564 Phil. 337

SECOND DIVISION

[G.R. NO. 152685, December 04, 2007]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER, VS. NATIONAL TELECOMMUNICATIONS COMMISSION, JOSEPH A. SANTIAGO, IN HIS CAPACITY AS NTC COMMISSIONER, AND EDGARDO CABARRIOS, IN HIS CAPACITY AS CHIEF, CCAD, RESPONDENTS.

R E S O L U T I O N

VELASCO, JR., J.:

Before us is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court. It assails the February 12, 2001 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 61033, which dismissed petitioner's special civil action for certiorari and prohibition, and the March 21, 2002 Resolution[3] of the CA denying petitioner's motion for reconsideration. The petition raises the sole issue on whether the appellate court erred in holding that the assessments of the National Telecommunications Commission (NTC) were contrary to our Decision in G.R. No. 127937 entitled *NTC v. Honorable Court of Appeals*. [4]

This case pertains to Section 40 (e)[5] of the Public Service Act[6] (PSA), as amended on March 15, 1984, pursuant to Batas Pambansa Blg. 325, which authorized the NTC to collect from public telecommunications companies Supervision and Regulation Fees (SRF) of PhP 0.50 for every PhP 100 or a fraction of the capital and stock subscribed or paid for of a stock corporation, partnership or single proprietorship of the capital invested, or of the property and equipment, whichever is higher.

Under Section 40 (e) of the PSA, the NTC sent SRF assessments to petitioner Philippine Long Distance Telephone Company (PLDT) starting sometime in 1988. The SRF assessments were based on the market value of the outstanding capital stock, including stock dividends, of PLDT. PLDT protested the assessments contending that the SRF ought to be based on the par value of its outstanding capital stock. Its protest was denied by the NTC and likewise, its motion for reconsideration.

PLDT appealed before the CA. The CA modified the disposition of the NTC by holding that the SRF should be assessed at par value of the outstanding capital stock of PLDT, excluding stock dividends.

With the denial of the NTC's partial reconsideration of the CA Decision, the issue of the basis for the assessment of the SRF was brought before this Court under G.R. No. 127937 wherein we ruled that the SRF should be based neither on the par value nor the market value of the outstanding capital stock but on the value of the stocks subscribed or paid including the premiums paid therefor, that is, the amount that the corporation receives, inclusive of the premiums if any, in consideration of the original issuance of the shares. We added that in the case of stock dividends, it is the amount that the corporation transfers from its surplus profit account to its capital account, that is, the amount the stock dividends represent is equivalent to the value paid for its original issuance.

PLDT wanted our July 28, 1999 Decision in G.R. No. 127937 clarified. It posited that the SRF should be based on the par value in consonance with our holding in *Philippine Long Distance Telephone Company v. Public Service Commission*,[7] and that the premiums on issued shares should not be included in the valuation of the outstanding capital stock. Through our November 15, 1999 Resolution in G.R. No. 127937, we elucidated that our July 28, 1999 decision was not in conflict with our ruling in *Philippine Long Distance Telephone Company* since we never enunciated in the said case that the phrase "capital stock subscribed or paid" must be determined at par value. We reiterated that the term "capital stock subscribed or paid" is the amount that the corporation receives, inclusive of the premiums, if any, in consideration of the original issuance of the shares.

Thereafter, to comply with our disposition in G.R. No. 127937, for the reassessment of the SRF based on the value of the stocks subscribed or paid including the premiums paid for the stocks, if any, the NTC sent the assailed assessments of February 10, 2000[8] and September 5, 2000[9] to PLDT which included the value of stock dividends issued by PLDT. The assailed assessments were based on the schedule of capital stock submitted by PLDT.

PLDT now contends that our disposition in G.R. No. 127937 excluded stock dividends from the SRF coverage, while the NTC asserts the contrary. Also, PLDT questions the assessments for violating our disposition in G.R. No. 127937 since these assessments were identical to the previous assessments from 1988 which were questioned by PLDT in G.R. No. 127937 for being based on the market value of its outstanding capital stock.

PLDT wrote a letter protesting the assailed February 10, 2000 assessment which was not acted upon by the NTC. Instead, the NTC sent a second assailed assessment on September 5, 2000. Thus, in an attempt to clarify and resolve this issue, PLDT filed a Motion for Clarification of Enforcement of the Decision dated 28 July 1999 in G.R. No. 127937 which this Court simply noted for the case had already become final and executory.

Thus, on October 2, 2000, PLDT instituted the special civil action for certiorari and prohibition docketed as CA-G.R. SP No. 61033[10] before the CA. To maintain the status quo and to defer the enforcement of the assailed assessments and subsequent assessments, on October 3, 2000, the CA issued a Temporary Restraining Order. On December 4, 2000, a writ of preliminary injunction was granted.

Subsequently, on February 12, 2001, the CA rendered the assailed Decision dismissing the petition. The dispositive portion reads:

> WHEREFORE, the petition is DISMISSED for lack of merit, and the writ of preliminary injunction heretofore issued is DISSOLVED.[11]

PLDT's motion for reconsideration was denied by the CA's Special Division of Five on March 21, 2002.

