusion of (PBP) from settlement of clearing balances at the Central Bank clearing house" as warranted under the law. By using his own standards, and without scrutinizing the law, respondent Judge arbitrarily determined when the CB may or may not initiate measures against a bank that cannot maintain its liquidity. He also arbitrarily and capriciously decided who can continually overdraw from the deposit account with the CB, to the prejudice of other banking institutions, the banking public and the government.

3. As could be gleaned from the pleadings in G.R. No. 92943, the respondent Judge, per his Order of 18 November 1987, (a) directed the conservator to restore both the PBP officers to their original positions prior to the reorganization of the bank's personnel, and the PBP's standing committees to their original compositions, and (b) restrained her from leasing out to a third party any portion of PBP's space in the Producers Bank Centre; per his Order of 22 December 1987, respondent Judge granted PPI's motion for an order transferring to the latter the administration of the three (3) buildings; and per the Order of 22 December 1987, he granted the motion

directing the conservator to publish the financial statement of the PBP in the manner prayed for by the latter.

The foregoing Orders were issued without due hearing. Moreover, these reliefs were not prayed for in the Amended complaint. They were not even covered by any specific allegations therein. Except for the prohibition to lease, the rest partook of the nature of a preliminary mandatory injunction which deprived the conservator of her rights and powers under Section 28-A of R.A. No. 265 and, in effect, set aside the conservatorship which PBP itself had earlier accepted. It must be remembered that PBP did not ask, in its Amended Complaint, for the setting aside of the conservatorship. On the contrary, it even prayed that the conservator be ordered to restore the viability of PBP as mandated by said Section 28-A.

The respondent Judge should not have forgotten the settled doctrine that it is improper to issue a writ of preliminary mandatory injunction prior to the final hearing, except in cases of extreme urgency, where the right is very clear, where considerations of relative inconvenience bear strongly in complainant's favor, where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one, and where the effect of the mandatory injunction is rather to re-establish and maintain a pre-existing continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation.[63]

It is plain to this Court that respondent Judge ceased to be an impartial arbitrator; he became the godfather of PBP and PPI, granting to them practically all that they had asked for in the motions they filed. Upon the issuance of these Orders, nothing appeared clearer in the judicial horizon than this - PBP and PPI had everything in the bag, so to speak, including the reliefs not even contemplated in their Amended Complaint. The challenged Orders then were whimsically and arbitrarily issued.

Compounding such detestable conduct is the respondent Judge's issuance, with undue haste and unusual speed, of the orders of contempt without the proper hearing. If the conservator could, at all, be liable for contempt, it would be for indirect contempt punished

under Section 3, Rule 71 of the Rules of Court, more specifically item (b) of the first paragraph which reads:

> "SECTION 3. Indirect contempts to be punished after charge and hearing. — After charge in writing has been filed, and an opportunity given to the accused to be heard by himself or counsel, a person guilty of any of the following acts may be punished for contempt:
>
> x x x
>
> (b) Disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court, or judge;"

It is clear from the said section that it is necessary that there be a charge and that the party cited for contempt be given an opportunity to be heard. The reason for this is that contempt partakes of the nature of a criminal offense. In the instant case, each motion for contempt served as the charge. It is settled that a charge may be filed by a fiscal, a judge, or even a private person.[64] Petitioner Tansinsin-Encarnacion filed oppositions thereto. Thereafter, it was the duty of the respondent Judge to hold a hearing on the motions. Respondent Judge deliberately did away with the hearing and this Court finds no justifiable reason therefor.

There is, moreover, another reason why the contempt orders must be struck down. The orders which were supposedly disobeyed and from which the motions for contempt arose were, as earlier indicated, null and void for having been issued with grave abuse of discretion amounting to lack of jurisdiction. Such orders, therefore, cannot then be characterized as lawful. Consequently, resistance thereto cannot be punished as contempt.[65]

PREMISES CONSIDERED, the Petitions in G.R Nos. 88353 and 92943 are **GRANTED**. The 6 October 1988 decision and 17 May 1969 Resolution of the Court of Appeals in C.A.-G. R. SP No. 13624 are **REVERSED** and **SET ASIDE**. Respondent Judge is ordered to dismiss Civil Case No. 17692. All proceedings undertaken and all Orders issued by respondent Judge are hereby **SET ASIDE** for being

null and void. The writ of preliminary injunction issued by the trial court in its Order dated 21 September 1987 is hereby **LIFTED**.

IT IS SO ORDERED.

Narvasa, *C.J.*, Melencio-Herrera, Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Romero and Nocon, *JJ.*, concur.
Padilla and Bellosillo, *JJ.*, took no part.

SEPARATE OPINIONS

GUTIERREZ, JR., J., concurring:

While I concur in the Court's decision, I would like to express certain reservations about the arbitrary grant of power under the law to Central Bank (CB) authorities.

Any displeasure of CB officials against a private bank expressed through official pronouncements or through rumors, real or imagined, in media, as in this case, will lead to a bank run by depositors. And if the CB, which alone can stem the disaster, does not sincerely do all it can to help the bank, the inevitable result is the bank's collapse and closure. Subsequent judicial action is illusory. I realize that the possibility of abuse is no reason to invalidate a law but here it is not a mere "possibility." It is a certainty whenever CB officials decide or will to do so. The absolute power and discretion over a bank's life or death and the total reliance on the officials' good faith is contrary to principles of fairness and substantive due process embodied in our Constitution.

