

EN BANC

[G.R. No. 178830, July 14, 2008]

ROLEX SUPLICO, PETITIONER, VS. NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY, REPRESENTED BY NEDA SECRETARY ROMULO L. NERI, AND THE NEDA-INVESTMENT COORDINATION COMMITTEE, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), REPRESENTED BY DOTC SECRETARY LEANDRO MENDOZA, INCLUDING THE COMMISSION ON INFORMATION AND COMMUNICATIONS TECHNOLOGY, HEADED BY ITS CHAIRMAN, RAMON P. SALES, THE TELECOMMUNICATIONS OFFICE, BIDS AND AWARDS FOR INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT), HEADED BY DOTC ASSISTANT SECRETARY ELMER A. SONEJA AS CHAIRMAN, AND THE TECHNICAL WORKING GROUP FOR ICT, AND DOTC ASSISTANT SECRETARY LORENZO FORMOSO, AND ALL OTHER OPERATING UNITS OF THE DOTC FOR INFORMATION AND COMMUNICATIONS TECHNOLOGY, AND ZTE CORPORATION, AMSTERDAM HOLDINGS, INC., AND ALL PERSONS ACTING IN THEIR BEHALF, RESPONDENTS.

[G.R. No. 179317]

AMSTERDAM HOLDINGS, INC., AND NATHANIEL SAUZ, PETITIONERS, VS. DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, SECRETARY LEANDRO MENDOZA, COMMISSION ON INFORMATION AND COMMUNICATIONS TECHNOLOGY, AND ASSISTANT SECRETARY LORENZO FORMOSO III, RESPONDENTS.

[G.R. No. 179613]

GALELEO P. ANGELES, VICENTE C. ANGELES, JOB FLORANTE L. CASTILLO, TRINI ANNE G. NIEVA, ROY ALLAN T. ARELLANO, CARLO MAGNO M. REONAL, ETHEL B. REGADIO, RAENAN B. MALIG, AND VINALYN M. POTOT, TOGETHER WITH LAWYERS AND ADVOCATES FOR ACCOUNTABILITY, TRANSPARENCY, INTEGRITY AND GOOD GOVERNANCE (LATIGO), PETITIONERS, VS. DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), REPRESENTED BY DOTC SECRETARY LEANDRO MENDOZA, AND ZHONG XING EQUIPMENT (ZTE) COMPANY, LTD., AND ANY AND ALL PERSONS ACTING ON THEIR BEHALF, RESPONDENTS.

R E S O L U T I O N

REYES, R.T., J.:

Under consideration is the Manifestation and Motion^[1] dated October 26, 2007 of the Office of the Solicitor General (OSG) which states:

The Office of the Solicitor General (OSG) respectfully avers that in an Indorsement dated October 24, 2007, the Legal Service of the Department of Transportation and Communications (DOTC) has informed it of the Philippine Government's decision not to continue with the ZTE National Broadband Network Project (see attachment^[2]). That said, there is no more justiciable controversy for this Honorable Court to resolve. WHEREFORE, public respondents respectfully pray that the present petitions be DISMISSED.

On November 13, 2007, the Court noted the OSG's manifestation and motion and required petitioners in G.R. Nos. 178830, 179317, and 179613 to comment.

On December 6, 2007, Rolex Suplico, petitioner in G.R. No. 178830, filed his Consolidated Reply and Opposition,^[3] opposing the aforementioned OSG Manifestation and Motion, arguing that:

66. Aside from the fact that the *Notes of the Meeting Between President Gloria Macapagal-Arroyo and Chinese President Hu Jintao* held 2 October 2007 were not attached to the 26 October 2007 Manifestation and Motion - thus depriving petitioners of the opportunity to comment thereon - a mere verbally requested *1st Indorsement* is not sufficient basis for the conclusion that the ZTE-DOTC NBN deal has been permanently scrapped.

67. Suffice to state, said *1st Indorsement* is glaringly **self-serving**, especially without the *Notes of the Meeting Between President Gloria Macapagal-Arroyo and Chinese President Hu Jintao* to support its allegations or other proof of the supposed decision to cancel the ZTE-DOTC NBN deal. Public respondents can certainly do better than that.^[4]

Petitioner Suplico further argues that:

79. *Assuming arguendo* that some aspects of the present Petition have been rendered moot (which is vehemently denied), this Honorable Court, consistent with well-entrenched jurisprudence, may still take cognizance thereof.^[5]

Petitioner Suplico cites this Court's rulings in *Gonzales v. Chavez*,^[6] *Rufino v. Endriga*,^[7] and *Alunan III v. Mirasol*^[8] that despite their mootness, the Court nevertheless took cognizance of these cases and ruled on the merits due to the Court's symbolic function of educating the bench and the bar by formulating guiding and controlling principles, precepts, doctrines, and rules.

On January 31, 2008, Amsterdam Holdings, Inc. (AHI) and Nathaniel Sauz, petitioners in G.R. No. 179317, also filed their comment expressing their sentiments, thus:

3. First of all, the present administration has never been known for candor. The present administration has a very nasty habit of not keeping its word. It says one thing, but does another.
4. This being the case, herein petitioners are unable to bring themselves to feel even a bit reassured that the government, in the event that the above-captioned cases are dismissed, will not backtrack, re-transact, or even resurrect the now infamous NBN-ZTE transaction. This is especially relevant since what was attached to the OSG's Manifestation and Motion was a mere one (1) page written communication sent by the Department of Transportation and Communications (DOTC) to the OSG, allegedly relaying that the Philippine Government has decided not to continue with the NBN project **"x x x due to several reasons and constraints."**

Petitioners AHI and Sauz further contend that because of the transcendental importance of the issues raised in the petition, which among others, included the President's use of the power to borrow, i.e., to enter into foreign loan agreements, this Court should take cognizance of this case despite its apparent mootness.