Hence, the instant petition for review, raising the core issue:

> THE COURT OF APPEALS ERRED IN HOLDING THAT THE DISPUTED NTC ASSESSMENTS WERE NOT CONTRARY TO THE PURISIMA DECISION.[12]

The petition is bereft of merit.

PLDT argues that in our Decision in G.R. No. 127937 we have excluded from the coverage of the SRF the capital stocks issued as stock dividends. Petitioner argues that G.R. No. 127937 clearly delineates between capital subscribed and stock dividends to the effect that the latter are not included in the concept of capital stock subscribed because subscribers or shareholders do not pay for their subscriptions as no amount is received by the corporation in consideration of such issuances since these are effected as mere book entries, that is, the transfer from the retained earnings account to the capital or stock account. To bolster its position, PLDT repeatedly used the phrase "actual payments" received by a corporation as a consideration for issuances of shares which do not apply to stock dividends.

We are not persuaded.

Crucial in point is our disquisition in G.R. No. 127937 entitled *National Telecommunications Commission v. Honorable Court of Appeals*, which we quote:

> The term "capital" and other terms used to describe the capital structure of a corporation are of universal acceptance and their usages have long been established in jurisprudence. Briefly, capital refers to the value of the property or assets of a corporation. The **capital subscribed is the total amount of the capital that persons (subscribers or shareholders) have agreed to take and pay for**, which need not necessarily by, and can be more than, the par value of the shares. In fine, **it is the amount that the corporation receives, inclusive of the premiums if any, in consideration of the original issuance of the shares. <u>In the case of stock dividends, it is the amount that the corporation transfers from its surplus profit account to its capital account</u>.** It is the same amount that can be loosely termed as the "trust fund" of the corporation. The "Trust Fund" doctrine considers this subscribed capital as a trust fund for the payment of the debts of the corporation, to which the creditors may look for satisfaction. Until the liquidation of the corporation, no part of the subscribed capital may be returned or released to the stockholder (except in the redemption of redeemable shares) without violating this principle. Thus, dividends must never impair the subscribed capital; subscription commitments cannot be condoned or remitted; nor can the corporation buy its own shares using the subscribed capital as the considerations therefor.[13] (Emphasis supplied.)

Two concepts can be gleaned from the above. First, what constitutes capital stock that is subject to the SRF. Second, such capital stock is equated to the "trust fund" of a corporation held in trust as security for satisfaction to creditors in case of corporate liquidation.

The first asks if stock dividends are part of the outstanding capital stocks of a corporation insofar as it is subject to the SRF. They are. The first issue we have to tackle is, are all the stock dividends that are part of the outstanding capital stock of PLDT subject to the SRF? Yes, they are.

PLDT's contention, that stock dividends are not similarly situated as the subscribed capital stock because the subscribers or shareholders do not pay for their issuances as no amount was received by the corporation in consideration of such issuances since these are effected as a mere book entry, is erroneous.

Dividends, regardless of the form these are declared, that is, cash, property or stocks, are valued at the amount of the declared dividend taken from the unrestricted retained earnings of a corporation. Thus, the value of the declaration in the case of a stock dividend is the actual value of the original issuance of said stocks. In G.R. No. 127937 we said that "in the case of stock dividends, it is the amount that the corporation transfers from its surplus profit account to its capital account" or "it is the amount that the corporation receives in consideration of the original issuance of the shares." It is "the distribution of current or accumulated earnings to the shareholders of a corporation pro rata based on the number of shares owned."[14] Such distribution in whatever form is valued at the declared amount or monetary equivalent.

Thus, it cannot be said that no consideration is involved in the issuance of stock dividends. In fact, the declaration of stock dividends is akin to a forced purchase of stocks. By declaring stock dividends, a corporation ploughs back a portion or its entire unrestricted retained earnings either to its working capital or for capital asset acquisition or investments. It is simplistic to say that the corporation did not receive any actual payment for these. When the dividend is distributed, it ceases to be a property of the corporation as the entire or portion of its unrestricted retained earnings is distributed pro rata to corporate shareholders.

When stock dividends are distributed, the amount declared ceases to belong to the corporation but is distributed among the shareholders. Consequently, the unrestricted retained earnings of the corporation are diminished by the amount of the declared dividend while the stockholders' equity is increased. Furthermore, the actual payment is the cash value from the unrestricted retained earnings that each shareholder foregoes for additional stocks/shares which he would otherwise receive as required by the Corporation Code to be given to the stockholders subject to the availability and conditioned on a certain level of retained earnings.[15] Elsewise put, where the unrestricted retained earnings of a corporation are more than 100% of the paid-in capital stock, the corporate Board of Directors is mandated to declare dividends which the shareholders will receive in cash unless otherwise declared as property or stock dividends, which in the latter case the stockholders are forced to forego cash in lieu of property or stocks.

In essence, therefore, the stockholders by receiving stock dividends are forced to exchange the monetary value of their dividend for capital stock, and the monetary value they forego is considered the actual payment for the original issuance of the stocks given as dividends. Therefore, stock dividends acquired by shareholders for the monetary value they forego are under the coverage of the SRF and the basis for