The principal function of a CB conservator is to preserve the asset of the private bank and restore its viability. I, however, note from this petition and earlier cases of the same nature that a conservator usually forgets that he is supposed to be a friend of the bank under conservatorship and not its adversary. The distinction between a

conservator and a liquidator is overlooked. The conservator starts with a prejudiced attitude. There should be a more objective and evenhanded way of restoring distressed banks to viability.

Medialdea, *J.*, concurs.

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[1] Rollo, G.R. No. 92943, 294.
[2] Id., G.R. No. 88353, 41-60; per Associate Justice Hector C. FULE, concurred in by Associate Justices Nathanael P. De Paño, Jr. and Asaali S. Isnani.
[3] Id., 63-68.
[4] Rollo, G.R. No. 92943, 27-46; per Associate Justice Jorge G. Imperial, concurred in by Associate Justices Reynato S. Puno and Filemon M. Mendoza.
[5] Rollo, 12-13.
[6] Paragraph 15 of Amended Complaint; Id., 124.
[7] Rollo, 131-133.
[8] Rollo, G.R. No. 88353, 108-110.
[9] Rollo, G.R. No. 88353, 111.
[10] Rollo, G.R. No. 92943, 123-169.
[11] Id., 154-159.
[12] Id., 167-168.
[13] Rollo, G.R. No. 88353, 115.
[14] Id., 163-174.
[15] Id., 100-103.
[16] Id., 115-162.
[17] Rollo, G.R. No. 88353, 11; 105.
[18] Rollo, G.R. No. 88353, 105-107.
[19] Id., 69-99.
[20] Rollo, G.R. No. 88353, 41-59. Per Associate Justice Hector C. Fule, concurred in by Associate Justices Nathanael P. De Pano and Asaali S. Isnami.
[21] Id., 63-68.
[22] Rollo, G.R. No. 88353, 10-38.
[23] 149 SCRA 562 (1987).
[24] Rollo, G.R. No. 88353, 199.
[25] Id., 204-224.
[26] Rollo, G.R. No. 88353, 227-234.
[27] Id., 269-a.
[28] Id., 273-282.
[29] Rollo, G.R. No. 92943, 36-37.
[30] Rollo, G.R. No. 92943, 37-38.
[31] Id., 27-46; per Associate Justice Jorge S. Imperial, concurred in by Associate Reynato S. Puno and Filemon H. Mendoza.
[32] G.R. Nos. 79937-38, 13 February 1989.

[33] G.R. No. 76119, 10 April 1989.
[34] Rollo, G.R. No. 92943, 48-49.
[35] Rollo, G.R. No. 92943, 58-94.
[36] Section 10, Rule 71, Rules of Court.
[37] Op. cit., 88-94.
[38] R.A. No. 265.
[39] Rollo, G.R. No. 88353, 25.
[40] Rollo, G.R. No. 88353, 106.
[41] Id., 124.
[42] Central Bank vs. De la Cruz, 191 SCRA 346 (1990); Salud vs. Central Bank, 143 SCRA 590 (1986); Central Bank vs. Court of Appeals, 106 SCRA 143 (1981).
[43] 15 SCRA 66 (1965).
[44] 9 C.J.S.
[45] Supra.
[46] Rollo, G.R. No. 88353, 68.
[47] Subheadings in the Complaint and Amended Complaint, Id., 115, et seq.; Id., G.R. No. 92943, 123, et seq.
[48] Per Section 5, Rule 141 of the Rules of Court, the filing fee thereon would be P200.00 for the first P150,000.00 and P4.00 for every P1,000 in excess of P150,000.00.
[49] Rollo, G.R. No. 92943, 27 et seq.
[50] Id., 45.
[51] 170 SCRA 274 (13 February 1989).
[52] 171 SCRA 674 (10 April 1989).
[53] Further clarification was subsequently made in Tacay vs. Regional Trial court of Tagum, Davao del Norte, 180 SCRA 433 (20 December 1989).
[54] Ortigas & Co. Limited Partnership vs. Court of Appeals, 162 SCRA 165 (1988); Teotico vs. Agda, Sr., 197 SCRA 675 (1991).
[55] 9 C.J.S. 32.
[56] Simex International (Manila), Inc. vs. Court of Appeals, 183 SCRA 360 (1990).
[57] R.A. No. 265, as amended.
[58] Section 14, Article XV, 1973 Constitution, and Section 20, Article XII, 1987 Constitution.
[59] 189 SCRA 14 (1990).
[60] Section 100, R.A. No. 265, as amended.
[61] Section 107, Id.
[62] Section 107, R.A. No. 265, as amended.
[63] Alvaro vs. Zapata, 118 SCRA 722 (1982).
[64] People vs. Venturanza, 98 Phil. 211 (1956).
[65] MORAN, M., Comments on the Rules of Court, vol. 3, 1980 ed., 360-361.