On January 15, 2008, the Court required the OSG to file respondents' reply to petitioners' comments on its manifestation and motion.

On April 18, 2008, the OSG filed respondents' reply, reiterating their position that for a court to exercise its power of adjudication, there must be an actual case or controversy - one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice.^[9]

Respondents also insist that there is no perfected contract in this case that would prejudice the government or public interest. Explaining the nature of the NBN Project as an executive agreement, respondents stress that it remained in the negotiation stage. The conditions precedent^[10] for the agreement to become effective have not yet been complied with.

Respondents further oppose petitioners' claim of the right to information, which they contend is not an absolute right. They contend that the matters raised concern executive policy, a political question which the judicial branch of government would generally hesitate to pass upon.

On July 2, 2008, the OSG filed a Supplemental Manifestation and Motion. Appended to it is the Highlights from the Notes of Meeting between President Gloria Macapagal-Arroyo and Chinese President Hu Jintao, held in XI Jiao Guesthouse, Shanghai, China, on October 2, 2007. In the Notes of Meeting, the Philippine Government conveyed its decision not to continue with the ZTE National Broadband Network Project due to several constraints. The same Notes likewise contained President Hu Jintao's expression of understanding of the Philippine Government decision.

We resolve to grant the motion.

Firstly, the Court notes the triple petitions to be for *certiorari*, prohibition and mandamus, with application for the issuance of a Temporary Restraining Order (TRO) and/or Preliminary Injunction. The individual prayers in each of the three (3) consolidated petitions are:

G.R. No. 178830

WHEREFORE, it is respectfully prayed of this Honorable Court:

1. Upon the filing of this Petition, pursuant to the second paragraph of Rule 58, Section 5 of the Rules of Court, issue *forthwith* an *ex parte* temporary restraining order **enjoining respondents**, their subordinates, agents, representatives and any and all persons acting on their behalf **from pursuing, entering into indebtedness, disbursing funds, and implementing the ZTE-DOTC Broadband Deal**;
2. **Compel respondents**, upon Writ of Mandamus, **to forthwith produce and furnish petitioner or his undersigned counsel a certified true copy of the contract or agreement covering the NBN project as agreed upon with ZTE Corporation**;
3. Schedule Oral Arguments in the present case pursuant to Rule 49 in relation to Section 2, Rule 56 of the revised Rules of Court; and,
4. **Annul and set aside the award of the ZTE-DOTC Broadband Deal**, and compel public respondents to *forthwith* comply with pertinent provisions of law regarding procurement of government ICT contracts and public bidding for the NBN contract.^[11] (Emphasis supplied)

G.R. No. 179317

WHEREFORE, petitioners Amsterdam Holdings, Inc., and Nathaniel Sauz respectfully pray as follows:

- A. upon the filing of this Petition for Mandamus and conditioned upon the posting of a bond in such amount as the Honorable Court may fix, a temporary restraining order and/or writ of preliminary injunction **be issued directing the Department of Transportation and Communication**, the Commission on Information and Communications Technology, all other government agencies and instrumentalities, their officers, employees, and/or other persons acting for and on their behalf **to desist** during the pendency of the instant Petition for Mandamus **from entering into any other agreements and from commencing with any kind, sort, or specie of activity in connection with the National**

Broadband Network Project;

- B. the instant Petition for Mandamus be given due course; and,
- C. after due consideration of all relevant issues, judgment be rendered directing respondents to allow herein petitioners access to all agreements entered into with the Government of China, the ZTE Corporation, and/or other entities, government instrumentalities, and/or individuals with regard to the National Broadband Network Project.^[12] (Emphasis supplied)

G.R. No. 179613

WHEREFORE, it is respectfully prayed of this Honorable Court to:

1. Compel respondents, upon Writ of Mandamus, **to forthwith produce and furnish petitioner or his undersigned counsel a certified true copy of the contract or agreement covering the NBN project as agreed upon with ZTE Corporation;**
2. Schedule Oral Arguments in the present case pursuant to Rule 49 in relation to Section 2, Rule 56 of the Revised Rules of Court;
3. **Annul and set aside the award of the contract for the national broadband network to respondent ZTE Corporation,** upon the ground that said contract, as well as the procedures resorted to preparatory to the execution thereof, is contrary to the Constitution, to law and to public policy;
4. **Compel public respondent to forthwith comply with pertinent provisions of law regarding procurement of government infrastructure projects,** including public bidding for said contract to undertake the construction of the national broadband network.^[13] (Emphasis supplied)

On September 11, 2007, the Court issued a TRO^[14] in G.R. No. 178830, enjoining the parties from "pursuing, entering into indebtedness, disbursing funds, and implementing the ZTE-DOTC Broadband Deal and Project" as prayed for. Pertinent parts of the said Order read:

WHEREAS, the Supreme Court, on 11 September 2007, adopted a resolution in the above-entitled case, to wit:

"G.R. No. 178830 (*Rolex Suplico vs. National Economic and Development Authority*, represented by NEDA Secretary Romulo L. Neri, and the NEDA Investment Coordination Committee, Department of Transportation and