

SECOND DIVISION

[G.R. NO. 141667, July 17, 2006]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY NATIONAL TELECOMMUNICATIONS COMMISSION (NTC), PETITIONER, VS. INTERNATIONAL COMMUNICATIONS CORPORATION (ICC), RESPONDENT.

D E C I S I O N

GARCIA, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner Republic, through the National Telecommunications Commission (NTC), seeks the annulment and setting aside of the **Amended Decision**^[1] dated September 30, 1999 of the Court of Appeals (CA), setting aside the orders dated June 4, 1996 and June 25, 1997 of the NTC insofar as said orders required respondent International Communications Corporation (ICC) to pay the amount of P1,190,750.50 by way of permit fee as a condition for the grant of a provisional authority to operate an international telecommunications leased circuit service, and the **Resolution**^[2] dated January 24, 2000, denying NTC's motion for reconsideration.

There is no dispute as to the facts:

On April 4, 1995, respondent ICC, holder of a legislative franchise under Republic Act (RA) No. 7633 to operate domestic telecommunications, filed with the NTC an application for a Certificate of Public Convenience and Necessity to install, operate, and maintain an international telecommunications leased circuit service between the Philippines and other countries, and to charge rates therefor, with provisional authority for the purpose.

In an Order^[3] dated June 4, 1996, the NTC approved the application for a provisional authority subject, among others, to the condition:

2. That applicant [ICC] shall pay a **permit fee** in the amount of P1,190,750.00, in accordance with section 40(g) of the Public Service Act,^[4] as amended;

Respondent ICC filed a motion for partial reconsideration of the Order insofar as the same required the payment of a permit fee. In a subsequent Order dated June 25, 1997, the NTC denied the motion.

Therefrom, ICC went to the CA on a petition for certiorari with prayer for a temporary restraining order and/or writ of preliminary injunction, questioning the NTC's imposition against it of a permit fee of P1,190,750.50 as a condition for the grant of the provisional authority applied for.

In its original decision^[5] dated January 29, 1999, the CA ruled in favor of the NTC whose challenged orders were sustained, and accordingly denied ICC's certiorari petition, thus:

WHEREFORE, the instant petition is hereby DENIED. In view thereof, the assailed orders dated 4 June 1996 and 25 June 1997, requiring the payment of permit fees in the amount of One Million One Hundred Ninety Thousand Seven Hundred Fifty and 50/100 Pesos (P1,190,750.50) as a condition for the grant of a Provisional Authority to operate an International Circuit service, are hereby AFFIRMED. ACCORDINGLY, the International Communications Corporation is hereby ordered to pay the amount of One Million One Hundred Ninety Thousand Seven Hundred Fifty and 50/100 Pesos (P1,190,750.50) to the National Telecommunications Commission.

SO ORDERED.

In time, ICC moved for a reconsideration. This time, the CA, in its Amended Decision dated September 30, 1999, reversed itself, to wit:

WHEREFORE, the instant Motion for Reconsideration is hereby GRANTED. Accordingly, the Decision dated 29 January 1999 including the imposition by the public respondent of permit fees with respect to [ICC's] international leased circuit service is hereby REVERSED. Judgment is hereby rendered, setting aside the questioned orders dated 04 June 1996 and 25 June 1997, insofar as they impose upon petitioner ICC the payment of the amount of One Million One Hundred Ninety Thousand Seven Hundred Fifty and Fifty Centavos (P1,190,750.50) by way of permit fees as a condition for the grant of a provisional authority to operate an International Leased Circuit Service. No costs.

SO ORDERED. (Word in bracket added).

Petitioner NTC filed a motion for reconsideration, but its motion was denied by the CA in its equally challenged Resolution dated January 24, 2000. Hence, NTC's present recourse claiming that the CA erred in ruling that:

1. NTC has arrogated upon itself the power to tax an entity;
2. Section 40(g) of the Public Service Act has been amended by Section 5(g) of R.A. 7925;^[6]
3. The imposition of permit fees is no longer authorized by R.A. 7925; and
4. The imposed permit fee in the amount of P1,190,750.50 for respondent's provisional authority is exorbitant.

Before addressing the issues raised, we shall first dwell on the procedural matter raised by respondent ICC, namely, that the present petition should be dismissed outright for having been filed out of time. It is respondent's posture that petitioner's motion for reconsideration filed with the CA vis-a-vis the latter's Amended Decision is a pro forma motion and, therefore, did not toll the running of the reglementary

period to come to this Court via this petition for review.

Under Section 2 of Rule 45 of the Rules of Court, a recourse to this Court by way of a petition for review must be filed *within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment*. While a motion for reconsideration ordinarily tolls the period for appeal, one that fails to point out the findings or conclusions which were supposedly contrary to law or the evidence does not have such

an effect on the reglementary period as it is merely a *pro forma* motion.^[7]

In arguing for the outright dismissal of this petition, respondent ICC claims that the motion for reconsideration filed by petitioner NTC in connection with the CA's Amended Decision failed to point out specifically the findings or conclusions of the CA which were supposedly contrary to law. Respondent contends that the issues raised by the petitioner in its motion for reconsideration were mere reiterations of the same issues which had already been considered and passed upon by the CA when it promulgated its Amended Decision. On this premise, respondent maintains that petitioner's aforementioned motion for reconsideration is a mere *pro forma* motion that did not toll the period for filing the present petition.

Under established jurisprudence, the mere fact that a motion for reconsideration reiterates issues already passed upon by the court does not, by itself, make it a *pro forma* motion.^[8] Among the ends to which a motion for reconsideration is addressed is precisely to convince the court that its ruling is erroneous and improper, contrary to the law or evidence; and in so doing, the movant has to dwell of necessity on issues already passed upon. If a motion for reconsideration may not discuss those issues, the consequence would be that after a decision is rendered, the losing party would be confined to filing only motions for reopening and new trial.^[9]

Where there is no apparent intent to employ dilatory tactics, courts should be slow in declaring outright a motion for reconsideration as *pro forma*. The doctrine relating to *pro forma* motions has a direct bearing upon the movant's valuable right to appeal. Hence, if petitioner's motion for reconsideration was indeed *pro forma*, it would still be in the interest of justice to review the Amended Decision a quo on the merits, rather than to abort the appeal due to a technicality, especially where, as here, the industry involved (telecommunications) is vested with public interest. All the more so given that the instant petition raises some arguments that are well-worth resolving for future reference.

This brings us to the substantive merits of the petition.

In its Amended Decision, the CA ruled that petitioner NTC had arrogated upon itself the power to tax an entity, which it is not authorized to do. Petitioner disagreed, contending the fee in question is not in the nature of a tax, but is merely a regulatory measure.

Section 40(g) of the Public Service Act provides:

Sec. 40. The Commission is authorized and ordered to charge and collect from any public service or applicant, as the case may be, the following fees as reimbursement of its expenses in the authorization, supervision and/or regulation of the public services:

xxx xxx xxx

g) For each permit, authorizing the increase in equipment, the installation of new units or authorizing the increase of capacity, or the extension of means or general extensions in the services, twenty centavos for each one hundred pesos or fraction of the additional capital necessary to carry out the permit. (Emphasis supplied)

Clearly, Section 40(g) of the Public Service Act is not a tax measure but a simple regulatory provision for the collection of fees imposed pursuant to the exercise of the State's police power. A tax is imposed under the taxing power of government principally for the purpose of raising revenues. The law in question, however, merely authorizes and requires the collection of fees for the reimbursement of the Commission's expenses in the authorization, supervision and/or regulation of public services. There can be no doubt then that petitioner NTC is authorized to collect such fees. However, the amount thereof must be reasonably related to the cost of such supervision and/or regulation.^[10]

Petitioner NTC also assails the CA's ruling that Section 40(g) of the Public Service Act had been amended by Section 5(g) of R.A. No. 7925, which reads:

Sec. 5. Responsibilities of the National Telecommunications Commission.
- The National Telecommunications Commission (Commission) shall be the principal administrator of this Act and as such shall take the necessary measures to implement the policies and objectives set forth in this Act. Accordingly, in addition to its existing functions, the Commission shall be responsible for the following:

xxx xxx xxx

g) In the exercise of its regulatory powers, *continue to impose such fees and charges as may be necessary to cover reasonable costs and expenses for the regulation and supervision of the operations of telecommunications entities.* (Emphasis supplied)

The CA ratiocinated that while Section 40(g) of the Public Service Act (CA 146, as amended), *supra*, allowed NTC to impose fees as reimbursement of its expenses related to, among other things, the "authorization" of public services, Section 5(g), above, of R.A. No. 7921 no longer speaks of "authorization" but only of "regulation" and "supervision." To the CA, the omission by Section 5(g) of R.A. No. 7921 of the word "authorization" found in Section 40(g) of the Public Service Act, as amended, meant that the fees which NTC may impose are only for reimbursement of its expenses for regulation and supervision but no longer for authorization purposes.

We find, however, that NTC is correct in saying that there is no showing of legislative intent to repeal, even impliedly, Section 40(g), *supra*, of the Public Service Act, as amended. An implied repeal is predicated on a substantial conflict between the new